

CHAPTER 100.

MARKETING; WAREHOUSES; TRADE PRACTICES.

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100.01 Regulation of marketing of perishable fruits and vegetables. (1) When used in this section:

(a) The term "person" includes individuals, partnerships, corporations and associations.

(b) The term "perishable agricultural commodities" means fresh fruits and fresh vegetables of every kind and character.

(c) The term "commission merchant" means any person engaged in the business of receiving any perishable agricultural commodity for sale on commission, or for or on behalf of another.

(d) The term "dealer" means any person who buys, sells, offers or exposes for sale, or has in his possession with intent to sell, any perishable agricultural commodity, except that (1) no producer shall be considered a dealer in respect to sales of any such commodity of his own raising; (2) no person buying such commodity solely for sale at retail shall be considered a dealer in respect to such commodity.

(e) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity, for or on behalf of the vendor or the purchaser, respectively.

(2) (a) After July 1, 1933, no person shall at any time, carry on the business of a commission merchant, dealer or broker as herein defined, without a license as herein provided.

(b) Any person desiring any such license shall make application to the department of agriculture and markets, upon blanks to be furnished by said department, upon filing of said application, and pay a fee of five dollars annually for such license. As a condition to the granting of such license the applicant shall execute and file a bond with such department, in such form and amount and with such surety or sureties as it may direct. Such bond shall be conditioned that the applicant will faithfully perform his obligations as a bonded commission merchant, dealer or broker under the laws of this state and the rules and regulations of the department. Whenever the department shall determine that a bond approved by it is, or for any cause has become, insufficient it may require an additional bond or bonds and unless the same be given within the time fixed by a written demand therefor the license of such commission merchant, dealer or broker may be suspended or revoked. Any person claiming himself to be damaged by any breach of the conditions of a bond given by a licensee as hereinbefore provided may enter complaint thereof to the department of agriculture and markets, which complaint shall be a written statement of the facts constituting said complaint. Upon filing such complaint in the manner herein provided, the department of agriculture and markets shall investigate the charges made, and at its discretion order a hearing giving the party complained of notice of the filing of such complaint and the time and place of such hearing. At the conclusion of said hearing the department of agriculture and markets shall report its findings and render its conclusions upon the matter complained of to the complainant and the respondent in each case, who shall have fifteen days following in which to make effective and satisfy the department of agriculture and markets' conclusions. And if such settlement is not effected within the time aforesaid, either party, if aggrieved by any condition of the bond may, upon first obtaining the approval of the department of agriculture and markets, commence and maintain an action against the principal and sureties on the bond of the party

complained of as in any civil action, provided no action against the bondsmen of a licensee shall in any instance be maintained without the written approval of the department of agriculture and markets, which shall be attached to and made a part of the original complaint in such action. Upon commencing such action a copy thereof shall be filed in the office of the department of agriculture and markets. The record of the hearing before the department of agriculture and markets shall be competent evidence in any court having jurisdiction. If such licensee has become liable to more than one person by reason of breaches of the conditions of the bond and the amount of the bond is insufficient to pay the entire liability to all persons entitled to the protection of the bond, the penalty of the bond as against the sureties shall be apportioned among the several complainants. In all cases where the liability of the licensee exceeds the amount of his bond, the department of agriculture and markets shall commence an action for the recovery of the full amount of said bond, and when recovered such an amount shall be deposited with the department of agriculture and markets, which shall in the same action, subject to the approval of the court, pass upon and allow or disallow all claims which may be presented to it for payment or a portion thereunder, and to effect the purposes herein may employ counsel, the expense thereof to be paid out of the amount recovered on such bond.

(c) Whenever an applicant has paid the prescribed fee and furnished such bond, the department of agriculture and markets shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant, broker, or dealer, unless and until it is suspended or revoked by the department of agriculture and markets, in accordance with the provisions of this section, but said license shall automatically terminate unless the annual fee is paid within thirty days after notice has been mailed that payment is due.

(d) The department of agriculture and markets may suspend any such license temporarily for failure to comply with the provisions of this section or any rules or regulations made by the department of agriculture and markets, and shall have the power to permanently revoke such license for like cause. Before any such suspension or revocation of a license is made the department of agriculture and markets shall give written notice to the licensee that it contemplates the suspension or revocation of the same and give its reasons therefor. Such notice shall appoint a time for hearing before the department of agriculture and markets and may be sent by registered mail to the licensee. The hearing shall be held in the office of the department of agriculture and markets in the city of Madison. On the day of hearing the licensee may present such evidence as he may desire and after hearing the evidence the department of agriculture and markets shall decide the matter in such manner as to it appears just and right. The act of such department in refusing to grant a license or in suspending or revoking a license granted under this subsection shall be subject to review by a writ of certiorari issuing from a court of competent jurisdiction.

(3) It shall be unlawful:

(a) For any commission merchant or broker to make any fraudulent charge in respect to any perishable agricultural commodity.

(b) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause, any perishable agricultural commodity bought or sold or contracted to be bought or sold by such dealer.

(c) For any commission merchant or broker to discard, dump, or destroy without reasonable cause any perishable agricultural commodity received by such a commission merchant or broker.

(d) For any commission merchant, dealer or broker, to make for a fraudulent purpose or for the purpose of depressing the market of any perishable agricultural commodity, any false or misleading statement concerning the grade, condition, markings, quality, quantity, market quotations, disposition of, or the condition of the market for any perishable agricultural commodity.

(e) For any commission merchant to fail to render a true and itemized statement of the sale or other disposition of any consignment of perishable agricultural commodity with full payment of the gross amount for which such perishable agricultural commodity is sold less the proper, usual, or agreed selling charge, with all other expenses necessarily and actually incurred or agreed to in the handling thereof, and the prompt payment of the purchase price or other amount due the seller in accordance with the terms of the agreement between the parties, or, if no agreement, within fifteen days of receipt of the perishable agricultural commodity.

(f) For any dealer to fail to accept or reject any perishable agricultural commodity promptly. If the dealer fails to notify the vendor by wire or telephone within twenty-four hours after he receives notice of the arrival of the perishable agricultural commodity, that he rejects the same, he will be deemed to have accepted it as being in accordance with the terms of the contract relating to the same.

(g) For any commission merchant, dealer or broker to receive any perishable agricultural commodity from other states or countries for sale or resale within this state and give the purchasers thereof the impression, through any method of advertising, or by any statement, that the perishable agricultural commodity is of Wisconsin origin.

