CHAPTER 134

MISCELLANEOUS TRADE REGULATIONS

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134.01 Injury to business; restraint of will. Any 2 or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of willfully or maliciously injuring another in his or her reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his or her will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding $500.

History: 1993 a. 482.

A complaint alleging a conspiracy for the purpose of injuring another by means of perjury and resulting damage states a claim upon which relief can be granted. Radue v. Dill, 74 Wis. 2d 239, 246 N.W.2d 507 (1976).

Malice is an integral element that must be proved under this section and must be proved in respect to both parties to the conspiracy. For conduct to be malicious under conspiracy law, it must be conduct intended to cause harm for harm's sake. Maleki v. Fine-Lando Clinic Chartered, S.C., 162 Wis. 2d 73, 469 N.W.2d 629 (1991).

A doctor's personal service corporation was merely the alter ego of the doctor. The doctor and the corporation did not constitute "two or more persons" under this section. Wausau Medical Center, S.C. v. Asplund, 182 Wis. 2d 274, 514 N.W.2d 34 (Ct. App. 1994).

An employee's claim against fellow employees for injury to reputation and profession was preempted by s. 102.03. Mudrovich v. Soto, 2000 WI App 174, 238 Wis. 2d 162, 617 N.W.2d 242, 99-1410.

Malicious injury to reputation and business claims do not require the existence of a contract in order to lie. The economic loss doctrine does not apply in the case of an independent tort based on allegations distinct from any contract allegations that seeks separate, non-economic damages. Brew City Redevelopment Group, LLC v. Ferchill Group, 2006 WI 128, 297 Wis. 2d 606, 724 N.W.2d 879, 04-3238.

This section is a criminal statute, but Wisconsin courts have found an implied private right for victims of such conspiracies. To prove a claim under this section, a plaintiff must show that: 1) the defendants acted together; 2) with a common purpose to injure the plaintiff's reputation or business; 3) with malice; and 4) the plaintiff suffered financial harm. Kuryakyn Holdings, LLC v. Ciro, LLC, 242 F. Supp. 3d 789 (2017).

134.02 Blacklisting and coercion of employees. (1) Any 2 or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor and who shall combine or agree to combine for any of the following purposes shall be fined not less than $100 nor more than $500, which fine shall be paid into the state treasury for the benefit of the school fund:

(a) Preventing any person seeking employment from obtaining employment.

(b) Procuring or causing the discharge of any employee by threats, promises, circulating blacklists or causing blacklists to be circulated.

(c) After having discharged any employee, preventing or attempting to prevent the employee from obtaining employment with any other person, partnership, company or corporation by the means described in par. (a) or (b).

(d) Authorizing, permitting or allowing any of their agents to blacklist any discharged employee or any employee who has voluntarily left the service of his or her employer.

(e) Circulating a blacklist of an employee who has voluntarily left the service of an employer to prevent the employee's obtaining employment under any other employer.

(f) Coercing or compelling any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his or her securing employment or continuing therein.

(2) (a) Nothing in this section shall prohibit any employer from giving any other employer, to whom a discharged employee has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for the employee's discharge, when requested to do so by any of the following:

1. The discharged employee.

2. The person to whom the discharged employee has applied for employment.

3. Any bondsman or surety.

(b) It shall be a violation of this section to give a statement of the reasons for the employee's discharge with the intent to blacklist, hinder or prevent the discharged employee from obtaining employment.

(c) Nothing contained in this section shall prohibit any employer from keeping for the employer's own information and protection a record showing the habits, character and competency of the employer's employees and the cause of the discharge or voluntary quitting of any of them.

History: 1993 a. 482; 1995 a. 225.

To plead a claim for blacklisting, a plaintiff must allege that: 1) the defendants acted together; 2) with malice; and 3) with a common purpose to prevent the plaintiff from obtaining employment. Deeren v. Anderson, 518 F. Supp. 3d 1271 (2021).

134.03 Preventing pursuit of work. Any person who by threats, intimidation, force or coercion of any kind shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or herself or as a wage worker, or who shall attempt to so hinder or prevent shall be punished by fine not exceeding $100 or by imprisonment in the county jail not more than 6 months, or by both fine and imprisonment in the discretion of the court. Nothing herein contained shall be construed to prohibit any person or persons off of the premises of such lawful work or employment from recommending, advising or persuading others by peaceful means to refrain from working at a place where a strike or lockout is in progress.

History: 1993 a. 482.

An allegation of employment discrimination was not covered by this section. McCluney v. Jos. Schlitz Brewing Co., 489 F. Supp. 24 (1980).

134.04 Sale of certain merchandise by employers to employees prohibited; penalty. (1) No person, firm or corporation engaged in any enterprise in this state shall by any method or procedure directly or indirectly by itself or through a subsidiary agency owned or controlled in whole or in part by such person, firm or corporation, sell or procure for sale or have in its possession or under its control for sale to its employees or any person any article, material, product or merchandise of whatsoever nature not of the person's, firm's or corporation's production or not handled in the person's, firm's or corporation's regular course of trade, excepting meals, candy bars, cigarettes and tobacco for the exclusive use and consumption of such employees of the employer, and excepting tools used by employees in said enterprise and such specialized appliances and paraphernalia as may be required in said enterprise for the employees' safety or health and articles used by employees or other persons which insure better sanitary conditions and quality in the manufacture of food or food products. The provisions of this subsection shall not apply to lumber producers, loggers and dealers nor to any cooperative association organized under ch. 185 or 193. This section shall not be construed as authorizing the sale of any merchandise at less than cost as defined in s. 100.30.

(2) Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than $100 nor more than $500 and for second or subsequent offense by a fine of not less than $500 nor more than $1,000. Each act prohibited by this section shall constitute a separate violation and offense hereunder.

History: 1985 a. 30 s. 42; 1993 a. 482; 2005 a. 441.

134.05 Bribery of agent, etc. (1) Whoever corruptly gives, offers or promises to an agent, employee or servant, any gift or gratuity whatever, with intent to influence the agent's, employee's or servant's action in relation to the business of the agent's, employee's or servant's principal, employer or master shall be penalized as provided in sub. (4).

(2) An agent, employee or servant who does any of the following shall be penalized as provided in sub. (4):

(a) Corruptly requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself or herself, under an agreement or with an understanding that he or she shall act in any particular manner in relation to the business of the agent's, employee's or servant's principal, employer or master.

(b) Being authorized to procure materials, supplies or other articles either by purchase or contract for his or her principal, employer or master, or to employ service or labor for his or her principal, employer or master, receives directly or indirectly, for himself or herself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor.

(3) A person who gives or offers an agent, employee or servant authorized as described in sub. (2) (b) a commission, discount or bonus of the type described in sub. (2) (b), shall be penalized as provided in sub. (4).

(4) Whoever violates sub. (1), (2) or (3) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

History: 1993 a. 482; 1997 a. 283; 2001 a. 109.

Cross-reference: See s. 885.15 for provision as to granting immunity for testifying as to offenses charged under this section.

134.06 Bonus to chauffeurs for purchases, forbidden. It shall be unlawful for any chauffeur, driver or other person having the care of a motor vehicle for the owner to receive or take directly or indirectly without the written consent of such owner any bonus, discount or other consideration for supplies, or parts furnished or purchased for such motor vehicle or upon any work or labor done thereon by others or on the purchase of any motor vehicle for the chauffeur's, driver's or other person's employer and no person furnishing such supplies or parts, work or labor or selling any motor vehicle shall give or offer any such chauffeur or other person having the care of a motor vehicle for the owner thereof, directly or indirectly without such owner's written consent, any bonus, discount or other consideration thereon. Any person violating this section shall be guilty of a misdemeanor and punished by a fine not exceeding $25.

History: 1993 a. 482.

134.10 Invading right to choose insurance agent or insurer by persons engaged in financing. (1) Any person engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property, and any trustee, director, officer, agent or employee of any such person, who requires, or conspires with another to require, as a condition precedent to financing the purchase of such property or to loaning money upon the security of a mortgage thereon, or as a condition prerequisite for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person for

whom such purchase is to be financed or to whom the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed, negotiate any policy of insurance or renewal thereof covering such property through a particular insurance agent, shall be fined not less than $50 nor more than $200 or imprisoned not more than 6 months or both.

(2) It is the duty of every person engaged in such business and of every trustee, director, officer, agent or employee of any such person, when financing the purchase of such property or loaning money upon the security of a mortgage thereon, or renewing or extending any such loan or mortgage, or performing any other act in connection therewith, to advise the person for whom such purchase is to be financed or to or for whom the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed, that the person is free to choose the insurance agent or insurer through which the insurance covering such property is to be negotiated.

(3) This section shall not be construed to prevent the reasonable exercise of any person so engaged, or his or her trustee, director, officer, agent or employee, of his or her right to approve or disapprove the insurer selected to underwrite the insurance or to determine the adequacy of the insurance offered.

History: 1993 a. 482.

134.11 Invading of right to choose insurance agent or insurer by persons engaged in selling property. (1) Any person engaged in the business of selling real or personal property, and any trustee, director, officer, agent or employee of any such person, who requires, as a condition precedent to the selling of such property, or to the performance of any other act in connection therewith, that the person to whom such property is being sold, negotiate any policy of insurance or renewal thereof covering such property through a particular insurance agent, shall be fined not less than $50 nor more than $200 or imprisoned not more than 6 months or both.

(2) It is the duty of every person engaged in the business of selling real property or personal property and of every trustee, director, officer, agent or employee of any person so engaged, when negotiating the sale or selling any real or personal property, to advise the person to whom the property is being sold that the person is free to choose the insurance agent or insurer through which the insurance covering the property is to be negotiated.

(3) This section shall not be construed to prevent the reasonable exercise by any person so engaged, or his or her trustee, director, officer, agent or employee, of his or her right to approve or disapprove, on behalf of himself or herself or his or her principal, the insurer selected to underwrite the insurance or to determine the adequacy of the insurance offered.

History: 1993 a. 482.

134.15 Issuing and using what is not money; contracts void. (1) Any person who shall knowingly issue, pay out or pass, and any body corporate, or any officer, stockholder, director or agent thereof who shall issue, pay out or pass, or receive in this state, as money or as an equivalent for money, any promissory note, draft, order, bill of exchange, certificate of deposit or other paper of any form whatever in the similitude of bank paper, circulating as money or banking currency, that is not at the time of such issuing, paying out, passing or receiving expressly authorized by some positive law of the United States or of some state of the United States or of any other country, and redeemable in lawful money of the United States, or current gold or silver coin at the place where it purports to have been issued, such person shall be punished by imprisonment in the county jail not more than 6 months or by fine not exceeding $100, and such body corporate shall forfeit all its rights, privileges and franchises and shall also forfeit to the state and pay for each offense the sum of $500.

(2) All contracts of any kind whatever the consideration of which, in whole or in part, shall consist of any such paper as is prohibited in sub. (1) and all payments made in such unauthorized paper shall be null and void.

134.16 Fraudulently receiving deposits. Any officer, director, stockholder, cashier, teller, manager, messenger, clerk or agent of any bank, banking, exchange, brokerage or deposit company, corporation or institution, or of any person, company or corporation engaged in whole or in part in banking, brokerage, exchange or deposit business in any way, or any person engaged in such business in whole or in part, who shall accept or receive, on deposit, or for safekeeping, or to loan, from any person any money, or any bills, notes or other paper circulating as money, or any notes, drafts, bills of exchange, bank checks or other commercial paper for safekeeping or for collection, when he or she knows or has good reason to know that such bank, company or corporation or that such person is unsafe or insolvent is guilty of a Class F felony.

History: 1977 c. 418; 1997 a. 283; 2001 a. 109.

134.17 Corporate name, recording, amendment, discontinuance, unlawful use. (1) Any person who engages in or advertises any mercantile or commission business under a name purporting or appearing to be a corporate name, with the intent to obtain credit, and which name does not disclose the real name of one or more of the persons engaged in the business, without first recording in the office of the register of deeds of the county in which his or her principal place of business is located, a verified statement disclosing and showing the name of all persons using the name, shall be fined not more than $1,000 or imprisoned in the county jail for not more than one year.

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

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

(4) For each recording, the register of deeds shall receive the fee specified for recording under s. 59.43 (2) (ag).

History: 1981 c. 245; 1993 a. 301; 1995 a. 201; 2003 a. 206.

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

134.19 Fraud on exemption laws. Any person who shall, whether as principal, agent or attorney, with intent thereby to deprive any bona fide resident of this state of the resident's rights under the statutes thereof relating to the exemption of property or earnings from sale or garnishment, send or cause to be sent out of this state any claim for debt for the purpose of having the same collected by proceedings in attachment, garnishment or other mesne process, when the creditor and debtor and the person or corporation owing the debtor the money intended to be reached by any such proceedings are within the jurisdiction of the courts of this state; or who directly or indirectly assigns or transfers any claim for debt against such a resident for the purpose of having the same collected by such proceedings or any of them out of the wages or personal earnings of the debtor or of the debtor's minor children, whose earnings contribute to the support of the debtor's

family, in courts without this state, when the creditor and debtor and person or corporation owing the money intended to be reached by such proceedings are each and all within the jurisdiction of the courts of this state, shall be fined not more than $50 nor less than $10 for each offense.

History: 1993 a. 482.

134.20 Fraudulent issuance or use of warehouse receipts or bills of lading. (1) Whoever, with intent to defraud, does any of the following is guilty of a Class H felony:

(a) Issues a warehouse receipt or bill of lading covering goods which, at the time of issuance of the receipt or bill, have not been received or shipped in accordance with the purported terms and meaning of such receipt or bill.

(b) Issues a warehouse receipt or bill of lading which the person knows contains a false statement.

(c) Issues a duplicate or additional warehouse receipt or bill of lading, knowing that a former receipt or bill for the same goods or any part of them is outstanding and uncanceled.

(d) Issues a warehouse receipt covering goods owned by the warehouse keeper, either solely or jointly or in common with others, without disclosing such ownership in the receipt.

(e) Delivers goods out of the possession of such warehouse keeper or carrier to a person who he or she knows is not entitled thereto or with knowledge that the goods are covered by a negotiable warehouse receipt or bill of lading which is outstanding and uncanceled and without obtaining possession of such receipt or bill at or before the time of delivery and either canceling it or conspicuously noting thereon any partial deliveries made.

(f) In any manner removes beyond the immediate control of a warehouse keeper or carrier any goods covered by a warehouse receipt or bill of lading issued by such warehouse keeper or carrier, contrary to the terms and meaning of such receipt or bill and without the consent of the holder thereof.

(g) Negotiates or transfers for value a warehouse receipt or bill of lading covering goods which he or she knows are subject to a lien or security interest, other than the warehouse keeper's or carrier's lien, or to which he or she does not have title or which he or she knows have not been received or shipped in accordance with the purported terms and meaning of the warehouse receipt or bill of lading and fails to disclose those facts to the purchaser thereof.

(2) In this section:

(a) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(b) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

History: 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 225; 1997 a. 283; 2001 a. 109.

134.205 Warehouse keepers to keep register; liability for damages; penalty for fraud. (1) Every warehouse keeper shall keep in the office in which the business of the warehouse is transacted a register in which shall be entered with reference to each receipt issued, the facts specified in s. 407.202 (2). When the warehouse keeper ceases to be responsible for the delivery of the property described in the receipt, the fact and date of the delivery of the property and such other facts as may terminate liability on such receipt shall be entered in such register in connection with the original entry.

(2) Such register shall be open to the inspection of the owner or holder of any such receipt, or of any person who presents the same at the office of the warehouse keeper.

(3) The warehouse keeper shall be responsible to any person relying on such entries in good faith for any loss or damage which the person sustains through any failure to make the entries required by this section.

(4) Whoever, with intent to defraud, issues a warehouse receipt without entering the same in a register as required by this section is guilty of a Class H felony.

History: 1983 a. 500 s. 43; 1993 a. 482; 1997 a. 283; 2001 a. 109.

134.21 Penalty for unauthorized presentation of dramatic plays, etc. Any person who sells a copy or a substantial copy, or who causes to be publicly performed or represented for profit, any unpublished or undedicated dramatic play or musical composition, known as an opera, without the written consent of its owner or proprietor, or, who, knowing that such dramatic play or musical composition is unpublished or undedicated, and, without the written consent of its owner or proprietor, permits, aids, or takes part in such a performance or representation, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $5 nor more than $100, or by imprisonment not exceeding 60 days.

134.23 Motion picture fair practices. (1) DEFINITIONS. As used in this section:

(a) "Blind bidding" means offering, bidding for, negotiating for or agreeing to any term for the licensing or exhibition of a motion picture in this state prior to a trade screening of the motion picture.