(h) For any commission merchant, dealer or broker, for a fraudulent purpose to remove, alter, or tamper with any card, stencil, stamp, tag, certificate or other notice placed upon any container or railroad car containing perishable agricultural commodities by the original packer or by or under authority of any federal or state inspector, if such card, stencil, stamp, tag, certificate or other notice contains a certificate as to the grower, grade or quality of the commodity contained in such container or railroad car.

(i) For failure of any commission merchant, dealer or broker, to comply with the grading and marking requirements on perishable agricultural commodities, on which legal standards exist, or other state laws, relating to the marketing of perishable agricultural commodities.

(4) The department of agriculture and markets is charged with the enforcement of this section, and is authorized and empowered to make such rules and regulations as may be found necessary to carry out the provisions of and enforce the same.

(6) If any provision of this section or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the section and of the application of such provision to other persons and circumstances shall not be affected thereby. [1933 c. 351 s. 2; 1935 c. 44, 550 s. 333; 1939 c. 127, 476]

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

(2) If any provision of this act [1933 c. 112] is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the applicability of such provisions to other persons and circumstances shall not be affected thereby. [1933 c. 112; 1935 c. 550 s. 334, 335]

100.03 Emergency regulation of the distribution of milk in certain municipalities.

(1) It is declared: In the economic depression, much of the business of fluid milk distribution in Wisconsin was becoming affected with unfair methods of competition and unfair trade practices that threatened the financial demoralization of producers and dealers, the continued ability of producers to produce an adequate supply of milk of a sanitary and safe quality and of dealers to distribute it in a sanitary and safe manner, and the public health and welfare; and that created a great and pressing public need for special regulation to eliminate and prevent such methods and practices. Such regulation under the milk control statutes of 1933 and 1935 measurably stabilized the business and prevented much of the threatened results. Such need measurably continues, however, and will continue with the same threatened results, if regulation is relaxed, so long as economic unbalance or unemployment materially interferes with the ability to produce, to consume, to bargain, or to deal in the production or distribution of fluid milk in Wisconsin.

(2) This section shall cease to be of force or effect when the department shall determine that economic unbalance or unemployment no longer so materially interferes with the ability to produce, to consume, to bargain, or to deal in the production or distribution

of fluid milk in Wisconsin as to continue measurably to threaten results as recited in subsection (1), but in any event not later than December 31, 1941. The department's determination, to whatever effect, shall be in the form of a general order and may be reviewed as such and not otherwise. The provisions of this section shall not apply to towns, villages and cities of the fourth class, unless the same are located in a county containing a population of more than seventy thousand.

(3) As used in this section:

(a) "Milk" has the same definition as provided in the first paragraph of subsection (5) of section 97.02.

(b) "Regulated milk" means fluid milk and fluid cream, whole or skimmed, and with or without added ingredients, buttermilk, and cottage cheese, and all milk and cream received by any dealer, as to any of which, directly or indirectly, the conditions described in subsection (2) exist in any particular regulated milk market.

(c) "Regulated milk market" is any area within which, as to the distribution of regulated milk, the conditions described in subsection (2) exist.

(d) "Person" means any individual, partnership, corporation or association, including any co-operative association.

(e) "Producer" means any person producing milk.

(f) "Dealer" means any person buying for resale or receiving, handling or selling, either personally or through an agent or as agent of another, either at wholesale or retail, regulated milk in a regulated milk market.

(g) "Department" means the department of agriculture and markets.

(h) "Price" includes the amount to be charged or paid, and the proceeds to be delivered, and shall be money or property presently paid, delivered, or vested indefeasibly in the person entitled thereto, as the price order shall provide.

(4) (a) No person shall engage in business as a dealer without a license therefor under this section, except a producer distributing milk only and not to exceed ten quarts daily, and except that a dealer not bottling milk or cream in any fluid form shall not be required to be licensed for the operation of a grocery or delicatessen store, meat market, bakery, confectionary store or restaurant.

(b) Application for license shall be made in writing and under oath, giving such pertinent information, in such form, as the department shall require, and accompanied by a fee of ten dollars, which shall be retained whether or not a license is issued. All licenses shall expire on December thirty-first in the year for which issued.

(c) The department shall issue license to each person making proper application and who is fit and equipped for the business. License may be denied, suspended or revoked by special order after notice and hearing as provided in section 93.18, when the applicant or licensee is unfit or unequipped for the business.

(d) Under paragraph (c) the department shall consider, in addition to other matters, the character and conduct, including past compliance or noncompliance with law, of the applicant or any person to be connected with the business, and the financial responsibility of the applicant. The department may at any time require an applicant or licensee to file with it a surety bond conditioned for the prompt delivery of the price to producers.

(e) Such license is not transferable. Sale or other transfer of the regulated milk business of any dealer to another person shall void such dealer's license as of the day of transfer.

(5) (a) The department shall have jurisdiction upon its own initiative or upon petition in writing to inquire into and determine the regulated milk markets of the state, and to inquire into any matter pertinent to regulation under this section in any such market and to prescribe such terms and conditions for the purchasing, receiving, handling or selling of regulated milk in any such market as it shall find necessary to eliminate unfair methods of competition or unfair trade practices, which terms and conditions may include schedules of prices for producers, dealers and consumers, or either, and labeling. The department may include in its orders provisions reasonably necessary to prevent circumvention of such terms and conditions. In prescribing such terms and conditions the department shall consider among other things the terms of any collective bargaining agreement arrived at between producers and dealers.

(b) Each dealer shall deduct from the price to producers an amount sufficient to administer this section, to be at the same rate for all markets and to be determined from time to time by the department, not exceeding one cent per hundred pounds of fluid distribution. Fluid distribution is the part of the producer's deliveries that is equal to the proportion of the entire receipts of the dealer distributed in actual fluid form plus the milk equivalent of fluid cream distributed, including milk produced by the dealer.

(c) The department may order a further deduction, not exceeding one-half cent per hundred pounds of fluid distribution, in any regulated milk market when conditions in such market show need for such expenditure to promote increased consumption.

(d) The dealer shall hold deductions in trust for and pay them to the department, together with an amount, as his share, equal to deductions under paragraph (c).

(e) The department, with the advice of a local committee of producers and dealers, shall use the advertising fund created by the deductions under paragraph (c) and dealer payments under paragraph (d) for the purpose of promoting increased consumption of regulated milk in such market.

(f) Determinations of the department under this subsection shall be by general order in the manner provided in section 93.18.

(6) Actions to enjoin violation of this section or any order thereunder may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction, whether or not the equity jurisdiction specifically conferred upon such court is broad enough to cover actions under this section. This remedy is not exclusive.

(7) All questions of fact under this section shall be determined by the department, in written findings, and the provisions for judicial review of orders or regulations made under this section shall be as prescribed in chapter 102 in so far as the provisions thereof are applicable.

(8) No person shall be excused from testifying, from making answer or report, or from producing any paper, record, document or other evidence, in any examination, inspection, proceeding or requirement in pursuance or enforcement of this section, including civil contempt, on the ground of tendency to incriminate, but no person complying herewith shall be prosecuted in any criminal or forfeiture proceeding for or on account of any transaction, matter or thing as to which he may have testified, answered, reported or otherwise produced evidence tending to incriminate him, except for perjury, false swearing, false report or false answer in such examination, inspection, proceeding or requirement.

(9) This section shall not be construed as limiting the power of any municipality to license or to regulate the distribution of regulated milk in any manner not inconsistent with this section or with an order or regulation of the department under this section.

(10) The department shall have power, under sections 100.19 and 100.20 concurrently with this section, to make effective the elimination of unfair methods of competition and unfair trade practices in connection with the distribution of regulated milk.

(11) All licenses, orders and proceedings of the department in force or pending under sections 100.03 and 100.04 of the statutes of 1935 shall continue and be subject to further action of the department.

(12) It is intended that each provision of this section, without regard to whether or not more than one provision is incorporated in the same subsection or subdivision, shall be severable, except provisions that necessarily are so dependent the one upon the other that the one cannot stand without the other; particularly, but without limitation, each exception, express or implied, is severable from each other provision, including each other exception; and if any exception be invalid, this section shall be in force without such exception; and if any provision or exception shall be invalid as to any person, thing or circumstance, the provision or exception shall be construed to except such person, thing or circumstance from its terms. [1935 c. 58, 80, 550 s. 336; 43.03 (2); 1937 c. 369; 1939 c. 512]

Note: Section 100.03, Stats. 1935, in declaring that its provisions are made necessary in part by a public emergency growing out of the financial condition of the farmers delivering milk to certain municipal markets, is not invalid as improper class legislation, since the statute deals with an industry subject to regulation, and is neither arbitrary nor discriminatory. *State ex rel. Finnegan v. Lincoln Dairy Co.*, 221 W 1, 265 NW 197, 851.

The department need not find that the applicant for a dealer's license is unequipped as well as unfit to warrant denial of the license, but the existence of one or the other of those conditions is sufficient basis for denial. *Buhler v. Department of Agriculture and Markets*, 229 W 133, 280 NW 367.

If the department entertains doubt as to the corporation's ability to meet its obligation to a milk producer the department may require the corporation to file a bond. A corporation may adopt any name so long as it does not conflict with the name of another corporation of record in the office of the secretary of state. The department could not deny the reorganized corporation a license as a milk dealer merely because the new corporation employed persons formerly employed by the old corporation and who were parties to its violations of law. *National Guernsey Dairy v. Department of Agriculture and Markets*, 232 W 248, 286 NW 868.

Ch. 512, Laws 1939, amending 100.03 (2), is constitutional so far as extending the operation of the milk control act, 100.03, but unconstitutional so far as seeking to impose certain territorial limitations on the application of the act, and is severable in such a way as to save the valid extension features and leave the existing act in force to December 31, 1941 (without such territorial limitations) it being considered that the portion of the amending act containing the territorial limitations was not so important an inducement to its passage that the legislature would not have extended the operation of the existing act without the limitations, and that the extension was a species of reenactment, with the effect the same as though the existing act, which contained a broad severability clause, had been set out in full in the amending act. *State ex rel. Department of Agriculture v. Marriott*, 237 W 607, 296 NW 622.

A producer-distributor selling only the milk products of his own farm is nevertheless a "dealer" within the meaning of the milk control act and as such is required by (4) to secure a license from the department of agriculture in a regulated milk market, and such a dealer is not exempt from securing a state license by any rule of "policy" merely by reason of the fact that farmers distributing their own agricultural products are expressly exempted from the peddler-licensing statute, 129.01 (1). The distribution

of milk to regular customers in quantities of ten or more quarts per day is subject to licensing by the state as a business affected with a public interest. State ex rel. Department of Agriculture & Markets v. Gagnon, 237 W 617, 296 NW 627.

Fact that person has license to peddle under ch. 129 does not authorize him to become milk dealer in regulated milk market without obtaining license under 100.03. 28 Atty. Gen. 149.

100.04 [Repealed by 1937 c. 369]

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

(2) The department, by special order, after notice and hearing as provided in section 93.18, may limit, suspend, or revoke any license relating to cheese issued to any person by it when it finds that the licensee has violated or has refused, neglected or failed to obey any applicable law, order, or regulation. Rehearing as provided in section 93.19 shall apply to proceedings under this subsection, and judicial review shall be as provided in chapter 102, so far as applicable. [1939 c. 217]

Note: Chapter 217, Laws 1939, creating section 100.04, takes effect on date to be set therefor by general department order, but not later than Jan. 1, 1940. See section 3 of said chapter 217.

100.05 Dairy product dealer's license. (1) No person, as principal, or as agent of either party, shall purchase, assemble or receive any dairy product for manufacturing, processing or sale, in this state or elsewhere, or negotiate therefor, without an annual license therefor from the department; but this section shall not apply to a licensee under sections 97.04, 97.05, 100.03, or 100.13 or an employe of such licensee, as to business covered by such license; to transporting milk or cream from a producer to a plant or station licensed under sections 97.04 or 97.05, or from such station to such plant, or transporting by-products thereof back to a producer; nor to the purchase of dairy products by a person operating only an established restaurant, hotel, or retail shop or store, exclusively for consumption therein or sale directly to the consumer. The license certificate or a certified copy thereof shall be displayed conspicuously in each warehouse, plant and assembling point. The department shall issue such certified copy for one dollar.

(2) The application for license shall give in writing such pertinent information in such form as the department shall require, and be accompanied by a fee of fifteen dollars, which shall be retained whether or not a license is issued. The department shall issue a license to each person making proper application and who is fit and equipped for the business.

(3) The licensee shall make and file with the department such reports and information as it shall require.