(b) "Distributor" means a person who rents, sells, licenses or otherwise distributes to an exhibitor a motion picture for exhibition in this state.

(c) "License agreement" means a contract, agreement, understanding or condition between a distributor and an exhibitor relating to the exhibition of a motion picture in this state.

(d) "Trade screening" means the showing of a motion picture by a distributor in one of the 3 largest cities in this state.

(2) BLIND BIDDING PROHIBITED. A person may not engage in blind bidding.

(3) TRADE SCREENING. (a) Every trade screening shall be open to any exhibitor.

(b) A distributor shall provide reasonable and uniform notice to all exhibitors of all trade screenings.

(4) GUARANTEES PROHIBITED. A license agreement created or renewed after May 18, 1984, which provides for a fee or other payment to a distributor based in whole or in part on the attendance at a theater or the box office receipts of a theater may not contain or be conditioned upon a guarantee of a minimum payment by an exhibitor to the distributor.

(5) INJUNCTIVE RELIEF AND DAMAGES. A person aggrieved by a violation of this section may bring a civil action to enjoin further or continuing violations or to recover actual damages sustained as a result of a violation, together with costs of the action. In an action under this subsection, the court shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a party who obtains injunctive relief or an award of damages.

History: 1983 a. 454.

134.245 Definitions. In ss. 134.25 to 134.32:

(1) "Marked" means stamped, branded, engraved or imprinted upon, attached to a tag, card or label which is stamped, branded, engraved or imprinted upon, or contained in a box, package, cover or wrapper which is stamped, branded, engraved or imprinted upon.

(2) "Person" means an individual, firm, corporation or association.

(3) "Sells" includes making for sale, selling, offering to sell or dispose of, or possessing with intent to sell or dispose of.

History: 1997 a. 254.

134.25 Misbranding of gold articles. (1) (a) Except as provided in par. (b) and subject to sub. (3), any person who sells any article of merchandise made in whole or in part of gold or any alloy of gold which that is marked in any way indicating, or designed or intended to indicate, that the gold or alloy of gold in the article is of a greater degree of fineness than the actual fineness or quality of the gold or alloy, is guilty of a misdemeanor.

(b) Paragraph (a) is not violated if the actual fineness of the gold or alloy in the article meets any of the following conditions:

1. The actual fineness is not less, by more than three one-thousandths parts in the case of flatware and watch cases, than the fineness actually marked on the article.

2. The actual fineness is not less, by more than one-half karat, than the fineness actually marked on the article in the case of all articles not specified in subd. 1.

(2) In any test to determine the fineness of the gold or its alloy in any article, according to the standards set forth in this section, the part of the gold or gold alloy taken for the test shall not contain or have attached to it any solder or alloy of inferior fineness used for brazing or uniting the parts of the article.

(3) The actual fineness of the entire quantity of gold and gold alloys contained in any article mentioned in this section, except watch cases and flatware, including all solder or alloy of inferior metal used for brazing or uniting the parts of the article, shall not be less, by more than one karat, than the fineness marked on the article. In determining the quality of gold and gold alloys for purposes of this subsection, the gold, alloys and solder being tested shall be tested as one piece.

History: 1997 a. 254.

134.26 Misbranding of sterling silver articles. (1) Except as provided in sub. (2) and s. 134.29, any person who sells any article of merchandise made in whole or in part of silver or of any alloy of silver marked with the words "sterling silver" or "sterling" or any colorable imitation of "sterling silver" or "sterling", unless nine hundred twenty-five one-thousandths of the component parts of the metal appearing or purporting to be silver are pure silver is guilty of a misdemeanor.

(2) In the case of all articles that are subject to sub. (1), there shall be allowed a divergence in fineness of four one-thousandths parts from the standards under sub. (1).

History: 1997 a. 254.

134.27 Misbranding of coin silver articles. (1) Except as provided in sub. (2) and s. 134.29, any person who sells any article of merchandise made in whole or in part of silver or of any alloy of silver marked with the words "coin" or "coin silver", or any colorable imitation of "coin" or "coin silver", unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver are pure silver is guilty of a misdemeanor.

(2) In the case of all articles that are subject to sub. (1), there shall be allowed a divergence in fineness of four one-thousandths parts from the standards under sub. (1).

History: 1997 a. 254.

134.28 Misbranding of base silver articles. Except as provided in s. 134.29, any person who sells any article of merchandise made in whole or in part of silver or of any alloy of silver marked in way, other than with the word "sterling" or the word "coin", indicating, or designed or intended to indicate, that the silver or alloy of silver in the article is of a greater degree of fineness than the actual fineness or quality of the silver or alloy, unless the actual fineness of the silver or alloy of silver of which the article is composed is not less by more than four one-thousandths parts than the actual fineness, is guilty of a misdemeanor.

History: 1997 a. 254.

134.29 Testing of silver articles. (1) In any test to determine the fineness of any silver article mentioned in ss. 134.26 to 134.28, according to the standards contained in ss. 134.26 to 134.28, the part of the article taken for the test shall not contain or have attached to it any solder or alloy of inferior metal used for brazing or uniting the parts of the article.

(2) Notwithstanding sub. (1) and ss. 134.26 to 134.28, the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in ss. 134.26 to 134.28, including all solder or alloy of inferior fineness used for brazing or uniting the parts of the article, shall not be less by more than ten one-thousandths parts than the fineness marked on the article, according to the standards contained in ss. 134.26 to 134.28. In determining the fineness of metal for purposes of this subsection, the silver, alloy or solder being tested shall be tested as one piece.

History: 1997 a. 254.

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

134.31 Misbranding of silver-plated articles. Any person who sells any article of merchandise made in whole or in part of inferior metal, having deposited or plated on the inferior metal or brazed or otherwise affixed to the inferior metal, a plate, plating, covering or sheet of silver or of any alloy of silver known in the market as "silver plate" or "silver electroplate", or any similar designation, which is marked with the word "sterling" or the word "coin", either alone or in conjunction with any other words or marks, is guilty of a misdemeanor.

History: 1997 a. 254.

134.32 Penalty for violations of ss. 134.25 to 134.31. Every person who violates any of the provisions of ss. 134.25 to 134.31, and every officer, manager, director or managing agent of any such person directly participating in or consenting to a violation of ss. 134.25 to 134.31, shall be fined not less than $25 nor more than $500 or imprisoned for not more than 3 months or both.

History: 1997 a. 254.

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

(a) "Apply" and "applied" include any method or means of application or attachment to, or of use on, or in connection with, or in relation to, an article, whether such application, attachment or use is to, on, by, in or with the article itself, or anything attached to the article, or anything to which the article is attached, or anything in or on which the article is, or anything so used or

placed as to lead to a reasonable belief that the mark on that thing is meant to be taken as a mark on the article itself.

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

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

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

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

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

(b) The quality mark applied to the article shall be deemed not to apply to springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust-bands, detachable movement rims, hatpin stems, bracelet and necklace snap tongues. In addition, in the event that an article is marked under sub. (1) (e), the quality mark applied to the article shall be deemed not to apply to pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf pin stems, hat pin sockets, shirtstud backs, vest button backs and ear screw backs, provided such parts are made of the same quality of gold as is used in the balance of this article.

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

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

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

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

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

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

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

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

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

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

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

3. The percentage of platinum in the article is no less than 5 percent in weight of the total weight of the article; and

4. The mark shall be so applied that the karat mark shall immediately precede the platinum mark, as for example, "14 K & Plat.", "18 K & Plat.", as the case may be, it being expressly provided that in case the percentage of platinum exceeds the 5 percent provided herein, the quality mark may also include a declaration of the percentage of platinum, as for example, "18 K & 1/10th Plat.", or "14 K & 1/8th Plat.", or as the case may be.

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

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

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

(b) In any action relating to the enforcement of this section, proof that an article has been marked in violation of this section shall be deemed to be prima facie proof that such article was manufactured after July 1, 1937.

(8) PENALTIES. Any person, firm, partnership, corporation or association or any officer, director, employee or agent thereof who makes, or sells, or offers to sell, or disposes of, or has in his or her or its possession, with intent to sell or dispose of, any article as herein defined to which is applied any quality mark which does not conform to all the provisions of this section, or from which is omitted any mark required by this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or by both such fine and imprisonment in the discretion of the court, provided, however, that it shall be a defense to any prosecution under this section for the defendant to prove that the said article was manufactured and marked with the intention of and for purposes of exportation from the United States, and that the said article was either actually exported from the United States to a foreign country within 6 months after date of manufacture thereof with the bona fide intention of being sold in the said country and of not being reimported, or that it was delivered within 6 months after date of manufacture thereof, to a person, firm or corporation whose exclusive customary business is the exportation of such articles from the United States.

(10) EFFECTIVE DATE. This section shall take effect July 1, 1937, and shall not apply to any article manufactured prior thereto.

History: 1979 c. 89; 1981 c. 390 s. 252; 1983 a. 189; 1993 a. 482; 1997 a. 254; 2001 a. 103.

134.34 Duplication of vessel hulls and parts. (1) In this section:

(a) "Direct molding process" means any direct molding process in which the original manufactured vessel hull or component part of a vessel is itself used as a plug for the making of the mold, which is then used to manufacture a duplicate item.

(b) "Mold" means a matrix or form in which a substance or material is shaped.

(c) "Plug" means a device or model used to make a mold for the purpose of exact duplication.

(2) No person may use the direct molding process to duplicate for the purpose of sale a manufactured vessel hull or component part of a vessel made by another person without the written permission of that other person.

(3) No person may knowingly sell a vessel hull or component part of a vessel duplicated in violation of sub. (2).

(4) This section applies only to vessel hulls or component parts of vessels duplicated using a mold made after June 30, 1983.

(5) A person who suffers injury or damage as the result of a violation of this section may bring an action in circuit court for an injunction prohibiting the violation. In addition, the person shall be entitled to actual damages incurred as a result of the violation, reasonable attorney fees and costs, notwithstanding s. 814.04 (1).

History: 1983 a. 324.

134.345 Form retention and disposal. (1) In this section:

(a) "Customer" means any person who causes a molder to make a form or to use a form to make a product.

(b) "Form" means an object in or around which material is placed to make a mold for pouring plastic or casting metal, and includes a mold, die or pattern.

(c) "Molder" means any person who makes a form or who uses a form to make a product.

(2) Unless a customer and a molder otherwise agree in writing a molder may, as provided in sub. (3), dispose of a form possessed by a customer if the customer does not take from the molder physical custody of the form within 3 years after the molder's last prior use of the form.

(3) A molder who wishes to dispose of a form shall send written notice by registered mail with return receipt requested to the customer's last-known address and to any address set forth in the agreement under which the molder obtained physical custody of the form. The notice shall state that the molder intends to dispose of the form. The molder may dispose of the form without liability to the customer if, within 120 days after the molder receives the return receipt of the notice or within 120 days after the molder sends notice if no return receipt is received within that period, the customer does not take physical custody of the form or enter into an agreement with the molder for taking possession or physical custody of the form.

History: 1987 a. 399.

134.35 Time of filing endorsed on telegrams delivered. (1) Every person, firm or corporation operating a telegraph line or lines in this state shall, without extra charge therefor, cause to be written, stamped or printed in a conspicuous place upon the addressee's copy of each telegram originating at and destined to a point within this state, the hour and minute of the day in which the copy of such telegram was filed or left with such person, firm or corporation for transmission and the hour and minute of the day when such telegram was received in the office of such person, firm or corporation at its destination.

(2) Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

134.36 Telegraph; divulging message; preference in sending, etc. Any officer or other person connected with, or in the business or management of, any telegraph company doing business in this state who shall divulge or communicate any telegraph message or dispatch or the substance or any part thereof, except to the person entitled to receive the same, or who shall give unlawful preference in the sending, transmitting or receiving of telegraph messages or dispatches, or shall willfully fail or neglect to give preference to dispatches or messages in the order of time in which applications are received shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding $500.

134.37 Divulging message or forging receipt. Any person connected with a telegraph or messenger company, incorporated or unincorporated, operating a line of telegraph or engaged in the business of receiving and delivering messages in this state, in any capacity, who willfully divulges the contents, or the nature of the contents of a private communication entrusted to the person for transmission or delivery, or who willfully refuses or neglects to transmit or deliver the same, or who willfully forges the name of the intended receiver to a receipt for any such message or communication or article of value entrusted to the person by said company, shall be imprisoned in the county jail, not exceeding one year, or be fined not to exceed $500, in the discretion of the court.

History: 1993 a. 482.

134.38 Companies to post copies of s. 134.37. All telegraph or messenger companies whose employees are affected by s. 134.37 are hereby required to post, in their offices in this state, a copy of s. 134.37, under a penalty of $10 and costs for each and every offense.

History: 1979 c. 89.

134.39 Fraudulent knowledge of dispatch; injury to wires; interference. Any person who shall, by any device or means whatever, procure or attempt to procure from any officer or other person connected with or in the business or management of any telegraph company transacting business within this state, any knowledge of the contents or substance of any telegraph message or dispatch not addressed to himself or herself or to which he or she is not entitled, or who shall, without lawful authority, tamper or interfere with, use or in any manner intentionally, carelessly or negligently disturb or interrupt any telegraph wires or lines of any such telegraph company, or who shall intentionally, carelessly or negligently fell any tree or timber so as to break, destroy or injure any such telegraph wires, without first giving 24 hours' notice of his or her intention to do so to some agent of the company at its nearest office or to some agent of a railroad company at its nearest office, in case such wires are constructed along any railroad, or who shall, without the consent of such company, send or attempt to send any message or dispatch over said wire or lines, in any manner whatever, or shall intercept, interrupt or disturb any dispatch passing upon any such wires or lines, or who shall willfully or maliciously interfere with, obstruct, prevent or delay, by any means or contrivance whatsoever, the sending, transmission or receiving of any wireless telegraph message, communication or report by any wireless telegraph company doing business in this state, or who shall aid, agree with, employ or conspire with any person or persons to unlawfully interfere with, obstruct, prevent or delay the sending, transmission or receiving of any such wireless telegraph message, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding $1,000.

History: 1993 a. 482.

134.405 Purchase and sale of certain scrap material. (1) DEFINITIONS. In this section:

(a) "Commercial account" means a commercial enterprise with which a scrap dealer maintains an ongoing and documented business relationship.

(b) "Commercial enterprise" means a corporation, partnership, limited liability company, business operated by an individual, association, state agency, political subdivision, or other government or business entity, including a scrap dealer.

(c) "Ferrous scrap" means scrap metal, other than scrap metal described in pars. (d) to (f), consisting primarily of iron or steel, including large manufactured articles that may contain other substances to be removed and sorted during normal operations of scrap metal dealers.

(d) "Metal article" means a manufactured item that consists of metal, is usable for its original intended purpose without processing, repair, or alteration, and is offered for sale for the value of the metal it contains, except that "metal article" does not include antique or collectible articles, including jewelry, coins, silverware, and watches.

(e) "Nonferrous scrap" means scrap metal consisting primarily of metal other than iron or steel, but does not include any of the following:

1. Aluminum beverage cans.

2. Used household items.

3. Items removed from a structure during renovation or demolition.

4. Small quantities of nonferrous metals contained in large manufactured items.

(em) "Plastic bulk merchandise container" means a plastic crate, pallet, or shell used by a product producer, distributor, or retailer for the bulk transport or storage of retail containers of bottled beverages.

(f) "Proprietary article" means any of the following:

1. A metal article stamped, engraved, stenciled, or otherwise marked to identify the article as the property of a governmental entity, telecommunications provider, public utility, cable operator, as defined in s. 66.0420 (2) (d), or an entity that produces, transmits, delivers, or furnishes electricity, or transportation, shipbuilding, ship repair, mining, or manufacturing company.

2. A copper conductor, bus bar, cable, or wire, whether stranded or solid.

3. An aluminum conductor, cable, or wire, whether stranded or solid.

4. A metal beer keg.

5. A manhole cover.

6. A metal grave marker, sculpture, plaque, or vase, if the item's appearance suggests the item has been obtained from a cemetery.

7. A rail, switch component, spike, angle bar, tie plate, or bolt used to construct railroad track.

8. A plastic bulk merchandise container.

9. A catalytic converter.

(fm) "Scrap dealer" means a scrap plastic dealer or scrap metal dealer.

(g) "Scrap metal" means a metal article; metal removed from or obtained by cutting, demolishing, or disassembling a building, structure, or manufactured item; or other metal that is no longer used for its original intended purpose and that can be processed for reuse in a mill, foundry, or other manufacturing facility.

(h) "Scrap metal dealer" means a person engaged in the business of buying or selling scrap metal.

(j) "Scrap plastic dealer" means a person engaged in the business of buying or selling plastic to be processed for reuse in a mill or other manufacturing facility.

(2) PURCHASES OF FERROUS SCRAP. A scrap metal dealer may purchase scrap metal other than nonferrous scrap, a metal article, or a proprietary article from any person over the age of 18.

(3) PURCHASES OF NONFERROUS SCRAP, METAL ARTICLES, PROPRIETARY ARTICLES. (a) Subject to par. (b), a scrap dealer may purchase nonferrous scrap, metal articles, or proprietary articles from any person who is over the age of 18 if all of the following apply:

1. If the seller of nonferrous scrap, metal articles, or proprietary articles is an individual, at the time of the sale, the seller provides to the scrap dealer the seller's motor vehicle operator's license, tribal identification card, as defined in s. 134.695 (1) (cm), or other government-issued, current photographic identification that includes the seller's full name, current address, date of birth, and recognized identification number. If the seller is not an individual, at the time of the sale, the individual who delivers the seller's nonferrous scrap, metal articles, or proprietary articles provides to the dealer the deliverer's motor vehicle operator's license, tribal identification card, as defined in s. 134.695 (1) (cm), or other government-issued, current photographic identification that includes the deliverer's full name, current address, date of birth, and recognized identification number.

2. The scrap dealer records and maintains at the scrap dealer's place of business the seller's or deliverer's identification information described in subd. 1., the time and date of the purchase, the number and state of issuance of the license plate on the seller's or deliverer's vehicle, and a description of the items received, including all of the following:

a. The weight of the scrap or articles.

b. A description of the scrap or articles that is consistent with guidelines promulgated by a national recycling industry trade organization. This subd. 2. b. does not apply to plastic bulk merchandise containers.

4. With respect to a purchase of nonferrous scrap or a metal article the scrap dealer obtains the seller's signed declaration that the seller is the owner of the items being sold.

5. With respect to a purchase of a proprietary article, one of the following applies:

a. The scrap dealer receives from the seller documentation, such as a bill of sale, receipt, letter of authorization, or similar evidence, that establishes that the seller lawfully possesses the proprietary article.

b. The scrap dealer documents that the scrap dealer has made a diligent inquiry into whether the person selling the proprietary article has a legal right to do so, and, not later than one business day after purchasing the proprietary article, submits a report to a local law enforcement department describing the proprietary article and submits a copy of the seller's or deliverer's identifying information under subd. 1.

(b) This subsection does not apply to purchases of nonferrous scrap, metal articles, or proprietary articles by a scrap dealer from a commercial account, if the scrap dealer creates and maintains a record of its purchases from the commercial account that includes all of the following:

1. The full name of the commercial account.

2. The business address and telephone number of the commercial account.

3. The name of a contact person at the commercial account who is responsible for the sale of nonferrous scrap, metal articles, or proprietary articles to the scrap dealer.

4. The time, date, and value of each of the scrap dealer's purchases from the commercial account.

5. A description of the predominant types of nonferrous scrap, metal articles, or proprietary articles the scrap dealer has purchased from the commercial account.

(c) Except as provided under sub. (4), a scrap dealer may disclose personally identifiable information recorded or maintained under this subsection only to a successor in interest to the scrap dealer, including a successor in interest that arises as a result of a merger, sale, assignment, restructuring, or change of control.

(4) OTHER PROVISIONS. (a) A scrap dealer shall make the records required under sub. (3) (a) 2. to 5. and (b) available to a law enforcement officer who presents the agent's credentials at the scrap dealer's place of business during business hours.

(b) A scrap dealer shall maintain the records required under sub. (3) (a) 2., 4., and 5. and (b) 4. and 5. for not less than 2 years after recording it. A scrap dealer shall maintain the records required under sub. (3) (b) 1. to 3. regarding a commercial account for not less than 2 years after the dealer's most recent transaction with the commercial account.

(c) A law enforcement officer of a city, village, town, or county in which a scrap dealer conducts business may request that all scrap dealers in the city, village, town, or county furnish reports of all purchases of nonferrous scrap, metal articles, and proprietary articles. A scrap dealer shall comply with a request under this paragraph by submitting to the requesting law enforcement officer a report of each purchase of nonferrous scrap, metal articles, and proprietary articles not later than the business day following the purchase, including each seller's or deliverer's name, date of birth, identification number, and address, and the number and state of issuance of the license plate on each seller's or deliverer's vehicle.

(d) Notwithstanding s. 19.35 (1), a law enforcement officer or agency that receives a record under par. (a) or a report under par. (c) may disclose it only to another law enforcement officer or agency.

(5) PENALTIES. (ad) A scrap dealer who knowingly violates this section and who has not knowingly committed a previous violation of this section is subject to a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both.

(ah) A scrap dealer who knowingly violates this section and who has knowingly committed one previous violation of this section is subject to a fine not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

(ap) A scrap dealer who knowingly violates this section and who has knowingly committed more than one previous violation of this section is guilty of a Class I felony.

(b) Each day on which a scrap dealer knowingly violates this section constitutes a separate violation.

(6) ORDINANCE. (a) A county, town, city, or village may enact an ordinance governing the sale and purchase of scrap metal or the sale of bulk plastic merchandise containers to scrap plastic dealers if the ordinance is not more stringent than this section, except that a 1st class city may enact an ordinance that is more stringent than this section.

(b) Notwithstanding par. (a), a city, village, town, or county may enact an ordinance that requires scrap dealers to submit reports to a law enforcement officer under sub. (4) (c) in an electronic format.

History: 2007 a. 64; 2009 a. 180; 2011 a. 194; 2013 a. 165 s. 115; 2015 a. 55; 2017 a. 170, 226; 2021 a. 189.

134.41 Poles and wires on private property without

owner's consent. (1) No person nor any officer, agent, servant or employee of any firm or corporation shall erect any pole or poles outside of the limits of any highway, street or alley or attach any wire or cables to any tree, building or structure, or string or suspend any wire, wires or cables over any private property without first obtaining the consent of the owner or agent of the owner, to erect such pole or poles or to string such wire or wires, or the consent of the owner or agent of the owner of any building or structure to which such wire, wires or cables are attached; and any person who shall fail to remove such pole, poles, wire or wires or to detach such wire, wires or cables within 10 days after such person, firm or corporation has been served with a notice to remove, as hereinafter provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $25.

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

134.43 Privacy and cable television. (1g) In this section:

(a) "Equipment" means equipment provided by a multichannel video provider that enables a subscriber to receive video programming.

(b) "Multichannel video provider" means an interim cable operator, as defined in s. 66.0420 (2) (n), video service provider, as defined in s. 66.0420 (2) (zg), or multichannel video programming distributor, as defined in 47 USC 522 (13).

(c) "Subscriber" means a person who subscribes to video programming provided by a multichannel video provider.

(d) "Video programming" has the meaning given in s. 66.0420 (2) (x).

(1m) (a) Upon the request of a subscriber, the subscriber's equipment shall be fitted with a device under the control of the subscriber that enables the subscriber to prevent reception and transmission of messages identified in par. (b) by the subscriber's equipment.

(b) The device in par. (a) shall control all messages received and transmitted by the subscriber's equipment except messages recurring at constant intervals, including those related to security, fire, and utility service.

(c) Each multichannel video provider shall notify each subscriber in writing of the opportunity to request the device under par. (a).

(d) No subscriber may be required to pay any extra fee for the installation and operation of a device requested under par. (a).

(e) This subsection does not apply to a multichannel video provider that provides video programming via Internet protocol technology.

(2) No person may intrude on the privacy of another by doing any of the following without the written consent of the subscriber given within the preceding 2 years:

(a) Monitor the subscriber's equipment or the use of it, except to verify the system's integrity or to collect information for billing of pay services.

(b) Provide anyone with the name or address or other information that discloses or reasonably leads to the disclosure of any aspect of the behavior, including but not limited to individual habits, preferences or finances, of the subscriber or of a member of the subscriber's household.

(c) Conduct research that requires the response of the subscriber or of any member of the subscriber's household, except by mail or personal interview, unless the subscriber or household member has been notified in writing before the research begins and at least once each month while the research is being conducted.

(2m) (a) A person may supply the name, address, or other information identifying a subscriber or member of the subscriber's household to another person if the person receiving the information uses it only for billing of pay services or to send listings of video programming programs to the subscriber and if the subscriber is notified in writing of that supplying of information, given the opportunity to object to that supplying and does not object to that supplying.

(b) Any person receiving information under par. (a) may use it only for the purposes specified in par. (a) and is otherwise subject to sub. (2).

(3) Any person who is the victim of an intrusion of privacy under this section is entitled to relief under s. 995.50 (1) and (4) unless the act is permissible under ss. 968.27 to 968.373.

(3m) Subsections (2) (b), (2m) and (3) do not apply to information regarding the name, address or employer of or financial information related to a subscriber or member of a subscriber's household that is requested under s. 49.22 (2m) by the department of children and families or a county child support agency under s. 59.53 (5).

(4) Any person who violates this section is subject to a forfeiture of not to exceed $50,000 for a first offense and not to exceed $100,000 for a 2nd or subsequent offense.

(5) Damages under sub. (3) are not limited to damages for pecuniary loss but shall not be presumed in the absence of proof.

History: 1981 c. 271; 1987 a. 399; 1997 a. 191; 2005 a. 155; 2007 a. 20, 42; 2013 a. 375.

134.45 Contracts restricting days for exhibiting motion picture films; penalty. (1) As used in this section the following words and terms shall be construed as follows:

(a) "Person" shall include any natural person, partnership, firm, unincorporated association, limited liability company or corporation doing business within this state.

(b) "Public exhibition" shall mean any exhibition, performance or display which the public may see, view or attend for an admission price, fee or other valuable consideration.

(2) It shall be unlawful for any person to enter into a contract, directly or indirectly, to sell, rent, lease, license, lend, distribute or barter a motion picture film for public exhibition within this state upon the condition imposed by the seller, vendor, renter, lessor, licensor or distributor that such public exhibition thereof shall begin, occur or take place on a certain or specified day or days of the week.

(3) (a) Any person who violates any provision of this section shall, upon conviction thereof, be fined not less than $25 nor more than $300 for the first offense, and shall be fined not less than $300 nor more than $500 for each separate subsequent offense.

(b) A domestic or foreign corporation, association or limited liability company exercising any of the powers, franchises or functions of a business entity in this state that violates any provision of this section, shall not have the right of, and shall be prohibited from, doing business in this state, and the department of financial institutions shall revoke its certificate to do business in this state.

(4) When, upon complaint or otherwise, the attorney general or district attorney has good reason to believe that any provision of this section has been violated, he or she shall commence and

prosecute the necessary actions in the supreme court, or in the circuit court of the county in which the defendant resides, for enforcement of this section. Such actions may include quo warranto, injunction or any other proceedings.

History: 1993 a. 112, 482, 490; 1995 a. 27.

134.46 Exhibition of explicit sexual material at outdoor theater. (1) DEFINITIONS. In this section:

(a) "Explicit sexual material" means any pictorial or other visual representation depicting sexual conduct or sadomasochistic abuse.

(b) "Harmful to minors" means that quality of any description or representation of sexual conduct or sadomasochistic abuse, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of minors;

2. Is patently offensive to an average person applying contemporary community standards in the adult community as a whole with respect to what is suitable material for minors; and

3. Taken as a whole, lacks serious literary, artistic, political or scientific value for minors.

(c) "Outdoor theater" means a place where any picture or other visual representation or image is displayed on a screen or other background not completely enclosed by walls and a roof and which screen or background can be seen by individuals not within the confines of the theater.

(d) "Sadomasochistic abuse" has the meaning set forth in s. 948.01 (4).

(e) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area.

(2) EXHIBITION OF EXPLICIT SEXUAL MATERIAL PROHIBITED. No person may exhibit explicit sexual material harmful to minors at an outdoor theater with knowledge of the nature of the material, if the material is visible from a public street, sidewalk, thoroughfare or other public place or from private property where it may be observed by minors.

(3) PENALTY. Any person violating this section after receiving proper written notice shall be subject to a forfeiture not to exceed $1,000. Each exhibition constitutes a separate violation of this section.

History: 1977 c. 281; 1983 a. 189 s. 329 (2); 1987 a. 332 ss. 17, 64; 1991 a. 189.

134.48 Contracts for the display of free newspapers. (1) In this section:

(a) "Newspaper" means a publication that is printed on newsprint and that is published, printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public.

(b) "Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation or transportation facility where goods, services, facilities, privileges, advantages or accommodations are offered, sold or otherwise made available to the public.

(2) A contract for the display of a newspaper that is distributed free of charge to the public in a place of public accommodation may not prohibit the person displaying the newspaper for distribution from displaying any other newspaper that is distributed free of charge to the public. A provision in a contract that violates this subsection is unenforceable, but does not affect the enforceability of the remaining provisions of the contract.

History: 1999 a. 9; 2017 a. 365.

134.49 Renewals and extensions of business contracts. (1) DEFINITIONS. In this section:

(a) "Business contract" means a contract that is entered into for the lease of business equipment, if any of the business equipment is used primarily in this state, or for providing business services, but only if the contract is for the direct benefit of the end user of the business equipment or business services. "Business contract" does not include any of the following:

1. A contract in which a customer agrees to purchase from a seller an undetermined amount of business services or lease from the seller an undetermined amount of business equipment, and agrees to pay the seller based on the amount of business services received or business equipment leased, subject to a predetermined minimum payment in a 12-month period specified in the contract, if the predetermined minimum payment is $250,000 or more.

2. A contract for the lease or purchase of real property.

3. A contract for the lease of a vehicle for which a certificate of title has been issued under ch. 342.

4. A contract for the lease of medical equipment.

5. A contract derived from a tariff issued by an energy utility, as defined in s. 196.027 (1) (c).

6. A contract for the lease of equipment that is for personal, family, or household purposes.

7. A contract for the purchase of services that are for personal, family, or household purposes.

8. A contract for the lease or purchase of access service, as defined in s. 196.01 (1b).

9. An interconnection agreement, as defined in s. 196.01 (3b), or a contract or agreement offered by a telecommunications utility, as defined in s. 196.01 (10), to meet obligations imposed on the telecommunications utility under 47 USC 151 to 276.

10. A contract for the lease or purchase of telecommunications service, as defined in s. 196.01 (9m), including commercial mobile service, as defined in s. 196.01 (2i), if the contract is derived from a tariff issued by a telecommunications provider, as defined in s. 196.01 (8p), or if the contract permits the lessee or purchaser to terminate the contract after an automatic renewal by giving written notice, permits the termination to take effect not more than one month after receipt of the written notice, and permits a termination without liability for fees or penalties other than a payment for services or equipment used during the period before the termination takes effect, if the amount of the payment is one of the following:

a. The amount of the periodic payment due under the contract multiplied by the number of periods during which the services or equipment are provided before the termination takes effect.

b. If the contract does not provide for periodic payments, a portion of the amount due under the contract that is proportional to the portion of the renewed contract term that elapsed before the termination takes effect.

11. A contract that permits a customer to terminate an automatically renewed or extended contract period by giving the seller notice of the customer's intention to terminate the contract period, if the contract does not require the customer to give notice to the seller more than one month before the date of the customer's intended termination.

12. A contract to which a federal, state, or local government entity is a party.

13. A contract between a cooperative association organized under ch. 185 and a member of the cooperative, or a contract under which a cooperative association organized under ch. 185 is a seller.

14. A contract for the lease, maintenance, repair, service, or inspection of elevator or escalator systems, including mechanical

and electrical components of such systems when built into real property.

15. A contract for the supply of industrial, medical, or other gases in any form, including for the lease, service, or use of cylinders, tanks, hard goods, or other related equipment involved in supplying the gases.

(b) "Customer" means a person who conducts business in this state and who is the lessee under a business contract that is entered into for the lease of business equipment or the purchaser under a business contract that is entered into for the purchase of business services.

(c) "Seller" means the provider of a business service or the lessor of business equipment under a business contract.

(2) DISCLOSURE REQUIRED. (a) Subject to par. (d), if a business contract that is entered into, modified, or renewed after May 1, 2011, provides that the contract will be automatically renewed or extended for an additional period unless the customer declines renewal or extension, and the duration of the additional period is more than one month, the seller shall do one of the following:

1. At the time the customer enters into the contract, present to the customer a copy of a form including the disclosures required under par. (b) and obtain the customer's signature on the form.

2. Include the disclosures required under par. (b) in the contract in a conspicuous manner and obtain the customer's initials on the contract on a page on which a disclosure appears.