(4) Subsections (7), (8), (9), (10) and (11) of section 97.04 shall apply to this section. [1933 c. 405; 1935 c. 550 s. 338; 1939 c. 471]

100.06 to 100.11 [Repealed by 1937 c. 279]

100.06 Bond or security required. (1) No person shall operate a dairy plant or receiving station as defined in section 97.04, nor as a dairy products dealer, as set forth in section 100.05, without the operator or other person liable to pay for dairy products first having on file bond or other security with the department as required by this section. This section shall not supersede any other statute requiring like or greater security.

(2) The amount of the bond or other security shall be based upon the amount or value reasonably likely to be due at any one time, for dairy products except to a dairy products dealer; after January 1, 1940, to the extent of one-fourth of such amount; after October 1, 1940, one-half; after July 1, 1941, three-fourths; and after July 1, 1942, to the full amount. The amount of bond or other security may be changed from time to time so as to conform hereto, and no person shall receive dairy products that will increase the amount due and accrued beyond the basis of the security without first notifying the department, nor beyond twenty per cent above the basis of the security without first having on file corresponding additional security.

(3) (a) The department may accept as such security, when practicable and to the extent it is adequate, a lien upon all dairy products of the named classes on hand at the time and thereafter, and may name a trustee or trustees under such lien, and shall file or cause to be filed in the office of the register of deeds of the county where the delivery of products is made to the lienor, or if the delivery is to a truck or receiving station other than the plant, warehouse, or principal Wisconsin place of business of the lienor, of the county where such plant, warehouse or place of business is located, a copy of such lien and the name of the trustee entitled to receive the purchase price or proceeds of the products subject to the lien. The register of deeds shall file and number these liens and index them in a special book kept for such purpose, and shall receive for each filing fifty

cents, for a change in trustee, twenty-five cents, and for a termination of lien, twenty-five cents. The filing thereof shall constitute notice of the lien.

(b) No products subject to the lien shall be removed nor title pass to a third person without prior satisfaction of the lien as to such products, by payment to the trustee of the price on such transfer, or acceptance by the trustee of adequate security therefor. Until the lien is thus satisfied, such products, and until the payment of such price to the trustee, the proceeds of such products, shall be held in trust by any person into whose custody or possession they come. In all cases, the payment of the price shall be to the trustee. The department shall make rules for the custody and disbursement of the fund, and whereby, when the purpose of the lien will not be jeopardized, (1) funds may be turned over to the lienor, (2) the property may be removed within the state and (3) the lien may be satisfied or canceled as to certain products.

(4) The department may accept as such security, when practicable, and to the extent they are adequate, contracts by which payment for the products is secured directly to the producers of the milk and cream, or to their use in such manner as to assure its delivery to such producers, from anyone having security on file under this section or who has qualified under subsection (5), in which case the products and proceeds shall be in trust.

(5) The department may accept, in lieu of the security, a statement prepared by a certified public accountant adequately showing financial condition reasonably assuring prompt payment of the price of dairy products, or upon agreement to pay the actual cost of necessary examination from time to time and upon advancement of cost estimates, shown financial condition reasonably assuring prompt payment of the price of dairy products. The department may for cause disapprove any certified public accountant for certificate hereunder, and the penalties of section 135.11 shall apply as well to anyone filing a statement false or fraudulent in any material particular and to negligence in preparing, certifying or filing a misleading statement.

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

(6) As used in this section, "price" includes, without limitation, the amount to be paid, delivered, or vested indefeasibly in the person entitled thereto, as shall be lawfully agreed, and "pay" and its variants includes, without limitation, delivery of the price, as herein defined, to the person entitled thereto.

(7) Compliance with this section shall be an additional requirement for the license and noncompliance shall be ground for denial, suspension or revocation of license, under sections 97.04 and 100.05. Subsections (9), (10) and (11) of section 97.04 shall apply to this section.

(8) The whole claim of any person against the owner or operator of any dairy plant or receiving station, as defined by section 97.04, or any dealer in any dairy product, as defined in section 100.05, on account of milk, cream or any other dairy product, as defined in section 97.04, sold or delivered to such owner, operator or dealer, or any judgment therefor, shall be entitled to the same preference in bankruptcy or insolvency proceedings as is given by any law of this state or by the federal bankruptcy act to claims for labor, but this section shall not affect or impair any other lien or security for the said claim or judgment. [1939 c. 471; 1941 c. 217]

100.07 Milk payments; audits. (1) Persons receiving milk from producers for fluid distribution or under contract, arrangement or practice whereby the price to producers is to vary according to the disposition of the milk for different uses, such as for fluid consumption, fluid cream, relief, manufacturing or other purposes, shall keep adequate records and accounts and make reports thereof as prescribed by the department. The department shall at frequent intervals examine all such accounts and audit particularly the receipts of milk or cream from producers, the disposition of such milk or cream with special reference to producers' prices and payment of the producers, which the department may enforce, by action or other lawful means, on behalf of and for the benefit of the producers.

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

(3) As used in this section: "Price" includes the amount to be charged or paid, and the proceeds to be delivered, and shall be money or property presently paid, delivered,

or vested indefeasibly in the person entitled thereto, as the contract, arrangement or practice shall provide. "Pay" and its variants includes, without limitation, delivery of the price, as herein defined, to the person entitled thereto. [1941 c. 325]

100.12 Storing of farm products. (1) Terms as used in this section are defined as follows:

(a) "Bonded warehouseman" means a person duly licensed under this section to engage in the business of storing farm products.

(b) A "bonded warehouse" means any building, structure or other protected inclosure approved by the director of the division of markets for storage of farm products by a bonded warehouseman.

(c) "Farm product" includes farm products as defined in section 93.01.

(d) "Commissioner" means the commissioners of the department of agriculture and markets.

(2) The commissioner is authorized:

(a) To investigate the storage and warehousing of farm products.

(b) To inspect bonded warehouses, or buildings or other places for which licenses have been applied for under the provisions of this section, and to determine when the same are suitable to remain or become bonded warehouses.

(c) To classify bonded warehouses according to ownership, location, surroundings, capacity or other qualities.

(d) To prescribe the duties and responsibilities of bonded warehousemen with respect to the operation of bonded warehouses.

(e) To license persons to operate bonded warehouses under such terms and conditions as he may prescribe and not inconsistent with the provisions of this section.