(b) A disclosure required under par. (a) shall contain all of the following:

1. A statement that the contract will be renewed or extended unless the customer declines renewal or extension.

2. A statement indicating the duration of the additional contract period that would result from an automatic renewal or extension period.

3. A statement indicating whether an increase in charges to the customer will apply upon an automatic renewal or extension.

4. A description of action the customer must take to decline renewal or extension.

5. The date of the deadline for the customer to decline renewal or extension.

(c) If a seller fails to comply with par. (a), an automatic renewal or extension provision in the contract is not enforceable, and the contract terminates at the end of the current contract term.

(d) Paragraph (a) does not apply to a contract in effect on May 1, 2011, or to subsequent renewals of such a contract.

(3) NOTICE REQUIRED. If a business contract that has an initial term of more than one year provides that the contract will be automatically renewed or extended for an additional term of more than one year, unless the customer declines renewal or extension, and the deadline for the customer to decline renewal or extension of the contract is more than 60 days after May 1, 2011, the provision is not enforceable against the customer and the contract will terminate at the end of the current contract term unless the seller provides to the customer, at least 15 days but not more than 60 days before the deadline for the customer to decline renewal or extension, a written notice containing all of the following:

(a) A statement that the contract will be renewed or extended unless the customer declines renewal or extension.

(b) The deadline for the customer to decline renewal or extension.

(c) A description of any increase in charges to the customer that will apply after renewal or extension.

(d) A description of action that the customer must take to decline extension or renewal.

(4) MANNER OF GIVING NOTICE. A seller or a person acting on behalf of the seller shall give the written notice required under sub. (3) by any of the following methods:

(a) By mailing a copy of the notice by regular U.S. mail to the customer at the customer's last-known business address, unless the contract requires the customer to notify the seller by certified mail of the customer's intent to cancel.

(b) By mailing a copy of the notice by registered or certified mail to the customer at the customer's last-known business address.

(c) By giving a copy of the notice personally to an owner, officer, director, or managing agent of the customer's business.

(d) By including the notice on the first page of a monthly invoice sent to the customer. Notice under this paragraph shall be prominently displayed in bold face type and in a type size no smaller than 12-point.

(e) By sending a facsimile to the customer to the customer's last-known facsimile number, if the contract permits the customer to use this method to notify the seller that the customer declines renewal or extension of the contract.

(f) By sending an electronic mail message to the customer at the customer's last-known electronic mail address, if the contract permits the customer to use this method to notify the seller that the customer declines renewal or extension of the contract.

(g) By sending the notice via a recognized overnight courier service, if the contract permits the customer to use this method to notify the seller that the customer declines renewal or extension of the contract.

(5) UNENFORCEABLE TERMS. No business contract between a seller and a customer that is entered into, modified, or renewed after May 1, 2011, may require that the customer permit the seller to match any offer the customer receives from or makes to another seller for services to be provided after the end of the stated term of the contract or renewal period of the contract. A provision in a business contract that violates this subsection is void and unenforceable.

(6) REMEDIES. (a) Any of the following customers may bring an action or counterclaim for damages against a seller:

1. A customer who has notified a seller that the customer declines renewal or extension of a business contract to which sub. (3) applies, if the seller has failed to give notice as required under subs. (3) and (4) and the seller has refused to terminate the contract as requested by the customer.

2. A customer against whom a seller has attempted to enforce a provision in a business contract that is unenforceable under sub. (5).

(am) Notwithstanding par. (a) 1., if a seller who fails to give to a customer a notice required under sub. (3) subsequently receives notice that the customer declines renewal or extension and agrees to terminate the contract as of the date the customer notified the seller, the customer is responsible for charges incurred by the customer under the contract before the date on which the customer notified the seller and the customer may not bring an action against the seller based on the seller's failure to provide the required notice, unless the seller's failure to provide the required notice was willful or malicious.

(b) A customer who prevails in an action or counterclaim under par. (a) is entitled to damages in either of the following amounts:

1. An amount that equals twice the amount of the damages incurred by the customer.

2. An amount that equals twice the amount of the periodic payment specified in the contract or $1,000, whichever is less.

(c) Notwithstanding the limitations in s. 814.04 (1), the court

shall award a customer who prevails in an action or counterclaim under this subsection costs, including reasonable attorney fees.

(d) A seller is not liable in an action or counterclaim under this subsection if the court finds either of the following:

1. All of the following:

a. The seller has established and implemented written procedures for complying with this section.

b. The seller's failure to comply with subs. (3) and (4), or the seller's attempt to enforce a provision that is void and unenforceable under sub. (5), was not willful or malicious.

c. The seller has refunded any amounts paid by the customer after the date of the renewal or extension until the date on which the business contract is terminated.

2. The customer requested, in writing, renewal or extension of the contract that is the basis for the customer's action or counterclaim against the seller, and the customer was aware of the terms under which the contract would be renewed or extended.

History: 2009 a. 192; 2019 a. 135.

134.50 Poultry dealing regulations. (1) It is unlawful for any poultry dealer to purchase any live or dead poultry without registering annually with the county clerk.

(2) Every poultry dealer shall keep a record of all purchases of poultry made by the poultry dealer showing in detail the place and date of purchase and the name and address of the person from whom the purchase was made, together with a general description of the kind of poultry purchased. Such record shall be kept in permanent form and be open to inspection at all reasonable times to any district attorney, assistant district attorney, sheriff, deputy sheriff or any police officer.

(3) Any poultry dealer or his or her servant or agent violating any of the provisions of this section shall, upon the first conviction, be punished by a fine of from $10 to $100. Upon a 2nd or subsequent conviction, a poultry dealer or his or her servant or agent shall be punished by a fine of from $25 to $500 or be imprisoned in the county jail for not more than 90 days, or by both such fine and imprisonment.

(4) Any person selling poultry to a poultry dealer who gives falsely his name or address to such dealer, his agent or servant, shall be imprisoned in the county jail for not less than 30 days nor more than one year.

History: 1993 a. 482.

134.52 Shipment of chickens. (1) It shall be unlawful for any person, or the person's agent or servant, to ship, or for any common carrier or the agent or servant of such common carrier to allow, aid, or abet in the shipment of chickens confined in coops unless such coops are at least 13 inches in height on the inside and are covered at the top by wires or slats not more than one inch apart or by wire screening with meshes of not more than one inch.

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

(3) Whenever any humane officer or any peace officer in this state ascertains or observes any shipment of chickens in a crowded or congested condition, such officer may take or cause to be taken such steps as to give immediate relief.

(4) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $10 nor more than $50, or by imprisonment in the county jail not less than 10 days nor more than 30 days.

History: 1993 a. 482.

134.53 Transportation and sale of cattle. (1) No person shall transport cattle on any highway unless accompanied by shipping documents setting forth the number of cattle being moved, a description of the cattle, including brand, registry or other identification numbers if any, name and address of the owner, and point of origin and destination. The shipping document may consist of a statement signed by the owner setting forth the above information.

(2) Cattle being transported on highways and all shipping documents and other records pertaining to such animals shall be subject to inspection by any police officer. Such officers may stop or intercept any vehicle used or suspected of being used for the transportation of cattle and may seize or detain any shipment of cattle not accompanied by shipping documents containing information as required under sub. (1), or accompanied by shipping documents which may be false, until such time as satisfactory evidence of ownership of the cattle is obtained.

(3) No person shall purchase or receive for sale or shipment any cattle not accompanied by shipping documents required under sub. (1). Copies of such documents shall be retained for a period of 6 months following date of purchase or receipt of the cattle and shall be available for inspection at all reasonable times by any police officer.

(4) Any person who transports cattle without shipping documents containing information required under sub. (1), or executes, furnishes or issues any false document pertaining to the ownership or shipment of cattle, or who violates this section in any other manner shall be fined not more than $500, or be imprisoned not more than 3 months, or both.

(5) Subsection (1) does not apply to cattle being transported between farms owned, rented or leased by the owner of the cattle when ownership of cattle does not change.

(6) Subsection (1) does not apply to cattle being transported to market by the owner of the cattle.

History: 1973 c. 239.

134.57 Detectives, settlement with employees. Any employer and any person employed to detect dishonesty on the part of employees, or fiduciary agents, on a commission basis or under a contract for a percentage of the amount recovered through or by reason of the detective work done by such person, shall submit the facts of the case and the settlement made with such employee or fiduciary agent to the circuit judge of the county wherein the dishonest act was committed, for approval or further proceedings, and the employee shall be notified of such hearing and shall have a right to be heard. Any such person or employer who shall not so submit the facts and settlement as made to such circuit judge for approval or further proceedings, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than $100 nor more than $500, or imprisoned in the county jail not less than 3 months nor more than one year.

134.58 Use of unauthorized persons as officers. Any person who, individually, in concert with another or as agent or officer of any firm, joint-stock company or corporation, uses, employs, aids or assists in employing any body of armed persons to act as militia, police or peace officers for the protection of persons or property or for the suppression of strikes, not being authorized by the laws of this state to so act, is guilty of a Class I felony.

History: 1975 c. 94; 1997 a. 283; 2001 a. 109.

134.59 Felons, burglar alarm installation. (1) No per-

son may intentionally hire as a burglar alarm installer a felon who has not been pardoned. Any person engaged in the business of installing burglar alarms may request the department of justice to do a criminal history search on any person whom that person hires or proposes to hire as a burglar alarm installer.

(2) No person engaged in the business of installing burglar alarms may intentionally allow a felon who has not been pardoned to have access to individual burglar alarm installation records.

(3) Any person who violates sub. (1) or (2) may be required to forfeit not more than $1,000.

History: 1991 a. 216.

134.60 Cutting or transportation of evergreens. No person may cut for sale in its natural condition and untrimmed, with or without roots, any evergreen or coniferous tree, branch, bough, bush, sapling or shrub, from the lands of another without the written consent of the owner, whether such land is publicly or privately owned. The written consent shall contain the legal description of the land where the tree, branch, bough, bush, sapling or shrub was cut, as well as the name of the legal owner. The written consent or a certified copy of the consent shall be carried by every person in charge of the cutting or removing of the trees, branches, boughs, bushes, saplings or shrubs, and shall be exhibited to any officer of the law, forest ranger, forest patrol officer, conservation warden, or other officer of the department of natural resources at the officer's request at any time. The officer may inspect the trees, branches, boughs, bushes, saplings or shrubs when being transported in any vehicle or other means of conveyance and may investigate to determine whether or not this section has been complied with. The officer may stop any vehicle or means of conveyance found carrying any trees, branches, boughs, bushes, saplings or shrubs upon any public highway of this state for the purpose of making such inspection and investigation, and may seize and hold, subject to the order of the court, any such trees, bushes, saplings or shrubs found being cut, removed or transported in violation of this section. No person may ship or transport any such trees, bushes, saplings or shrubs outside the county where they were cut unless the person attaches to the outside of each package, box, bale, truckload or carload shipped a tag or label on which appears the person's name and address. No common carrier or truck hauler may receive for shipment or transportation any such trees, bushes, saplings or shrubs unless the tag or label is attached. Any person who violates this section shall be fined not less than $10 nor more than $100. Any person who signs any such written consent or certified copy under this section who is not authorized to do so, and any person who lends or transfers or offers to lend or transfer any such written consent or certified copy to another person who is not entitled to use it, and any person not entitled to use any such written consent or certified copy, or who borrows, receives or solicits from another any such written consent or certified copy thereof shall be fined not less than $100 nor more than $500.

History: 1975 c. 365, 366; 1975 c. 394 s. 27; 1975 c. 421; 1979 c. 342; 1981 c. 314.

Cross-reference: See s. 23.50 concerning enforcement procedure.

134.63 Nitrous oxide; restrictions on sales; records of certain sales; labeling. (1) In this section:

(a) "Deliver" or "delivery" means the actual, constructive or attempted transfer of nitrous oxide or a nitrous oxide container from one person to another.

(b) "Nitrous oxide container" means any compressed gas container that contains food grade or pharmaceutical grade nitrous oxide as its principal ingredient.

(2) (a) Except as provided in par. (b), no person who engages in the retail sale of cartridges of nitrous oxide may sell more than 24 cartridges in any single retail transaction.

(am) Except as provided in par. (b), no person may, during any consecutive 48-hour period, engage in more than one retail purchase of nitrous oxide or any nitrous oxide container.

(b) Paragraphs (a) and (am) do not apply to any of the following:

1. A retail sale to a bakery, restaurant, institutional food distributor or other person engaged in the food service industry if the bakery, restaurant, distributor or other person has an emergency business need for the cartridges.

2. Any retail sale to or retail purchase by a hospital, health care clinic or other health care organization that uses nitrous oxide to provide medical or dental care.

3. A retail food establishment, as defined in s. 97.30 (1) (c).

(3) (a) Except as provided in sub. (5), every person in this state who delivers nitrous oxide or any nitrous oxide container to another shall keep a register of all deliveries of nitrous oxide or any nitrous oxide container. The register shall show the name and complete address of the person to whom the nitrous oxide or nitrous oxide container is delivered, the number of cartridges or other containers delivered and the date of delivery.

(b) A person required to keep a register under par. (a) shall preserve the register on his or her business premises for 2 years in such a manner as to ensure permanency and accessibility for inspection and shall permit inspection of the register at all reasonable hours by state and local law enforcement agencies and by any state agency, as defined in s. 16.61 (2) (d).

(c) No person required to keep a register under par. (a) may deliver nitrous oxide or any nitrous oxide container to another person unless the person to whom the nitrous oxide or nitrous oxide container is delivered presents an official identification card, as defined in s. 125.085 (1) (a) to (c).

(d) No person to whom nitrous oxide or any nitrous oxide container is delivered may give a false name or address to a person required to keep a register under par. (a).

(4) (a) Except as provided in sub. (5), no person may deliver a cartridge of nitrous oxide to another unless the cartridge bears a label, stamp or tag that sets forth in clearly legible and conspicuous form the following warning: "Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under the age of 21. Do not inhale the contents of this cartridge. Misuse of nitrous oxide can be dangerous to your health."

(b) Except as provided in sub. (5), no person may deliver a cartridge of nitrous oxide to another unless the packaging in which the cartridge is enclosed is marked with a label or other device that indicates the name and business address of the person delivering the cartridge of nitrous oxide.

(5) Subsections (3) and (4) do not apply to a retail food establishment, as defined in s. 97.30 (1) (c).

History: 1997 a. 336; 2007 a. 164.

134.65 Cigarette, electronic vaping devices, and tobacco products retailer license. (1a) In this section:

(a) "Cigarette" has the meaning given in s. 139.30 (1m).

(b) "Electronic vaping device" means a device that may be used to deliver any aerosolized or vaporized liquid or other substance for inhalation, regardless of whether the liquid or other substance contains nicotine, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic vaping device" includes a component, part, or accessory of the device, and includes a liquid or other substance that may be aerosolized or vaporized by such device, regardless of whether the liquid or other substance contains nicotine. "Electronic vaping device" does not include a

battery or battery charger when sold separately. "Electronic vaping device" does not include drugs, devices, or combination products authorized for sale by the U.S. food and drug administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(c) "Tobacco products" has the meaning given in s. 139.75 (12).

(d) "Vending machine" has the meaning given in s. 139.30 (14).

(1d) No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes, electronic vaping devices, or tobacco products to any person not holding a license as herein provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised.

(1g) (a) The department of revenue shall create an application form for licenses issued under sub. (1d). The form shall require all of the following information from an applicant:

1. The applicant's history relevant to the applicant's fitness to hold a license under sub. (1d).

2. The kind of license for which the applicant is applying.

3. The premises where cigarettes, electronic vaping devices, or tobacco products will be sold or stored.

4. If the applicant is a corporation, the identity of the corporate officers and agent.

5. If the applicant is a limited liability company, the identity of the company members or managers and agent.

6. The applicant's trade name, if any.

7. Whether the applicant will sell, exchange, barter, dispose of, or give away the cigarettes, electronic vaping devices, or tobacco products over the counter or in a vending machine, or both.

8. Any other information required by the department of revenue.

(b) The department of revenue shall make the form prepared under this subsection available to all cities, villages, and towns.

(c) An applicant for a license under sub. (1d) shall use the form prepared under this subsection.

(d) An application for a license under sub. (1d) shall be signed by the applicant and the applicant shall submit the application to the clerk of the city, village, or town where the intended place of sale is located.

(e) Within 30 days of any change in any fact set forth in an application for a license under sub. (1d), the applicant or licensee shall file a written description of the change with the clerk of the city, village, or town where the application was submitted.

(f) Any person may inspect applications for a license under sub. (1d). The clerk of a city, village, or town where such applications are submitted shall retain all applications, except that the clerk may destroy any application that is 4 or more years old.

(1m) (a) A city, village, or town clerk may not issue a license under sub. (1d) unless the applicant meets all of the following requirements:

1. Subject to ss. 111.321, 111.322, and 111.335, the applicant has not habitually been a law offender or been convicted of a felony unless pardoned.

2. The applicant has submitted the proof required under s. 77.61 (11).

(b) The requirements under par. (a) apply to all partners of a partnership, all members of a limited liability company, all agents of a limited liability company or corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has been convicted of a crime, the entity may not be issued a license under sub. (1d) unless the entity has terminated its relationship with the individuals whose actions directly contributed to the conviction.

(1r) A city, village, or town clerk may not require an applicant's signature on an application for a cigarette, electronic vaping devices, and tobacco products retailer license to be notarized. If a city, village, town, or any department of this state prepares an application form for a cigarette, electronic vaping devices, and tobacco products retailer license, the form may not require an applicant's signature on the form to be notarized.

(2) (a) Except as provided in par. (b), upon filing of a proper written application a license shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The city, village or town may charge a fee for the license of not less than $5 nor more than $100 per year which shall be paid to the city, village or town treasurer before the license is issued.

(b) In any municipality electing to come under this paragraph, upon filing of a proper written application a license shall be issued and continue in force for one year from the date of issuance unless sooner revoked. The city, village or town may charge a fee for the license of not less than $5 nor more than $100 per year which shall be paid to the city, village or town treasurer before the license is issued.

(2m) Annually, no later than July 15, the clerk of a city, village, or town issuing licenses under sub. (1d) shall submit to the department of revenue, in a manner prescribed by the department, a list of licenses issued by the city, village, or town under sub. (1d) during the previous fiscal year. The list shall include the name, address, seller's permit number, and trade name of the licensee and the type of license held. The department of revenue shall publish this list annually on the department's website.

(3) Each such license shall name the licensee and specifically describe the premises where such business is to be conducted. Such licenses shall not be transferable from one person to another nor from one premises to another.

(3m) A person holding a license under sub. (1d) shall enclose the license in a frame that has a transparent front that allows the license to be read clearly. The licensee shall conspicuously display the license for public inspection at all times in the room or place where the activity subject to licensure is carried out.

(4) Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes, electronic vaping devices, and tobacco products. Such records shall be preserved on the licensed premises for 2 years in such a manner as to insure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.

(5) Any person violating this section shall be fined not more than $100 nor less than $25 for the first offense and not more than $200 nor less than $25 for the 2nd or subsequent offense. If upon such 2nd or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be fined not more than $300 nor less than $25 or imprisoned not exceeding 60 days or both. Conviction shall immediately terminate the license of the person convicted of being personally guilty of such failure to exercise due care and the person shall not be entitled to another license hereunder for a period of 5 years thereafter, nor shall the person in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license.

(5m) Any person who knowingly provides materially false information in an application for a cigarette, electronic vaping de-

vices, and tobacco products retailer license under this section may be required to forfeit not more than $1,000.

(6) Any 1st class city may revoke, suspend, or refuse to renew any license issued under this section, as provided in sub. (7).

(7) (a) Any duly authorized employee of a 1st class city issuing licenses under this section may file a sworn written complaint, supported by reports from a law enforcement agency, with the clerk of the city alleging at least 2 separate instances of one or more of the following about a person holding a license issued under this section by the city:

1. The person has violated s. 134.66 (2) (a), (am), (cm), or (e), or a municipal ordinance adopted under s. 134.66 (5).

2. The person's premises are disorderly, riotous, indecent, or improper.

3. The person has knowingly permitted criminal behavior, including prostitution and loitering, to occur on the licensed premises.

4. The person has been convicted of any of the following:

a. Manufacturing, distributing, or delivering a controlled substance or controlled substance analog under s. 961.41 (1).

b. Possessing with intent to manufacture, distribute, or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m).

c. Possessing with intent to manufacture, distribute, or deliver, or manufacturing, distributing, or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.

d. Possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.

5. The person knowingly allows another person who is on the licensed premises to do any of the actions described in subd. 4.

(b) Upon the filing of the complaint, the city governing body shall issue a summons, signed by the clerk and directed to any peace officer in the city. The summons shall command the person complained of to appear before the city governing body on a day and place named in the summons, not less than 3 days and not more than 10 days from the date of issuance, and show cause why his or her license should not be revoked, suspended, or not renewed. The summons and a copy of the complaint shall be served on the person complained of at least 3 days before the date on which the person is commanded to appear. Service shall be in the manner provided in ch. 801 for service in civil actions in circuit court.

(c) 1. If the person does not appear as required by the summons, the allegations of the complaint shall be taken as true, and if the city governing body finds the allegations to be sufficient grounds for revocation or nonrenewal, the license shall be revoked or not renewed. The city clerk shall give notice of the revocation or nonrenewal to the person whose license is revoked or not renewed.

2. If the person appears as required by the summons and answers the complaint, both the complainant and the person complained of may produce witnesses, cross-examine witnesses, and be represented by counsel. The person complained of shall be provided a written transcript of the hearing at his or her expense. If upon the hearing the city governing body finds the allegations of the complaint to be true, and if the city governing body finds the allegations to be sufficient grounds for suspension, revocation, or nonrenewal, the license shall be suspended for not less than 10 days nor more than 90 days, revoked, or not renewed.

3. The city clerk shall give notice of each suspension, revocation, or nonrenewal to the person whose license is suspended, revoked, or not renewed.

4. If the city governing body finds the allegations of the complaint to be untrue, the complaint shall be dismissed without cost to the person complained of.

(d) When a license is revoked under this subsection, the revocation shall be recorded by the city clerk and no other license may be issued under this section to the person whose license was revoked within the 12 months after the date of revocation. No part of the fee paid for any license that is revoked under this subsection may be refunded.

(e) The action of any city governing body in suspending, revoking, or not renewing any license under this subsection, or the failure of any city governing body to suspend, revoke, or not renew any license under this subsection for good cause, may be reviewed by the circuit court for the county in which the license was issued, upon the request of any applicant or licensee. The procedure on review shall be the same as in civil actions instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the city governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The city governing body, applicant, or licensee shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The findings and order of the court shall be filed within 10 days after the hearing and a copy of the findings and order shall be transmitted to each of the parties. The order shall be final unless appeal is taken to the court of appeals.

(8) The uniform licensing of cigarette, electronic vaping devices, and tobacco products retailers is a matter of statewide concern. A city, village, or town may adopt an ordinance regulating the issuance, suspension, revocation, or renewal of a license under this section only if the ordinance strictly conforms to this section. If a city, village, or town has in effect on May 1, 2016, an ordinance that does not strictly conform to this section, the ordinance does not apply and may not be enforced.

History: 1983 a. 27; 1987 a. 67; 1993 a. 482; 1997 a. 214; 2001 a. 75; 2015 a. 275; 2017 a. 289; 2023 a. 73.

134.66 Restrictions on sale or gift of cigarettes or nicotine or tobacco products.

(1) DEFINITIONS. In this section:

(a) "Cigarette" has the meaning given in s. 139.30 (1m).

(am) "Direct marketer" has the meaning given in s. 139.30 (2n).

(b) "Distributor" means any of the following:

1. A person specified under s. 139.30 (3).

2. A person specified under s. 139.75 (4).

(c) "Identification card" means any of the following:

1. A license containing a photograph issued under ch. 343.

2. An identification card issued under s. 343.50.

3. An identification card issued under s. 125.08, 1987 stats.

4. A tribal identification card, as defined in s. 134.695 (1) (cm).

(d) "Jobber" has the meaning given in s. 139.30 (6).

(e) "Manufacturer" means any of the following:

1. A person specified under s. 139.30 (7).

2. A person specified under s. 139.75 (5).

(f) "Nicotine product" means a product that contains nicotine and is not any of the following:

1. A tobacco product.

2. A cigarette.

3. A product that has been approved by the U.S. food and drug administration for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such an approved purpose.

(g) "Retailer" means any person licensed under s. 134.65 (1d).

(h) "School" has the meaning given in s. 118.257 (1) (d).

(hm) "Stamp" has the meaning given in s. 139.30 (13).

(i) "Subjobber" has the meaning given in s. 139.75 (11).

(j) "Tobacco products" has the meaning given in s. 139.75 (12).

(k) "Vending machine" has the meaning given in s. 139.30 (14).

(L) "Vending machine operator" has the meaning given in s. 139.30 (15).

(2) RESTRICTIONS. (a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person under the age of 18, except as provided in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph for the purchase of cigarettes, nicotine products, or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

(am) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

(b) 1. A retailer shall post a sign in areas within his or her premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under this section and s. 254.92.

2. A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under s. 254.92 and that the purchaser is subject to a forfeiture of not to exceed $50.

(cm) 1m. A retailer or vending machine operator may not sell cigarettes or tobacco products from a vending machine unless the vending machine is located in a place where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

2. Notwithstanding subd. 1m., no retailer may place a vending machine within 500 feet of a school.

(e) No retailer or direct marketer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under s. 139.32 (1).

(2m) TRAINING. (a) Except as provided in par. (b), at the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for a violation of sub. (2) (a) or (am). The department of health services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this paragraph. A retailer may comply with this paragraph by providing the training program developed or approved by the department of health services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the department of health services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee, or independent contractor.

(b) Paragraph (a) does not apply to an agent, employee, or independent contractor who has received the training described in par. (a) as part of a responsible beverage server training course or a comparable training course, as described in s. 125.04 (5) (a) 5., that was successfully completed by the agent, employee, or independent contractor. The department of health services shall make the training program developed or approved by that department under par. (a) available to the technical college system board, and that board shall include that training program or a comparable training program approved by that department in the curriculum guidelines specified by that board under s. 125.04 (5) (a) 5. The department of health services shall also make the training program developed or approved by that department under par. (a) available to any provider of a comparable training course, as described in s. 125.04 (5) (a) 5., on request, and the department of revenue or the department of safety and professional services may approve a comparable training course under s. 125.04 (5) (a) 5. only if that training course includes the training program developed or approved by the department of health services under par. (a) or a comparable training program approved by that department.

(c) If an agent, employee, or independent contractor who has not received the training described in par. (a) commits a violation of sub. (2) (a) or (am), a governmental regulatory authority, as defined in s. 254.911 (2), may issue a citation based on that violation only to the retailer that hired or contracted with the agent, employee, or independent contractor and not to the agent, employee, or independent contractor who has not received that training. If an agent, employee, or independent contractor who has received the training described in par. (a) commits a violation of sub. (2) (a) or (am) for which a governmental regulatory authority issues a citation to the retailer that hired or contracted with the agent, employee, or independent contractor, the governmental regulatory authority shall also issue a citation based on that violation to the agent, employee, or independent contractor who has received that training.

(3) DEFENSE; SALE TO MINOR. Proof of all of the following facts by a retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution, or a complaint made under s. 134.65 (7), for a violation of sub. (2) (a):

(a) That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.

(b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18.

(c) That the sale was made in good faith, in reasonable re-

liance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18.

(4) PENALTIES. (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a), (am), (cm), or (e) or a local ordinance which strictly conforms to sub. (2) (a), (am), (cm), or (e).

2. A person who commits a violation is subject to a forfeiture of:

a. Not more than $500 if the person has not committed a previous violation within 12 months of the violation; or

b. Not less than $200 nor more than $500 if the person has committed a previous violation within 12 months of the violation.

3. A court shall suspend any license or permit issued under s. 134.65, 139.34 or 139.79 to a person for:

a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

b. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or

c. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 or more other violations.

4. The court shall promptly mail notice of a suspension under subd. 3. to the department of revenue and to the clerk of each municipality which has issued a license or permit to the person.

(b) Whoever violates sub. (2) (b) shall forfeit not more than $25.

(5) LOCAL ORDINANCE. A county, town, village, or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section. A county ordinance adopted under this subsection does not apply within any town, village, or city that has adopted or adopts an ordinance under this subsection. If a county, town, village, or city conducts unannounced investigations of retail outlets, as defined in s. 254.911 (5), to determine compliance with an ordinance adopted under this subsection, as authorized under s. 254.916 (1), the investigations shall meet the requirements of s. 254.916 (3) (a) to (f) and any standards established by the department of health services under s. 254.916 (1) (b).

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352; 1997 a. 214; 1999 a. 9; 2001 a. 75; 2003 a. 326; 2005 a. 25; 2007 a. 20 s. 9121 (6) (a); 2011 a. 249; 2015 a. 275; 2017 a. 59, 226; 2023 a. 73.

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations that are not in strict conformity with those of the state. U.S. Oil, Inc. v. City of Fond du Lac, 199 Wis. 2d 333, 544 N.W.2d 589 (Ct. App. 1996), 95-0213.

134.69 Peddling finger alphabet cards prohibited. No person in this state may engage in the business of peddling finger alphabet cards or printed matter stating that the person is deaf, or use finger alphabet cards or such printed matter or masquerade as a deaf person in any way as a means of inducement in the sale of merchandise. No state or local license may be issued to any person for the purpose of peddling finger alphabet cards or printed matter stating that the person is deaf or masquerading as a deaf person. Any person who peddles or uses finger alphabet cards or such printed matter, or masquerades as a deaf person in any way as a means of inducement in the sale of merchandise in this state and any person who issues any state or local license for that purpose may be imprisoned not more than 90 days or fined not less than $25 nor more than $100 or both.

History: 1977 c. 29 s. 1503; Stats. 1977 s. 134.69.

134.695 Antique dealers and recyclers. (1) In this section:

(a) "Antique dealer" means a person, other than a nonprofit organization, who is engaged in the business of selling or purchasing used home furnishings.

(am) "Nonprofit organization" means an organization described in section 501 (c) (3) of the Internal Revenue Code which is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(b) "Recycler" means a person, other than a nonprofit organization, who is engaged in the business of purchasing used home furnishings for the purpose of collecting, separating, processing and selling the material that was used in manufacturing the used home furnishings.

(c) "Registration plate" means a plate specified under s. 341.12 or under a similar law of another state.

(cm) "Tribal identification card" means a valid identification card issued by a federally recognized American Indian tribe or band in this state that contains the card holder's photograph, full name, address, and date of birth.

(d) "Used home furnishings" means windows, siding, piping, radiators, cabinets, bookcases, doors, light fixtures, wood moldings, bathroom fixtures, bannisters, doorknobs, mantels, staircases or other attached items that are removed from a home or other building.

(2) No antique dealer or recycler may knowingly purchase or receive used home furnishings from a person unless the antique dealer or recycler obtains the person's signature and records all of the following information:

(a) The person's name and address.

(b) One of the following identification numbers:

1. The person's motor vehicle operator's license number.
2. The person's state identification card number.
3. The person's military identification card number.
4. The person's U.S. passport number.
5. The person's alien registration card number.
6. The person's tribal identification card number.

(c) The registration plate numbers and the color, make, model and year of any motor vehicle delivering the used home furnishings to the antique dealer or recycler.

(d) If known by the person, the address of the home or other building from which the used home furnishings were removed.

(3) An antique dealer or recycler shall maintain a record of the information provided under sub. (2) for not less than one year after the later of the dates on which the antique dealer or recycler purchases or receives the used home furnishings.

(4) Any person who violates this section shall forfeit not less than $100 nor more than $1,000 for the first offense and shall forfeit not less than $500 nor more than $3,000 upon conviction for a 2nd or subsequent offense.

History: 1997 a. 76; 2017 a. 226.

134.71 Pawnbrokers and secondhand article and jewelry dealers. (1) DEFINITIONS. In this section:

(a) "Article" means any of the following articles except jewelry:

1. Audiovisual equipment.
2. Bicycles.
3. China.
4. Computers, printers, software and computer supplies.
5. Computer toys and games.
6. Crystal.
7. Electronic equipment.
8. Fur coats and other fur clothing.
9. Ammunition and knives.
10. Microwave ovens.

11. Office equipment.

12. Pianos, organs, guitars and other musical instruments.

12m. Video tapes or discs, audio tapes or discs, and other optical media.

13. Silverware and flatware.

14. Small electrical appliances.

15. Telephones.

(ag) "Auctioneer" means an individual who is registered as an auctioneer under ch. 480 and who sells secondhand articles or secondhand jewelry at an auction, as defined in s. 480.01 (1).

(am) "Charitable organization" means a corporation, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) "Customer" means a person with whom a pawnbroker, secondhand article dealer or secondhand jewelry dealer or an agent thereof engages in a transaction of purchase, sale, receipt or exchange of any secondhand article or secondhand jewelry.