(3) Each application for a license to operate a bonded warehouse shall be accompanied by a fee of twenty dollars, and as a condition to the granting of a license hereunder the applicant shall execute and file a bond with the commissioner, in such form and amount and with such surety or sureties as he may direct. Such bond shall be conditioned that the applicant will faithfully perform his obligations as a bonded warehouseman under the laws of this state and the rules and regulations of the commissioner. Whenever the commissioner shall determine that a bond approved by him is, or for any cause has become, insufficient, he may require an additional bond or bonds, and unless the same be given within the time fixed by a written demand therefor the license of such bonded warehouseman may be suspended or revoked.

(4) Any person injured by the breach of any obligation which a bond is given to secure may sue on such bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach.

(5) Each license issued under the provisions of this section shall be issued for a period not exceeding one year and shall specify the date upon which it is to terminate, and upon showing satisfactory to the commissioner, and the payment of ten dollars, such license may be renewed or extended by a written statement, which shall specify the date of its termination.

(6) For failure on the part of any bonded warehouseman to comply with any of the provisions of this section, or with any of the rules or regulations prescribed by the commissioner, the license of such bonded warehouseman may be revoked upon notice and opportunity to defend.

(7) No person shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the commissioner, or shall issue or utter a false or fraudulent receipt or certificate. [1933 c. 470 s. 15; 1935 c. 550 s. 345, 346]

100.13 Warehousemen. (1) DEFINITIONS, LICENSES. (a) The term "warehouseman" when used in this section shall include every corporation other than a municipal corporation or municipal board or commission or a railroad corporation, individual, firm or partnership storing personal property for hire except those warehousemen licensed under the provisions of section 99.02 and section 126.07 of the Wisconsin statutes and co-operative associations storing farm products and merchandise for its members and warehouses owned by individuals, partnerships or corporations using warehouses for storage of manufactured dairy products, or canned produce and dairy products, manufactured by them and except also field warehouses.

(b) The department of agriculture and markets may exempt from the operation of this section a warehouse or portion thereof if the warehouseman operating the same has a license under the provisions of section 100.12, Wisconsin statutes, or under the federal bonded warehouse act.

(c) No person, firm or corporation shall act as a warehouseman as heretofore defined without a license so to do issued by the department of agriculture and markets. Any person, firm or corporation desiring such license shall make written application on a form to be prescribed and furnished by the department and shall set forth the city in which it is

proposed to carry on the business of warehousing, the location, size, character and equipment of the building or buildings or premises to be used by said warehouseman, the kind of goods, wares and merchandise intended to be stored therein, the name of the persons or the corporation operating the same, the name of each member of the firm if a partnership and the names of the officers if a corporation, and such other facts as the department may require to satisfy the department that the property proposed to be used is suitable for warehouse purposes and that the warehouseman making the application is qualified to carry on the business of warehousing. If the building or other property proposed to be used as a warehouse is suitable for warehouse purposes and that the applicant or applicants are entitled to a license, notice of such fact shall be given the applicant and upon payment of the license fee and the giving of a bond as hereinafter provided a license shall be issued.

(2) LICENSE FEES. (a) Every person, firm or corporation desiring to engage in or follow the business of a warehouseman as herein defined, before he shall be entitled to a license authorizing him to do so, shall pay into the state treasury an annual fee, as follows:

Class 1. Warehousemen having less than ten thousand square feet, ten dollars.

Class 2. Warehousemen having ten thousand square feet and less than fifty thousand square feet, twenty dollars.

Class 3. Warehousemen having fifty thousand square feet and less than one hundred thousand square feet, thirty dollars.

Class 4. Warehousemen having one hundred thousand square feet and less than one hundred fifty thousand square feet, forty dollars.

Class 5. Warehousemen having one hundred fifty thousand square feet and over, fifty dollars.

No license shall be issued for any proportion of a year for less than the full amount of the license fee and the license is not transferable. The period for which a license is granted shall run from July first to June thirtieth of the next year, both dates inclusive. All licenses shall expire on June thirtieth of each year.

(b) Every warehouseman, before he shall be entitled to a license, as provided for in this section, shall file with the department, and acceptable to the commissioners thereof, a bond, to the state of Wisconsin, with one or more sureties, who shall justify in double the amount of such bond, or with a surety company duly licensed under the laws of this state as surety. Such bond, to be approved by the commissioners, shall be conditioned that the warehouseman will faithfully perform his obligations as a warehouseman under the laws of this state and the rules and regulations of the commissioners. Whenever the commissioners shall determine that a bond approved by them is, or for any cause has become insufficient, they may require an additional bond or bonds, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked. Provided, however, that any warehouseman may, in lieu of such bond, file with the department a certified copy of a legal liability insurance policy of like amount acceptable to the department containing loss payable indorsement making such policy payable to the state of Wisconsin for the benefit of the owner or owners of any stored property; and further providing that such policy shall not be canceled during the period for which any license shall be issued except upon fifteen days' notice in writing to the director of the department. Failure to keep such bond or policy of insurance in force shall be cause for revocation of any license issued. Such bond or legal liability insurance policy shall be in amount as follows:

Class 1. Warehousemen having less than ten thousand square feet, the bond shall be not less than five thousand dollars.

Class 2. Warehousemen having ten thousand square feet and less than fifty thousand square feet, ten thousand dollars.

Class 3. Warehousemen having fifty thousand square feet and less than one hundred thousand square feet, fifteen thousand dollars.

Class 4. Warehousemen having one hundred thousand square feet and less than one hundred fifty thousand square feet, twenty thousand dollars.

Class 5. Warehousemen having one hundred fifty thousand square feet and over, twenty-five thousand dollars.

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

(d) Every warehouseman licensed under this section shall at all times keep a conspicuous sign posted on the outside of each warehouse at the main entrance thereof and another conspicuous sign posted at the main exit thereof which sign shall clearly state the name of the person, firm or corporation operating the warehouse, the license number of the warehouseman, and a statement that the warehouse is a public warehouse.

(3) REVOCATION OF LICENSE. (a) Licenses may be revoked by the commissioners of the department of agriculture and markets upon notice and hearing for violation of law or for violation of any rule or regulation prescribed by the department and they may forbid the use of any building or premises found by them to be unfit for warehouse purposes. A license may be refused to any warehouseman whose license has been revoked during the preceding year.

(b) It shall be unlawful under this section for any person, firm or corporation to hold himself or itself out as a warehouseman or advertise for or solicit business as a warehouseman without first complying with the provisions of this section.

(4) TRANSACTING BUSINESS WITHOUT A LICENSE. No person, firm or corporation shall act as a warehouseman, as defined in this section, without first procuring a license and giving a bond as heretofore prescribed or shall continue to do business as a warehouseman after such license has expired or such bond has become void or found insufficient security for the sum for which it was executed. [1933 c. 456; 1935 c. 550 s. 347, 348; 1937 c. 395; 1939 c. 353; 1939 c. 513 s. 27]

Note: Owner or operator of garage or of automobiles is not "warehouseman" as used automobile parking space for storage of in (1) (a). 23 Atty. Gen. 47.

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

(2) The secretary of state shall, upon application of the commissioner, record any such label or trade-mark under sections 132.01 to 132.14, inclusive. The department shall be entitled to protect such label or trade-mark under said sections and in any other manner authorized by law. [1935 c. 550 s. 349]

100.15 Regulation of trading stamps. (1) No person, firm, corporation, or association within this state shall use, give, offer, issue, transfer, furnish, deliver, or cause or authorize to be furnished or delivered to any other person, firm, corporation, or association within this state, in connection with the sale of any goods, wares or merchandise, any trading stamp, token, ticket, bond, or other similar device, which shall entitle the purchaser receiving the same to procure any goods, wares, merchandise privilege, or thing of value in exchange for any such trading stamp, token, ticket, bond, or other similar device, except that any manufacturer, packer, or dealer may issue any slip, ticket, or check with the sale of any goods, wares or merchandise, which slip, ticket or check shall bear upon its face a stated cash value and shall be redeemable only in cash for the amount stated thereon, upon presentation in amounts aggregating twenty-five cents or over of redemption value, and only by the person, firm or corporation issuing the same; provided, that the publication by or distribution through newspapers, or other publications, of coupons in advertisements other than their own, shall not be considered a violation of this section; and provided further, that this section shall not apply to any coupon, certificate or similar device, which is within, attached to, or a part of any package or container as packed by the original manufacturer and is directly redeemed by such manufacturer.

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

(3) If any provision, sentence, clause or word of this section or the application thereof to any person, firm, corporation or association, thing or circumstance shall be held invalid, the remainder of this section and the application of such provision, sentence, clause or word to other persons, firms, corporations or associations, things or circumstances shall not be affected thereby. [1931 c. 238; 1935 c. 550 s. 350; 1939 c. 52]

Note: The state has the power to regulate and even prohibit the issuance of trading stamps as a business device, including trading stamps redeemable in cash as well as those redeemable in merchandise, the whole subject of trading stamps being a matter

for legislative regulation within the police power, which may be used to fortify the policy of the validly enacted fair trade act, sec. 133.25, and hence 100.15 (2), in prohibiting the issuance of trading stamps in the circumstances described, although redeem-

able only in cash, is valid. *Ed. Schuster & Co. v. Steffes*, 237 W 41, 295 NW 737.

Giving of ticket with case of soda water which entitles person receiving ticket to rebate is violation of trading stamp law. 19 Atty. Gen. 358.

Giving of insurance policy on life of purchaser or any member of his family in exchange for five hundred trading stamps issued in connection with sale of merchandise to purchaser is in violation of trading stamp law. 19 Atty. Gen. 547.

Giving of coupon with sale of goods entitling holder to certain number of votes on Austin car or cash prize is violation of trading stamp law, and also violation of 348.15, Stats. 1933. 19 Atty. Gen. 558.

Coupons given with sale of thrift books, which books are sold by theater corporation and which coupons entitle owner to oil painting, are violation of trading stamp law. 19 Atty. Gen. 602.

Cards delivered with sale of merchandise by merchant in numbers as high as fifty, which may be exchanged for camera and ordering (as trial only) of one carton of six rolls of films at regular price of twenty-five cents per roll, is violation of trading stamp law. 19 Atty. Gen. 607.

Scheme by which any person is given prize who receives votes based upon number of wrappers, labels or sales slips which he collects, attached to merchandise when sold, and receives in addition certain per cent in cash for said labels is in violation of (1) unless person or company conducting campaign is manufacturer or acting as agent of manufacturer. 20 Atty. Gen. 670.

Merchant who gives with each one dollar purchase ticket upon which vote may be cast for "queen" who is to receive one hundred dollar prize, violates trading stamp law; but if vote is orally given to merchant and recorded by him, it is questionable if law is violated. 20 Atty. Gen. 886.

Ticket to theater contained in every tenth loaf of bread sold by bakery is adver-

tising in violation of trading stamp act; it is also violation of antilottery law. 20 Atty. Gen. 950.

Giving away without charge, and regardless of purchase of anything, of cards bearing numbers and entitling holders to prizes in accordance as number on particular card coincides with figures of bank balances published each week is not lottery, gambling device nor violation of trading stamp law. 21 Atty. Gen. 917.

Where coupons attached to original package are redeemable by manufacturer and retail merchant acts merely as his agent in receiving coupons for forwarding to manufacturer there is no violation of this section. 22 Atty. Gen. 389.

Giving of trade receipts in connection with sale of merchandise which are collected by children, child depositing largest sum of money represented by trade receipts being entitled to prize, is violation of trading stamp act. 23 Atty. Gen. 781.

When slips are issued in connection with sale of merchandise which, in addition to having cash redemption value, entitle purchaser to chance at prize if enough are accumulated, this section is violated. 24 Atty. Gen. 192.

Giving of parking stamps to customer at rate of ten cents for one dollar or more of merchandise, which stamps can be used to pay for parking at certain garages and parking lots, violates (1). 26 Atty. Gen. 558.

Advertising scheme by which every cash purchaser of merchandise receives cash slip bearing date and amount of purchase, holders of which are entitled on particular day selected by merchant to receive free from merchant merchandise equal to amount of cash slip bearing particular date merchant selects, is in violation of 100.15. It is also in violation of 348.01 and 100.16. 27 Atty. Gen. 325.

"Multiple-dividend" plan condemned as lottery but not deemed in violation of trading stamp act. 27 Atty. Gen. 764.

100.16 Selling with pretense of prize. No person shall sell or offer to sell anything whatever, by the representation or pretense that a sum of money or something of value, which is uncertain or concealed, is inclosed within or may be found with or named upon the thing sold, or that will be given to the purchaser in addition to the thing sold, or by any representation, pretense or device, by which the purchaser is informed or induced to believe that money or something else of value may be won or drawn by chance by reason of such sale. [1935 c. 550 s. 351]

Note: Giving of coupon with sale of goods entitling holder of certain number of votes on Austin car or cash prize is violation of trading stamp law and also of this section. 19 Atty. Gen. 558.

See note to 348.085, citing 27 Atty. Gen. 104.