(c) "Jewelry" means any tangible personal property ordinarily wearable on the person and consisting in whole or in part of any metal, mineral or gem customarily regarded as precious or semiprecious.

(d) "Municipality" means a city, village or town.

(e) "Pawnbroker" means any person who engages in the business of lending money on the deposit or pledge of any article or jewelry, or purchasing any article or jewelry with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(f) "Secondhand" means owned by any person, except a wholesaler, retailer or secondhand article dealer or secondhand jewelry dealer licensed under this section, immediately before the transaction at hand.

(g) "Secondhand article dealer" means any person, other than an auctioneer, who primarily engages in the business of purchasing or selling secondhand articles, except when engaging in any of the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show or a convention.

2. Any transaction entered into by a person while engaged in a business for which the person is licensed under sub. (2) or (4) or while engaged in the business of junk collector, junk dealer or scrap processor as described in s. 70.995 (2) (x).

3. Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.

4. Any transaction between a buyer of a new article and the person who sold the article when new which involves any of the following:

a. The return of the article.

b. The exchange of the article for a different, new article.

5. Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization.

6. Any transaction as a seller of a secondhand article which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

(h) "Secondhand jewelry dealer" means any person, other than an auctioneer, who engages in the business of any transaction consisting of purchasing, selling, receiving or exchanging secondhand jewelry, except for the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show or a convention.

2. Any transaction with a licensed secondhand jewelry dealer.

3. Any transaction entered into by a person while engaged in a business of smelting, refining, assaying or manufacturing precious metals, gems or valuable articles if the person has no retail operation open to the public.

4. Any transaction between a buyer of new jewelry and the person who sold the jewelry when new which involves any of the following:

a. The return of the jewelry.

b. The exchange of the jewelry for different, new jewelry.

5. Any transaction as a purchaser of secondhand jewelry from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

6. Any transaction as a seller of secondhand jewelry which the person bought from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

(2) LICENSE FOR PAWNBROKER. No person may operate as a pawnbroker unless the person first obtains a pawnbroker's license under this section. A license issued to a pawnbroker by the governing body of a municipality authorizes the licensee to operate as a pawnbroker in that municipality.

(3) LICENSE FOR SECONDHAND ARTICLE DEALER. (a) Except as provided in par. (b), no person may operate as a secondhand article dealer unless the person first obtains a secondhand article dealer's license under this section. A license issued to a secondhand article dealer authorizes the licensee to operate as a secondhand article dealer anywhere in the state.

(b) A person who operates as a secondhand article dealer only on premises or land owned by a person having a secondhand dealer mall or flea market license under sub. (9) need not obtain a secondhand article dealer's license.

(4) LICENSE FOR SECONDHAND JEWELRY DEALER. No person may operate as a secondhand jewelry dealer unless the person first obtains a secondhand jewelry dealer's license under this section. A license issued to a secondhand jewelry dealer authorizes the licensee to operate as a secondhand jewelry dealer anywhere in the state.

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

(a) The applicant's name, place and date of birth, residence address, and all states where the applicant has previously resided.

(b) The names and addresses of the business and of the owner of the business premises.

(c) A statement as to whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 10 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of the licensed activity and, if so, the nature and date of the offense and the penalty assessed.

(d) Whether the applicant is a natural person, corporation, limited liability company or partnership, and:

1. If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors.

2. If the applicant is a partnership, the names and addresses of all partners.

2L. If the applicant is a limited liability company, the names and addresses of all members.

(e) The name of the manager or proprietor of the business.

(f) Any other information that the county or municipal clerk may reasonably require.

(6) INVESTIGATION OF LICENSE APPLICANT. The law enforcement agency of the county or municipality shall investigate each applicant for a pawnbroker's, secondhand article dealer's or secondhand jewelry dealer's license to determine whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 10 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation described under sub. (5) (c) and, if so, the nature and date of the offense and the penalty assessed. The law enforcement agency shall furnish the information derived from that investigation in writing to the clerk of the municipality or county.

(7) LICENSE ISSUANCE. (a) The governing body of the county or municipality shall grant the license if all of the following apply:

1. The applicant, including an individual, a partner, a member of a limited liability company or an officer, director or agent of any corporate applicant, has not been convicted within the preceding 10 years of a felony or within the preceding 10 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of being a pawnbroker, secondhand jewelry dealer, secondhand article dealer or secondhand article dealer mall or flea market owner.

2. With respect to an applicant for a pawnbroker's license, the applicant provides to the governing body a bond of $500, with not less than 2 sureties, for the observation of all municipal ordinances relating to pawnbrokers.

(b) No license issued under this subsection may be transferred.

(c) 1. Each license for a pawnbroker, secondhand article dealer or secondhand jewelry dealer is valid from January 1 until the following December 31.

2. Each license for a secondhand article dealer mall or flea market is valid for 2 years, from May 1 of an odd-numbered year until April 30 of the next odd-numbered year.

(8) PAWNBROKER AND DEALER REQUIREMENTS. (a) *Identification.* No pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer without first securing adequate identification from the customer. At the time of the transaction, the pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to present one of the following types of identification:

1. A county identification card.

2. A state identification card.

3. A valid Wisconsin motor vehicle operator's license.

4. A valid motor vehicle operator's license, containing a picture, issued by another state.

5. A military identification card.

6. A valid passport.

7. An alien registration card.

8. A senior citizen's identification card containing a photograph.

9. Any identification document issued by a state or federal government, whether or not containing a picture, if the pawnbroker, secondhand article dealer or secondhand jewelry dealer obtains a clear imprint of the customer's right index finger.

10. A tribal identification card, as defined in s. 134.695 (1) (cm).

(b) *Transactions with minors.* 1. Except as provided in subd. 2., no pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from any minor.

2. A pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction described under subd. 1. if the minor is accompanied by his or her parent or guardian at the time of the transaction or if the minor provides the pawnbroker, secondhand article dealer or secondhand jewelry dealer with the parent's or guardian's written consent to engage in the particular transaction.

(c) *Records.* 1. Except as provided in subd. 2., for each transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to complete and sign, in ink, the appropriate form provided under sub. (12). No entry on such a form may be erased, mutilated or changed. The pawnbroker, secondhand article dealer or secondhand jewelry dealer shall retain an original and a duplicate of each form for not less than one year after the date of the transaction except as provided in par. (e), and during that period shall make the duplicate available to any law enforcement officer for inspection at any time that the pawnbroker's, secondhand article dealer's, or secondhand jewelry dealer's principal place of business is open to the public or at any other reasonable time.

2. For every secondhand article purchased, received or exchanged by a secondhand article dealer from a customer off the secondhand article dealer's premises or consigned to the secondhand article dealer for sale on the secondhand article dealer's premises, the secondhand article dealer shall keep a written inventory. In this inventory the secondhand article dealer shall record the name and address of each customer, the date, time and place of the transaction and a detailed description of the article which is the subject of the transaction, including the article's serial number and model number, if any. The customer shall sign his or her name on a declaration of ownership of the secondhand article identified in the inventory and shall state that he or she owns the secondhand article. The secondhand article dealer shall retain an original and a duplicate of each entry and declaration of ownership relating to the purchase, receipt or exchange of any secondhand article for not less than one year after the date of the transaction except as provided in par. (e), and shall make duplicates of the inventory and declarations of ownership available to any law enforcement officer for inspection at any time that the secondhand article dealer's principal place of business is open to the public or at any other reasonable time.

3. Every secondhand article dealer shall on a weekly basis prepare a list that contains the name and address of each customer of the secondhand article dealer during the week for which the list was prepared, the date, time, and place of each transaction with each of those customers, and a detailed description of the secondhand article, including the secondhand article's serial number and model number, if any. The secondhand article dealer shall retain the list for not less than one year after the date on which the list was prepared. The secondhand article dealer shall make the list available to any law enforcement officer for inspection at any time that the secondhand article dealer's principal place of business is open to the public or at any other reasonable time.

(d) *Holding period.* 1. Except as provided in subds. 3m. and 5., any secondhand article or secondhand jewelry purchased or received by a pawnbroker shall be kept on the pawnbroker's premises or other place for safekeeping for not less than 30 days after the date of purchase or receipt, unless the person known by the pawnbroker to be the lawful owner of the secondhand article or secondhand jewelry recovers it.

2. Except as provided in subds. 3m. and 5., any secondhand article purchased or received by a secondhand article dealer shall be kept on the secondhand article dealer's premises or other place for safekeeping for not less than 21 days after the date of purchase or receipt.

3. Except as provided in subds. 3m. and 5., any secondhand jewelry purchased or received by a secondhand jewelry dealer shall be kept on the secondhand jewelry dealer's premises or other place for safekeeping for not less than 21 days after the date of purchase or receipt.

3m. If a pawnbroker, secondhand article dealer, or secondhand jewelry dealer is required to submit a report under par. (e) concerning a secondhand article or secondhand jewelry purchased or received by the pawnbroker, secondhand article dealer, or secondhand jewelry dealer and the report is required to be submitted in an electronic format, the secondhand article or secondhand jewelry shall be kept on the pawnbroker's, secondhand article dealer's, or secondhand jewelry dealer's premises or other place for safekeeping for not less than 7 days after the report is submitted.

4. During the period set forth in subd. 1., 2., 3., or 3m., the secondhand article or secondhand jewelry shall be held separate and apart and may not be altered in any manner. The pawnbroker, secondhand article dealer, or secondhand jewelry dealer shall permit any law enforcement officer to inspect the secondhand article or secondhand jewelry during this period. Within 24 hours after a written request of a law enforcement officer during this period, a pawnbroker, secondhand article dealer, or secondhand jewelry dealer shall make available for inspection any secondhand article or secondhand jewelry that is kept off the premises for safekeeping. Any law enforcement officer who has reason to believe any secondhand article or secondhand jewelry was not sold or exchanged by the lawful owner may direct a pawnbroker, secondhand article dealer, or secondhand jewelry dealer to hold that secondhand article or secondhand jewelry for a reasonable length of time that the law enforcement officer considers necessary to identify it.

5. Subdivisions 1. to 4. do not apply to any of the following:

a. A coin of the United States, any gold or silver coin or gold or silver bullion.

b. A secondhand article or secondhand jewelry consigned to a pawnbroker, secondhand article dealer or secondhand jewelry dealer.

(e) *Report to law enforcement agency.* Within 24 hours after purchasing or receiving a secondhand article or secondhand jewelry, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall make available, for inspection by a law enforcement officer, the original form completed under par. (c) 1. or the inventory under par. (c) 2., whichever is appropriate. Notwithstanding s. 19.35 (1), a law enforcement agency receiving the original form or inventory or a declaration of ownership may disclose it only to another law enforcement agency.

(f) *Exception for customer return or exchange.* Nothing in this subsection applies to the return or exchange, from a customer to a secondhand article dealer or secondhand jewelry dealer, of any secondhand article or secondhand jewelry purchased from the secondhand article dealer or secondhand jewelry dealer.

(9) SECONDHAND ARTICLE DEALER MALL OR FLEA MARKET.

(a) The owner of any premises or land upon which 2 or more persons operate as secondhand article dealers may obtain a secondhand article dealer mall or flea market license for the premises or land if the following conditions are met:

1. Each secondhand article dealer occupies a separate sales location and identifies himself or herself to the public as a separate secondhand article dealer.

2. The secondhand article dealer mall or flea market is operated under one name and at one address, and is under the control of the secondhand article dealer mall or flea market license holder.

4. Each secondhand article dealer delivers to the secondhand article dealer mall or flea market license holder, at the close of business on each day that the secondhand article dealer conducts business, a record of his or her sales that includes the location at which each sale was made.

(b) The secondhand article dealer license holder and each secondhand article dealer operating upon the premises or land shall comply with sub. (8).

(10) LICENSE REVOCATION. A governing body of a county or municipality may revoke any license issued by it under this section for fraud, misrepresentation or false statement contained in the application for a license or for any violation of this section or s. 943.34, 948.62 or 948.63.

(11) FEES. The license fees under this section are:

(a) For a pawnbroker's license, $210.

(b) For a secondhand article dealer's license, $27.50.

(c) For a secondhand jewelry dealer's license, $30.

(d) For a secondhand article dealer mall or flea market license, $165.

(12) APPLICATIONS AND FORMS. The department of agriculture, trade and consumer protection shall develop applications and other forms required under subs. (5) (intro.) and (8) (c). The department shall make the applications and forms available to counties and municipalities for distribution to pawnbrokers, secondhand article dealers, and secondhand jewelry dealers at no cost. The department may make the applications and forms available to counties and municipalities by placing the applications and forms on an Internet website.

(13) PENALTY. (a) Upon conviction for a first offense under this section, a person shall forfeit not less than $50 nor more than $1,000.

(b) Upon conviction for a 2nd or subsequent offense under this section, a person shall forfeit not less than $500 nor more than $2,000.

(14) ORDINANCE. A county or municipality may enact an ordinance governing pawnbrokers, secondhand article dealers or secondhand jewelry dealers if that ordinance is at least as stringent as this section.

History: 1989 a. 257; 1991 a. 269; 1993 a. 102, 112, 246; 1995 a. 27; 1997 a. 252; 2005 a. 58; 2007 a. 191; 2017 a. 226; 2017 a. 365 s. 112.

134.715 Flea markets; proof of ownership, receipts, returns.

(1) DEFINITIONS. In this section:

(a) "Cosmetic" means an article intended to be applied to the human body for cleansing, beautifying, or altering appearance, but does not include soap.

(b) "Device" has the meaning given in s. 450.01 (6).

(c) "Drug" has the meaning given in s. 450.01 (10).

(d) "Infant formula" means a food that is intended for consumption by infants.

(e) "Proof of ownership" means all of the following information:

1. The name, address, and telephone number of the person

that supplied the merchandise or a representative of the person that supplied the merchandise.

2. The name and address of the person that received the merchandise from the person who supplied the merchandise.

3. A description of the product, including the quantity of the product received from the person who supplied the merchandise.

(2) PROOF REQUIRED. (a) A person engaged in the sale of used or new goods at a flea market or at a similar facility may not sell any of the following merchandise, unless the person has proof of ownership of the merchandise:

1. Baby food of a type usually consumed by children under 3 years of age.

2. Cosmetics.

3. Devices.

4. Drugs.

5. Infant formula.

6. Batteries.

7. Razor blades.

(b) A person required to have proof of ownership under this section shall make proof of ownership available for inspection by a law enforcement officer at any reasonable time.

(3) PENALTY. A person who violates this section may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 2011 a. 174.

134.72 Prohibition of certain unsolicited messages by facsimile machine. (1) DEFINITIONS. In this section:

(a) "Facsimile machine" means a machine that transmits copies of documents by means of a telephone line, telegraph line, microwave, satellite, radio wave, fiber optics, coaxial cable or any other transmission facility or any switching device.

(b) "Facsimile solicitation" means the unsolicited transmission of a document by a facsimile machine for the purpose of encouraging a person to purchase property, goods or services.

(2) PROHIBITIONS. (a) A person may not make a facsimile solicitation without the consent of the person solicited unless all of the following apply:

1. The document transmitted by facsimile machine does not exceed one page in length and is received by the person solicited after 9 p.m. and before 6 a.m.

2. The person making the facsimile solicitation has had a previous business relationship with the person solicited.

3. The document transmitted by facsimile machine contains the name of the person transmitting the document.

(b) Notwithstanding par. (a), a person may not make a facsimile solicitation to a person who has notified the facsimile solicitor in writing, by telephone, or by facsimile transmission that the person does not want to receive facsimile solicitation.

(c) A facsimile solicitor who receives notice under par. (b) may not disclose to another the facsimile transmission number of the person who gave the notice under par. (b). Each disclosure of a facsimile transmission number is a separate violation of this paragraph.

(3) TERRITORIAL APPLICATION. (a) *Intrastate.* This section applies to any intrastate facsimile solicitation.

(b) *Interstate.* This section applies to any interstate facsimile solicitation received by a person in this state.

(4) PENALTY. A person who violates this section may be required to forfeit not more than $500.

History: 1977 c. 301; 1989 a. 336; 1995 a. 351; 1997 a. 27; 2001 a. 16; 2005 a. 61.

134.73 Identification of prisoner making telephone solicitation. (1) DEFINITIONS. In this section:

(a) "Contribution" has the meaning given in s. 202.11 (5).

(b) "Prisoner" means a prisoner of any public or private correctional or detention facility that is located within or outside this state.

(c) "Solicit" has the meaning given in s. 202.11 (8).