Bakery packing in each loaf of bread letter of alphabet which entitles purchaser, after accumulating enough letters to spell words "golden cream bread," to premium does not violate 100.15 but does violate 348.01 and 100.16. 27 Atty. Gen. 357.

See note to 348.01, citing 28 Atty. Gen. 312.

100.17 Guessing contests. No person or persons or corporations in their own name or under any assumed trade name, with intent to defraud, shall advertise or represent in printing or writing of any nature, any enigma, guessing or puzzle contest, offering to the participants therein any premium, prize or certificate entitling the recipient to a credit upon the purchase of merchandise in any form whatsoever; nor shall any person or corporation in the printing or writing, advertising or setting forth any such contests, fail to state definitely the nature of the prizes so offered; nor shall any person or corporation fail to state clearly upon all evidences of value issued as a result of such contest in the form of credit certificates, credit bonds, coupons, or other evidences of credit in any form whatsoever, whether the same are redeemable in money or are of value only as a credit upon the purchase of merchandise; nor shall any person or corporation issue to any person as a result of any such contest, any instrument in the form of a bank check or bank draft or promissory note or any colorable imitation of any of the foregoing; nor shall any person or corporation refuse or fail to award and grant the specific prizes offered to the persons determined to be entitled thereto under the terms of such contest, or fail to redeem any credit certificate, credit bonds, coupons or other evidences of credit issued as a result of any such contest, according to the terms thereof. [1935 c. 550 s. 352]

100.18 Fraudulent advertising. (1) No person, firm, corporation or association shall, with intent to sell or in any wise dispose of real estate, merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption

thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding real estate, merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

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

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

(4) Any person, firm, corporation or association engaged in any business mentioned in subsection (2), or in any other kind of business, whether conducting such business in a store, business block, residence or other building, shall at all times keep a conspicuous sign posted on the outside of his establishment and another conspicuous sign in the sales-room, which sign shall clearly state the name of the association, corporation or individual who actually owns said merchandise, property or service which are being offered to the public and not the name of any other person; provided, however, that the exterior sign shall not be required where the seller has no control over the exterior of the premises where such business is conducted.

(5) The department of agriculture shall enforce the provisions of this section. [1935 c. 550 s. 353; 1939 c. 513 s. 28; 1941 c. 251]

Note: Where plaintiff, a professional musician and band director, agreed to print on all advertising matter for the band that defendant manufacturer's instruments were used exclusively by the band, and agreed that defendant should have exclusive use of names of plaintiff and band in connection with the sale and advertisement of musical instruments, but at time of signing the writing plaintiff used only seven of defendant's instruments out of twenty-four used in the

band, and on subsequent tours never used more than ten of defendant's instruments, agreement was invalid and plaintiff could not recover compensation thereunder. *Kryl v. Frank Holton & Co.*, 259 NW 828, 217 W 628.

Advertising by partnership or corporation of real estate, giving only business and home telephone numbers of member is deceptive advertising in violation of this section. 24 Atty. Gen. 56.

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

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

(3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of distribution or practice in dis-

tribution which is found by the department to cause waste or duplication as defined herein. The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of distribution or practice in distribution which is found by the department to avoid waste or duplication as defined herein. [1935 c. 550 s. 354]

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

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

(3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of competition in business or trade practice in business which is determined by the department to be unfair. The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of competition in business or trade practice in business which is determined by the department to be fair. [1935 c. 550 s. 355]

Note: Determination of department of agriculture and markets is reviewable solely under statute, and not by certiorari, since, where new right is created by statute and remedy is prescribed, prescribed remedy is exclusive. State ex rel. Waldorf v. Hill, 217 W 59, 258 NW 361.

Representations of Farmers' Call Board of Plymouth that it conducts market where seller has same opportunity to bargain as has buyer, being untrue, and fact being that seller has no practical choice but to sell at whatever price the buyer chooses to pay, and the board prices being base prices for bulk cheese of state, is unfair trade practice. 21 Atty. Gen. 30.

Since price war, with stabilized purchase

and labor costs, threatens speedy elimination of much of distributor competition, and hence virtual monopoly of milk distribution, department is authorized to determine such price cutting, in present economic emergency, to be unfair, and may issue orders against it. These orders may fix minimum schedule of prices to go below which would have mischievous results. 21 Atty. Gen. 1075.

Department of agriculture and markets has no jurisdiction to conduct hearing and make determination regarding alleged violations by regents of university of Wisconsin of provisions of this section. 22 Atty. Gen. 1036.

100.205 Standards for specified service trades. (1) (a) The department shall appoint a trade practice examiner not subject to chapter 16, who shall, after investigation and public hearing, issue by order such standards, with written reasons therefor, as are necessary or convenient to eliminate unfair methods of competition or unfair trade practices in the cleaning and dyeing, barber, cosmetician and shoe rebuilding trades and amend or revoke by order any standards previously issued by him.

(b) The department may modify or set aside any action taken by the examiner respecting the issuance, amendment or revocation of standards, or his refusal to issue, amend or revoke standards. Such action may be taken by the department upon its own motion or upon appeal to it by any aggrieved party within twenty days after action by the examiner. Review of the examiner's action shall be on the record and the department may remit the same to the examiner for further evidence, proceedings or action by the examiner. The department, in reviewing the action of the examiner, may adopt, modify or change the written reasons assigned by the examiner for such action, based upon the record of the proceedings, and confirm the action taken by the examiner based on the written reasons assigned by the examiner or on the written reasons as modified or changed by the department.

(c) Judicial review of orders and denials of orders of the department under this section may be had in the manner provided for review of orders of the industrial commission as provided in chapter 102 of the statutes of 1937 so far as applicable except that instead of the review being by the circuit court of Dane county it shall be by the circuit court of the county where the cause of action that gave the department jurisdiction arose.

(2) (a) The department shall appoint an advisory committee for each of the service trades covered by this section. Such committees shall consist of three members of the trade for which the advisory committee is appointed, one representative for the workers employed in the trade, and one consumer representative. Appointments to the advisory committee shall not be subject to chapter 16, and membership therein shall expire on January thirty-first, of each year. The committee shall meet at least once a month upon call of the examiner, and the members thereof shall be paid seven and a half dollars per day for the attendance of meetings and their expenses.