(d) "Telephone solicitation" means the unsolicited initiation of a telephone conversation for any of the following purposes:

1. To encourage a person to purchase property, goods, or services.

2. To solicit a contribution from a person.

3. To conduct an opinion poll or survey.

(2) REQUIREMENTS. A prisoner who makes a telephone solicitation shall do all of the following immediately after the person called answers the telephone:

(a) Identify himself or herself by name.

(b) State that he or she is a prisoner.

(c) Inform the person called of the name of the correctional or detention facility in which he or she is a prisoner and the city and state in which the facility is located.

(3) TERRITORIAL APPLICATION. (a) *Intrastate.* This section applies to any intrastate telephone solicitation.

(b) *Interstate.* This section applies to any interstate telephone solicitation received by a person in this state.

(4) PENALTIES. (a) A prisoner who violates this section may be required to forfeit not more than $500.

(b) If a person who employs a prisoner to engage in telephone solicitation is concerned in the commission of a violation of this section as provided under s. 134.99, the person may be required to forfeit not more than $10,000.

History: 2001 a. 16; 2013 a. 20.

134.74 Nondisclosure of information on receipts. (1) In this section:

(a) "Credit card" has the meaning given in s. 421.301 (15).

(b) "Debit card" means a plastic card or similar device that may be used to purchase goods or services by providing the purchaser with direct access to the purchaser's account at a depository institution.

(c) "Depository institution" means a bank, savings bank, savings and loan association, or credit union.

(2) Beginning on August 1, 2005, no person who is in the business of selling goods at retail or selling services and who accepts a credit card or a debit card for the purchase of goods or services may issue a credit card or debit card receipt, for that purchase, on which is printed more than 5 digits of the credit card or debit card number.

(3) This section does not apply to any person who issues a credit card or debit card receipt that is handwritten or that is manually prepared by making an imprint of the credit card or debit card.

History: 2001 a. 109.

134.77 Beverage container regulation. (1) DEFINITIONS. In this section:

(a) "Beverage" means any alcohol beverage, as defined in s. 125.02 (1), malt beverage, tea, bottled drinking water, as defined under s. 97.34 (1) (a), soda water beverage, as defined under s. 97.34 (1) (b), or fruit or vegetable juice or drink which is intended for human consumption.

(b) "Beverage container" means an individual, separate, sealed plastic or metal container for a beverage.

(2) SELF-OPENING METAL BEVERAGE CONTAINERS. (a) No

person may sell or offer for sale at retail in this state any metal beverage container so designed and constructed that it is opened by detaching a metal ring or tab.

(b) Paragraph (a) does not prohibit the sale of a beverage container which:

1. Is sealed with laminated tape, foil or other soft material that is detachable.

2. Contains milk-based, soy-based or similar products which require heat and pressure in the canning process.

(3) PLASTIC CONNECTORS. No person may sell or offer for sale at retail in this state any beverage container if the beverage container is connected to another beverage container by means of a device constructed of a material which does not decompose by photodegradation or biodegradation within a reasonable time after exposure to weather elements.

(4) PENALTY. Any person who violates sub. (2) or (3) shall forfeit not more than $500 for each violation. Each day of violation constitutes a separate offense.

History: 1987 a. 108.

134.80 Home heating fuel dealers. Any dealer selling fuel of any kind for the purpose of heating a private residence shall notify each private residential customer whose account is subject to disconnection of the existence of the fuel assistance programs provided by the department of administration under s. 16.27.

History: 1977 c. 418; 1981 c. 20; 1995 a. 27 s. 9126 (19); 1995 a. 417; 2003 a. 33.

134.81 Water heater thermostat settings. No person who manufactures water heaters may sell any new water heater designed for use in a dwelling unit, as defined in s. 101.61 (1), unless that person does all of the following:

(1) Sets the thermostat of the water heater at no higher than 125 degrees Fahrenheit or at the minimum setting of that water heater if the minimum setting is higher than 125 degrees Fahrenheit.

(2) Attaches a plainly visible notice to the water heater warning that any thermostat setting above 125 degrees Fahrenheit may cause severe burns and consume energy unnecessarily.

History: 1987 a. 102.

134.85 Automated teller machines; international charges. (1) In this section:

(a) "Automated teller machine" means any electronic information processing device located in this state that accepts or dispenses cash in connection with a credit, deposit, or other account. "Automated teller machine" does not include a device that is used solely to facilitate check guarantees or check authorizations, or that is used in connection with the acceptance or dispensing of cash on a person-to-person basis.

(b) "Foreign account" means an account with a financial institution located outside the United States.

(2) An agreement to operate or share an automated teller machine may not prohibit an owner or operator of the automated teller machine from imposing on an individual who conducts a transaction using a foreign account an access fee or surcharge that is not otherwise prohibited under federal or state law.

History: 2007 a. 48.

134.87 Repair, replacement and refund under new motorized wheelchair warranties. (1) In this section:

(a) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility.

(b) "Consumer" means any of the following:

1. The purchaser of a motorized wheelchair, if the motorized wheelchair was purchased from a motorized wheelchair dealer or manufacturer for purposes other than resale.

2. A person to whom the motorized wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motorized wheelchair.

3. A person who may enforce the warranty.

4. A person who leases a motorized wheelchair from a motorized wheelchair lessor under a written lease.

(c) "Demonstrator" means a motorized wheelchair used primarily for the purpose of demonstration to the public.

(d) "Early termination cost" means any expense or obligation that a motorized wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under sub. (3) (b) 3. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(e) "Early termination savings" means any expense or obligation that a motorized wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under sub. (3) (b) 3. "Early termination savings" includes an interest charge that the motorized wheelchair lessor would have paid to finance the motorized wheelchair or, if the motorized wheelchair lessor does not finance the motorized wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(f) "Manufacturer" means a person who manufactures or assembles motorized wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's motorized wheelchairs, but does not include a motorized wheelchair dealer.

(g) "Motorized wheelchair" means any motor-driven wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.

(h) "Motorized wheelchair dealer" means a person who is in the business of selling motorized wheelchairs.

(i) "Motorized wheelchair lessor" means a person who leases a motorized wheelchair to a consumer, or who holds the lessor's rights, under a written lease.

(j) "Nonconformity" means a condition or defect that substantially impairs the use, value or safety of a motorized wheelchair, and that is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the motorized wheelchair by a consumer.

(k) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new motorized wheelchair or within one year after first delivery of the motorized wheelchair to a consumer, whichever is sooner:

1. The same nonconformity with the warranty is subject to repair by the manufacturer, motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers at least 4 times and the nonconformity continues.

2. The motorized wheelchair is out of service for an aggregate of at least 30 days because of warranty nonconformities.

(2) A manufacturer who sells a motorized wheelchair to a consumer, either directly or through a motorized wheelchair dealer, shall furnish the consumer with an express warranty for

the motorized wheelchair. The duration of the express warranty shall be not less than one year after first delivery of the motorized wheelchair to the consumer. If a manufacturer fails to furnish an express warranty as required by this subsection, the motorized wheelchair shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this subsection.

(3) (a) If a new motorized wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers and makes the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to a consumer, the nonconformity shall be repaired.

(b) 1. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement under subd. 2. or 3., whichever is appropriate.

2. At the direction of a consumer described under sub. (1) (b) 1., 2. or 3., do one of the following:

a. Accept return of the motorized wheelchair and replace the motorized wheelchair with a comparable new motorized wheelchair and refund any collateral costs.

b. Accept return of the motorized wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's motorized wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. Under this subd. 2. b., a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motorized wheelchair by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the motorized wheelchair was driven before the consumer first reported the nonconformity to the motorized wheelchair dealer.

3. a. With respect to a consumer described in sub. (1) (b) 4., accept return of the motorized wheelchair, refund to the motorized wheelchair lessor and to any holder of a perfected security interest in the motorized wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

b. Under this subdivision, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the motorized wheelchair dealer's early termination costs and the value of the motorized wheelchair at the lease expiration date if the lease sets forth that value, less the motorized wheelchair lessor's early termination savings.

c. Under this subdivision, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the consumer drove the motorized wheelchair before first reporting the nonconformity to the manufacturer, motorized wheelchair lessor or motorized wheelchair dealer.

(c) To receive a comparable new motorized wheelchair or a refund due under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer to the manufacturer of the motorized wheelchair having the nonconformity to transfer possession of that motorized wheelchair to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new motorized wheelchair or refund. When the manufacturer provides the new motorized wheelchair or refund, the consumer shall return the motorized wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(d) 1. To receive a refund due under par. (b) 3., a consumer described under sub. (1) (b) 4. shall offer to return the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the motorized wheelchair having the nonconformity.

2. To receive a refund due under par. (b) 3., a motorized wheelchair lessor shall offer to transfer possession of the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the motorized wheelchair lessor. When the manufacturer provides the refund, the motorized wheelchair lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

3. No person may enforce the lease against the consumer after the consumer receives a refund due under par. (b) 3.

(e) No motorized wheelchair returned by a consumer or motorized wheelchair lessor in this state under par. (b), or by a consumer or motorized wheelchair lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

(4) This section does not limit rights or remedies available to a consumer under any other law.

(5) Any waiver by a consumer of rights under this section is void.

(6) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

History: 1991 a. 222.

134.90 Uniform trade secrets act. (1) DEFINITIONS. In this section:

(a) "Improper means" includes espionage, theft, bribery, misrepresentation and breach or inducement of a breach of duty to maintain secrecy.

(b) "Readily ascertainable" information does not include information accessible through a license agreement or by an employee under a confidentiality agreement with his or her employer.

(c) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

(2) MISAPPROPRIATION. No person, including the state, may misappropriate or threaten to misappropriate a trade secret by doing any of the following:

(a) Acquiring the trade secret of another by means which the person knows or has reason to know constitute improper means.

(b) Disclosing or using without express or implied consent a trade secret of another if the person did any of the following:

1. Used improper means to acquire knowledge of the trade secret.

2. At the time of disclosure or use, knew or had reason to know that he or she obtained knowledge of the trade secret through any of the following means:

a. Deriving it from or through a person who utilized improper means to acquire it.

b. Acquiring it under circumstances giving rise to a duty to maintain its secrecy or limit its use.

c. Deriving it from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

d. Acquiring it by accident or mistake.

(3) INJUNCTIVE RELIEF. (a) 1. A court may grant an injunction against a person who violates sub. (2). Chapter 813 governs any temporary or interlocutory injunction or ex parte restraining order in an action under this section, except that no court may issue such an injunction or restraining order unless the complainant makes an application which includes a description of each alleged trade secret in sufficient detail to inform the party to be enjoined or restrained of the nature of the complaint against that party or, if the court so orders, includes written disclosure of the trade secret. The complainant shall serve this application upon the party to be enjoined or restrained at the time the motion for the injunction is made or the restraining order is served, whichever is earlier.

2. Except as provided in subd. 3., upon application to the court, the court shall terminate an injunction when a trade secret ceases to exist.

3. The court may continue an injunction for a reasonable period of time to eliminate commercial advantage which the person who violated sub. (2) otherwise would derive from the violation.

(b) In exceptional circumstances, an injunction granted under par. (a) may condition future use of a trade secret by the person who violated sub. (2) upon payment of a reasonable royalty by that person to the owner of the trade secret for no longer than the period of time for which the court may enjoin or restrain the use of the trade secret under par. (a). Exceptional circumstances include a material and prejudicial change of position, prior to acquiring knowledge or reason to know of a violation of sub. (2), that renders an injunction inequitable.

(c) In appropriate circumstances, the court may order affirmative acts to protect a trade secret.

(4) DAMAGES. (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of a violation of sub. (2) renders a monetary recovery inequitable, a court may award damages to the complainant for a violation of sub. (2). A court may award damages in addition to, or in lieu of, injunctive relief under sub. (3). Damages may include both the actual loss caused by the violation and unjust enrichment caused by the violation that is not taken into account in computing actual loss. Damages may be measured exclusively by the imposition of liability for a reasonable royalty for a violation of sub. (2) if the complainant cannot by any other method of measurement prove an amount of damages which exceeds the reasonable royalty.

(b) If a violation of sub. (2) is willful and malicious, the court may award punitive damages in an amount not exceeding twice any award under par. (a).

(c) If a claim that sub. (2) has been violated is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or a violation of sub. (2) is willful and deliberate, the court may award reasonable attorney fees to the prevailing party.

(5) PRESERVATION OF SECRECY. In an action under this section, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting a protective order in a discovery proceeding, holding an in-camera hearing, sealing the record of the action and ordering any person involved in the action not to disclose an alleged trade secret without prior court approval.

(6) EFFECT ON OTHER LAWS. (a) Except as provided in par. (b), this section displaces conflicting tort law, restitutionary law and any other law of this state providing a civil remedy for misappropriation of a trade secret.

(b) This section does not affect any of the following:

1. Any contractual remedy, whether or not based upon misappropriation of a trade secret.

2. Any civil remedy not based upon misappropriation of a trade secret.

3. Any criminal remedy, whether or not based upon misappropriation of a trade secret.

(7) UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be applied and construed to make uniform the law relating to misappropriation of trade secrets among states enacting substantially identical laws.

History: 1985 a. 236.

NOTE: 1985 Wis. Act 236, which created this section, contains extensive notes describing this section and other sections affected by Act 236.

Some factors to be considered in determining whether given information is one's trade secret are: 1) the extent to which the information is known outside of the person's business; 2) the extent to which it is known by employees and others involved in the person's business; 3) the extent of measures taken by the person to guard the secrecy of the information; 4) the value of the information to the person and to the person's competitors; 5) the amount of effort or money expended by the person in developing the information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Minuteman, Inc. v. Alexander, 147 Wis. 2d 842, 434 N.W.2d 773 (1989).

A party asserting a trade secret need not spell out details that would destroy what the party seeks to protect, but the party must include with some specificity the nature of the trade secret that is more than a generalized allegation that there is a trade secret. ECT International, Inc. v. Zwerlein, 228 Wis. 2d 343, 597 N.W.2d 479 (Ct. App. 1999), 98-2041.

By limiting the period in which an employee agrees not to divulge trade secrets, an employer manifests its intent that there is no need to maintain the secrecy after the specified period. ECT International, Inc. v. Zwerlein, 228 Wis. 2d 343, 597 N.W.2d 479 (Ct. App. 1999), 98-2041.

Under sub. (4), "actual loss caused by the violation" may include losses that result when a misappropriator uses a trade secret unsuccessfully and produces and sells a defective product that causes the plaintiff's business to suffer. World Wide Prosthetic Supply, Inc. v. Mikulsky, 2002 WI 26, 251 Wis. 2d 45, 640 N.W.2d 764, 00-1751.

Sub. (6) (a) and (b) 2. together do the following: 1) replace all pre-existing definitions of trade secret and remedies for tort claims dependent solely on the existence of a specific class of information statutorily defined as trade secrets; and 2) leave available all other types of civil actions that do not depend on information that meets the statutory definition of a trade secret. Therefore, any civil tort claim not grounded in a trade secret, as defined in the statute, remains available. Burbank Grease Services, LLC v. Sokolowski, 2006 WI 103, 294 Wis. 2d 274, 717 N.W.2d 781, 04-0468.

Although a court may grant injunctive relief against a person who misappropriated a trade secret, the injunction should only be for a period reasonable to eliminate commercial advantage that the person who misappropriated the secret would otherwise derive from the violation. Once the defendant would have discovered the trade secret without the misappropriation, any lost profits from that time forward are not caused by the defendant's wrongful act. Minnesota Mining & Manufacturing Co. v. Pribyl, 259 F.3d 587 (2001).

Nondisclosure agreements under sub. (6) between suppliers and users of intellectual property are not subject to rules that govern noncompete agreements between employers and employees. A much greater scope of restraint is allowed in contracts between vendors and vendees than between employers and employees. IDX Systems Corp. v. Epic Systems Corp., 285 F.3d 581 (2002).

An independent contractor presumptively owns his or her work product. In the absence of an agreement, non-exclusivity is the norm. The law of trade secrets follows the same approach to ownership. Wisconsin does not require an express, written contract of confidentiality. An independent contractor does not acquire any rights in his or client's trade-secret data just because he or she used those data in the performance of his or her duties. Breach of an implicit promise to hold information for the client's sole benefit in turn violates sub. (2) (a). Hicklin Engineering, L.C. v. Bartell, 439 F.3d 346 (2006).

Because the recovery of unjust enrichment damages is grounded in equitable principles, Wisconsin law limits the measure of unjust enrichment damages to the value of the benefit conferred upon the defendant. Calculating the benefit conferred on a defendant to determine unjust enrichment damages is a context-specific analysis. Under Wisconsin law, a jury can award avoided research and development costs based on the defendant gaining a significant head start in its operation. Epic Systems Corp. v. Tata Consultancy Services Ltd., 980 F.3d 1117 (2020).

This section does not require absolute secrecy, but one who claims a trade secret must exercise eternal vigilance in protecting its confidentiality. In determining

whether companies have fulfilled this requirement, Wisconsin courts consider whether the company negotiated confidentiality agreements, kept documents locked up, limited access to information, restricted building access, denoted documents as confidential, informed individuals that information was confidential, and allowed individuals to keep information after the business relationship had ended. Starsurgical Inc. v. Aperta, LLC, 40 F. Supp. 3d 1069 (2014).

It is perfectly lawful to "steal" a firm's trade secret by reverse engineering. In this case, the plaintiff failed to rebut the defendants' contention that the plaintiff's designs may be reverse engineered, so the plaintiff did not meet its burden of showing its product designs were trade secrets. Kuryakyn Holdings, LLC v. Ciro, LLC, 242 F. Supp. 3d 789 (2017).

Bare bones listings of customer information, such as names, addresses, phone numbers, and contact persons, have been routinely rejected by the Wisconsin courts as constituting a trade secret. Indeed, when the names, addresses, and contact persons of a company's customers are readily ascertainable by proper means, a customer list is not a trade secret. Additionally, an agent is permitted to use general information concerning the names of customers retained in the agent's memory, if not acquired in violation of his duty as an agent. Charles Schwab & Co. v. Lagrant, 483 F. Supp. 3d 625 (2020).

Revisions to the law of trade secrets. Whitesel & Sklansky. WBB Aug. 1986.

134.91 Sale of dextromethorphan to a minor without prescription prohibited.

(1) DEFINITIONS. In this section:

(a) "Drug" has the meaning given in s. 450.01 (10).

(b) "Prescription order" has the meaning given in s. 450.01 (21).

(2) PROHIBITIONS. (a) No person may sell at retail a drug containing dextromethorphan to a person who is under 18 years of age, unless the sale is pursuant to a prescription order.

(b) No person may sell at retail a drug containing dextromethorphan unless the person making the sale receives from the purchaser, at the time of purchase, a form of identification from which the age of the purchaser can be determined, or unless based upon the outward appearance of the purchaser the person making the sale reasonably presumes that the purchaser is 25 years of age or older.

(c) A person who is under 18 years of age may not purchase a drug containing dextromethorphan unless pursuant to a prescription order.

(3) PENALTIES. (a) A person who violates sub. (2) (a) or (b) is subject to a civil forfeiture of not more than $250 for each violation.

(b) A person who violates sub. (2) (c) is subject to a civil forfeiture of $50 for each violation.

History: 2017 a. 160; 2021 a. 238 s. 45.

134.93 Payment of commissions to independent sales representatives.

(1) DEFINITIONS. In this section:

(a) "Commission" means compensation accruing to an independent sales representative for payment by a principal, the rate of which is expressed as a percentage of the dollar amount of orders or sales made by the independent sales representative or as a percentage of the dollar amount of profits generated by the independent sales representative.

(b) "Independent sales representative" means a person, other than an insurance agent or broker, who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission. "Independent sales representative" does not include any of the following:

1. A person who places orders or purchases products for the person's own account for resale.

2. A person who is an employee of the principal and whose wages must be paid as required under s. 109.03.

(c) "Principal" means a sole proprietorship, partnership, joint venture, corporation or other business entity, whether or not having a permanent or fixed place of business in this state, that does all of the following:

1. Manufactures, produces, imports or distributes a product for wholesale.

2. Contracts with an independent sales representative to solicit orders for the product.

3. Compensates the independent sales representative, in whole or in part, by commission.

(2) COMMISSIONS; WHEN DUE. (a) Subject to pars. (b) and (c), a commission becomes due as provided in the contract between the principal and the independent sales representative.

(b) If there is no written contract between the principal and the independent sales representative, or if the written contract does not provide for when a commission becomes due, or if the written contract is ambiguous or unclear as to when a commission becomes due, a commission becomes due according to the past practice used by the principal and the independent sales representative.

(c) If it cannot be determined under par. (a) or (b) when a commission becomes due, a commission becomes due according to the custom and usage prevalent in this state for the particular industry of the principal and independent sales representative.

(3) NOTICE OF TERMINATION OR CHANGE IN CONTRACT. Unless otherwise provided in a written contract between a principal and an independent sales representative, a principal shall provide an independent sales representative with at least 90 days' prior written notice of any termination, cancellation, nonrenewal or substantial change in the competitive circumstances of the contract between the principal and the independent sales representative.

(4) COMMISSIONS DUE; PAYMENT ON TERMINATION OF CONTRACT. A principal shall pay an independent sales representative all commissions that are due to the independent sales representative at the time of termination, cancellation or nonrenewal of the contract between the principal and the independent sales representative as required under sub. (2).

(5) CIVIL LIABILITY. Any principal that violates sub. (2) by failing to pay a commission due to an independent sales representative as required under sub. (2) is liable to the independent sales representative for the amount of the commission due and for exemplary damages of not more than 200 percent of the amount of the commissions due. In addition, the principal shall pay to the independent sales representative, notwithstanding the limitations specified in s. 799.25 or 814.04, all actual costs, including reasonable actual attorney fees, incurred by the independent sales representative in bringing an action, obtaining a judgment and collecting on a judgment under this subsection.

History: 1997 a. 71.

"Person" in this section is subject to the definition in s. 990.01 (26), which includes not only natural persons, but also partnerships, associations, and bodies corporate and politic. Industry to Industry, Inc. v. Hillsman Modular Molding, Inc., 2002 WI 51, 252 Wis. 2d 544, 644 N.W.2d 236, 00-2180.

134.95 Violations against elderly or disabled persons.

(1) DEFINITIONS. In this section:

(a) "Disabled person" means a person who has an impairment of a physical, mental or emotional nature that substantially limits at least one major life activity.

(b) "Elderly person" means a person who is at least 62 years of age.

(c) "Major life activity" means self-care, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks or being able to be gainfully employed.

(2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71, 134.72, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that chapter, the person shall be subject to a supplemental forfeiture not to exceed $10,000 for that violation if the conduct by the defendant, for which the fine or forfeiture was imposed, was perpetrated

against an elderly person or disabled person and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

(3) PRIORITY FOR RESTITUTION. If the court orders restitution under s. 100.171 (8), 100.173 (4) (a), 100.174 (7), 100.175 (7), 100.177 (15) or 134.87 (6) for a pecuniary or monetary loss suffered by a person, the court shall require that the restitution be paid by the defendant before the defendant pays any forfeiture imposed under this section.

History: 1995 a. 382; 1997 a. 111; 2001 a. 16.

134.96 Use of lodging establishments. (1) In this section:

(a) "Alcohol beverages" has the meaning given in s. 125.02 (1).

(b) "Controlled substance" has the meaning given in s. 961.01 (4).

(bd) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(c) "Lodging establishment" has the meaning given in s. 106.52 (1) (d).

(d) "Underage person" has the meaning given in s. 125.02 (20m).

(2) Any person who procures lodging in a lodging establishment and permits or fails to take action to prevent any of the following activities from occurring in the lodging establishment is subject to the penalties provided in sub. (5):

(a) Consumption of an alcohol beverage by any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

(b) Illegal use of a controlled substance or controlled substance analog.

(3) An owner or employee of a lodging establishment may deny lodging to an adult if the owner or employee reasonably believes that consumption of an alcohol beverage by an underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age, or illegal use of a controlled substance or controlled substance analog, may occur in the area of the lodging establishment procured.

(4) An owner or employee of a lodging establishment may require a cash deposit or use of a credit card at the time of application for lodging.

(5) A person who violates sub. (2) or a local ordinance which strictly conforms to sub. (2) shall forfeit:

(a) Not more than $500 if the person has not committed a previous violation within 12 months of the violation; or

(b) Not less than $200 nor more than $500 if the person has committed a previous violation within 12 months of the violation.

History: 1989 a. 94; 1991 a. 295; 1995 a. 27, 448; 1999 a. 82; 2005 a. 155 s. 41; Stats. 2005 s. 134.96.

134.97 Disposal of records containing personal information. (1) DEFINITIONS. In this section:

(a) "Credit card" has the meaning given in s. 421.301 (15).

(am) "Dispose" does not include a sale of a record or the transfer of a record for value.

(b) "Financial institution" means any bank, savings bank, savings and loan association or credit union that is authorized to do business under state or federal laws relating to financial institutions, any issuer of a credit card or any investment company.

(c) "Investment company" has the meaning given in s. 180.0103 (11e).

(d) "Medical business" means any organization or enterprise operated for profit or not for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company or association, that possesses information, other than personnel records, relating to a person's physical or mental health, medical history or medical treatment.

(e) "Personal information" means any of the following:

1. Personally identifiable data about an individual's medical condition, if the data are not generally considered to be public knowledge.

2. Personally identifiable data that contain an individual's account or customer number, account balance, balance owing, credit balance or credit limit, if the data relate to an individual's account or transaction with a financial institution.

3. Personally identifiable data provided by an individual to a financial institution upon opening an account or applying for a loan or credit.

4. Personally identifiable data about an individual's federal, state or local tax returns.

(f) "Personally identifiable" means capable of being associated with a particular individual through one or more identifiers or other information or circumstances.

(g) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(h) "Tax preparation business" means any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company or association, that for a fee prepares an individual's federal, state or local tax returns or counsels an individual regarding the individual's federal, state or local tax returns.

(2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. A financial institution, medical business or tax preparation business may not dispose of a record containing personal information unless the financial institution, medical business, tax preparation business or other person under contract with the financial institution, medical business or tax preparation business does any of the following:

(a) Shreds the record before the disposal of the record.

(b) Erases the personal information contained in the record before the disposal of the record.

(c) Modifies the record to make the personal information unreadable before the disposal of the record.

(d) Takes actions that it reasonably believes will ensure that no unauthorized person will have access to the personal information contained in the record for the period between the record's disposal and the record's destruction.

(3) CIVIL LIABILITY; DISPOSAL AND USE. (a) A financial institution, medical business or tax preparation business is liable to a person whose personal information is disposed of in violation of sub. (2) for the amount of damages resulting from the violation.

(b) Any person who, for any purpose, uses personal information contained in a record that was disposed of by a financial institution, medical business or tax preparation business is liable to an individual who is the subject of the information and to the financial institution, medical business or tax preparation business that disposed of the record for the amount of damages resulting from the person's use of the information. This paragraph does not apply to a person who uses personal information with the authorization or consent of the individual who is the subject of the information.

(4) PENALTIES; DISPOSAL AND USE. (a) A financial institution, medical business or tax preparation business that violates

sub. (2) may be required to forfeit not more than $1,000. Acts arising out of the same incident or occurrence shall be a single violation.

(b) Any person who possesses a record that was disposed of by a financial institution, medical business or tax preparation business and who intends to use, for any purpose, personal information contained in the record may be fined not more than $1,000 or imprisoned for not more than 90 days or both. This paragraph does not apply to a person who possesses a record with the authorization or consent of the individual whose personal information is contained in the record.

History: 1999 a. 9; 2005 a. 155 s. 52; Stats. 2005 s. 134.97.

Legislative Watch: Disposing Medical, Financial Records. Franklin. Wis. Law. Dec. 1999.

134.98 Notice of unauthorized acquisition of personal information. (1) DEFINITIONS. In this section:

(a) 1. "Entity" means a person, other than an individual, that does any of the following:

a. Conducts business in this state and maintains personal information in the ordinary course of business.

b. Licenses personal information in this state.

c. Maintains for a resident of this state a depository account as defined in s. 815.18 (2) (e).

d. Lends money to a resident of this state.

2. "Entity" includes all of the following:

a. The state and any office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

b. A city, village, town, or county.

(am) "Name" means an individual's last name combined with the individual's first name or first initial.

(b) "Personal information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in a manner that renders the element unreadable:

1. The individual's social security number.

2. The individual's driver's license number or state identification number.

3. The number of the individual's financial account number, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account.

4. The individual's deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a).

5. The individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.

(c) "Publicly available information" means any information that an entity reasonably believes is one of the following:

1. Lawfully made widely available through any media.

2. Lawfully made available to the general public from federal, state, or local government records or disclosures to the general public that are required to be made by federal, state, or local law.

(2) NOTICE REQUIRED. (a) If an entity whose principal place of business is located in this state or an entity that maintains or licenses personal information in this state knows that personal information in the entity's possession has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity shall make reasonable efforts to notify each subject of the personal information. The notice shall indicate that the entity knows of the unauthorized acquisition of personal information pertaining to the subject of the personal information.

(b) If an entity whose principal place of business is not located in this state knows that personal information pertaining to a resident of this state has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity shall make reasonable efforts to notify each resident of this state who is the subject of the personal information. The notice shall indicate that the entity knows of the unauthorized acquisition of personal information pertaining to the resident of this state who is the subject of the personal information.

(bm) If a person, other than an individual, that stores personal information pertaining to a resident of this state, but does not own or license the personal information, knows that the personal information has been acquired by a person whom the person storing the personal information has not authorized to acquire the personal information, and the person storing the personal information has not entered into a contract with the person that owns or licenses the personal information, the person storing the personal information shall notify the person that owns or licenses the personal information of the acquisition as soon as practicable.

(br) If, as the result of a single incident, an entity is required under par. (a) or (b) to notify 1,000 or more individuals that personal information pertaining to the individuals has been acquired, the entity shall without unreasonable delay notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 USC 1681a(p), of the timing, distribution, and content of the notices sent to the individuals.

(cm) Notwithstanding pars. (a), (b), (bm), and (br), an entity is not required to provide notice of the acquisition of personal information if any of the following applies:

1. The acquisition of personal information does not create a material risk of identity theft or fraud to the subject of the personal information.

2. The personal information was acquired in good faith by an employee or agent of the entity, if the personal information is used for a lawful purpose of the entity.

(3) TIMING AND MANNER OF NOTICE; OTHER REQUIREMENTS. (a) Subject to sub. (5), an entity shall provide the notice required under sub. (2) within a reasonable time, not to exceed 45 days after the entity learns of the acquisition of personal information. A determination as to reasonableness under this paragraph shall include consideration of the number of notices that an entity must provide and the methods of communication available to the entity.

(b) An entity shall provide the notice required under sub. (2) by mail or by a method the entity has previously employed to communicate with the subject of the personal information. If an entity cannot with reasonable diligence determine the mailing address of the subject of the personal information, and if the entity has not previously communicated with the subject of the personal information, the entity shall provide notice by a method reasonably calculated to provide actual notice to the subject of the personal information.

(c) Upon written request by a person who has received a notice under sub. (2) (a) or (b), the entity that provided the notice shall identify the personal information that was acquired.

(3m) REGULATED ENTITIES EXEMPT. This section does not apply to any of the following:

(a) An entity that is subject to, and in compliance with, the privacy and security requirements of 15 USC 6801 to 6827, or a person that has a contractual obligation to such an entity, if the

entity or person has in effect a policy concerning breaches of information security.

(b) An entity that is described in 45 CFR 164.104 (a), if the entity complies with the requirements of 45 CFR part 164.

(4) EFFECT ON CIVIL CLAIMS. Failure to comply with this section is not negligence or a breach of any duty, but may be evidence of negligence or a breach of a legal duty.

(5) REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY. A law enforcement agency may, in order to protect an investigation or homeland security, ask an entity not to provide a notice that is otherwise required under sub. (2) for any period of time and the notification process required under sub. (2) shall begin at the end of that time period. Notwithstanding subs. (2) and (3), if an entity receives such a request, the entity may not provide notice of or publicize an unauthorized acquisition of personal information, except as authorized by the law enforcement agency that made the request.

(6m) LOCAL ORDINANCES OR REGULATIONS PROHIBITED. No city, village, town, or county may enact or enforce an ordinance or regulation that relates to notice or disclosure of the unauthorized acquisition of personal information.

(7m) EFFECT OF FEDERAL LEGISLATION. If the joint committee on administrative rules determines that the federal government has enacted legislation that imposes notice requirements substantially similar to the requirements of this section and determines that the legislation does not preempt this section, the joint committee on administrative rules shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice of its determination. This section does not apply after publication of a notice under this subsection.

History: 2005 a. 138; 2007 a. 20; 2007 a. 97 s. 238.

This section does not create a private right of action. Fox v. Iowa Health System, 399 F. Supp. 3d 780 (2019).

134.99 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

History: 1975 c. 365; 1979 c. 62; 1997 a. 111.