(b) Upon the issuance of standards, the department shall appoint and employ a deputy examiner for the trade covered by the standards. The individual so employed shall be one experienced in the trade covered by said standards, and his employment shall not be subject to chapter 16. The deputy examiner so appointed shall receive such compensation

as may be fixed by the department and shall devote his full time to the enforcement and administration of the standards for the trade for which he is appointed, subject to the direction of the examiner and the department, and perform such other duties respecting said trade as may be delegated to him by the examiner and the department.

(3) (a) Unreasonably low wages, unreasonably long or inappropriate work or shop hours, other unreasonably burdensome or hazardous labor conditions, and selling below reasonable cost, are severally expressly declared to be, among others, unfair methods and practices.

(b) For standards of hours, wages and other labor conditions, the industrial commission shall name a member of its staff who shall act with the examiner, and the commission shall act with the department under paragraph (b) of subsection (1).

(c) For pertinent reasons, and within the limitation of this section, standards may classify persons, places and other things, and delimit areas of natural competition in the trade, and the examiner, by like procedure and subject to like review, may make specific exemptions.

(d) No standards shall be issued or continued in any area where it is impracticable of enforcement.

(e) No standard tending to promote monopoly, oppress or discriminate against small enterprises, or unreasonably burden consumers, shall be issued or continued.

(f) Standards may affect interstate commerce to the extent of state power.

(4) (a) Standards, and the amendment or revocation thereof, shall become effective upon publication, or at a later date specified in the standards, amendment or revocation.

(b) Any court having any equity jurisdiction may enjoin violation of the provisions of this section or the violation of any standard issued thereunder.

(c) Any defendant may have a jury trial in any criminal or contempt proceeding.

(d) Violation of any provision of this section or any standard promulgated or issued thereunder, shall be punishable by a fine of not less than five nor more than one hundred dollars, or by imprisonment in the county jail for not less than five nor more than ninety days, or both.

(5) (a) It shall be the duty of the examiner, under the supervision of the department, to administer and enforce this section, including the prosecution and defense of legal proceedings, in which at his request the attorney-general and district attorney shall assist.

(b) After a standard issued under this section has been in force for sixty days, and as long as a standard issued under this section shall be in force, for any trade covered by this section, no service, sales or distribution business in such trade in any area subject to such standards shall operate or solicit business directly or indirectly in such area without annual license. Said license shall be issued by the department upon application on a form which shall be provided therefor by the department. The license shall be issued if the applicant shall supply the department with all necessary information required by it on the application blank, and shall have agreed in writing to comply with all lawful standards issued under this section, and shall have paid the required fee therefor. If the trade is subject to a license requirement under any other statute, the state agencies may co-operate in using a joint application and license and collecting a combined fee.

(c) Assessments or license fees to be paid under this section shall be fixed by standards issued after hearing, upon an equitable basis. They shall be such as to enable the department to defray the expense of investigating, administering and enforcing standards for the affected trade. They shall be at a rate which shall in no event aggregate, for the trades as a whole, in any year, commencing August 1, 1939, more than the following: Cleaning and dyeing, seventeen thousand dollars; barber, twenty-one thousand dollars; cosmetician, twenty-five thousand dollars; shoe rebuilder, six thousand five hundred dollars. Refunds of advances, overpayments and of moneys in the treasury upon the revocation of standards for the trade may be made by direction of the examiner.

(d) The department may accept such voluntary services, contributions and advances against fees as will not prejudice the public interest.

(6) (a) The provisions of this section shall not apply to any county having a population of thirty thousand or less by the last federal census, or to any town, city or village having a population of five thousand two hundred or less by such census. Such territory shall be known as noncode area. Provided that if the provisions of this paragraph as to counties is invalid, the provision shall be that standards are prima facie not necessary or convenient in any county of not more than thirty thousand population by the last federal census unless by reason of proximity to a county of greater population unfair competition would result, and that if the provision of this paragraph as to towns, cities and villages is invalid the provision shall be that standards are prima facie not necessary in any town, city or village of not more than five thousand two hundred population by such census unless by reason of proximity to a municipality of greater population unfair competition would result; provided that in any event no standards shall be effective in any such county

or in any such town, city or village other than those in a county having a population of five hundred thousand or more unless such standards are approved by a majority of the electors voting thereon in such county or town, city or village. Provided further that in judicial review of orders or denials of orders under this paragraph, the court shall have the same powers as the department under paragraph (b) of subsection (1). Each provision of this paragraph is expressly declared to be severable.

(b) Every person having his principal Wisconsin place of business in a code area shall maintain code prices on all business solicited or done in the state, and every person having his principal Wisconsin place of business in a noncode area shall maintain code prices on all business solicited directly or indirectly or done in a code area. Provided that if any provision of this paragraph shall be invalid, this section shall be in force without such provision.

(7) Provisions and limitations of this section, whether or not in the same subsection or sentence, or express or implied, all are severable from each other and as to different persons, things and circumstances. [1939 c. 514]

Note: The proviso in (6) (a) of sec. 100.205, Stats. 1939, that the provisions of the section shall not apply to any town, city or village having a population of 5200 or less is not invalid as involving an ungermane or improper classification, but the further proviso that in any event no code of trade practice standards shall be effective in any such town, city or village other than those in a county having a population of 500,000 or more unless such standards shall be approved by a majority of the electors voting thereon in such town, city or village is invalid as not being based on a classification

germane to the act. In view of the terms of the severability clause contained therein, the valid provisos are severable from the invalid provisos therein. *State v. Neveau*, 237 W 85, 294 NW 796, 296 NW 622.

A legislative purpose to enact a law of doubtful constitutionality, and then, by the insertion of an all-inclusive severability clause, to authorize the courts to whittle down the law so as to bring it within the constitutional field, involves a method of lawmaking not contemplated by the constitution. *State v. Neveau*, 237 W 85, 294 NW 796, 296 NW 622.

100.21 Damage for violation. Any person who shall suffer pecuniary loss because of a violation by any other person of any order issued under section 100.20 may sue such person for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee. [1935 c. 550 s. 356]

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

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

(3) Whenever the department is credibly informed that this section has been violated, it shall make investigation and shall report the results of the investigation to the attorney-general and the secretary of state. The department shall co-operate with the attorney-general in the securing of evidence of violations of this section. [1935 c. 550 s. 358]

100.23 Contracts; void. All contracts or agreements made in violation of any of the provisions of section 100.22 shall be void. [1935 c. 550 s. 359]

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

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

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

(4) Upon complaint being made to the attorney-general and evidence presented to him which shall satisfy him that any foreign corporation has violated any order issued under section 100.20, or has violated any of the provisions of section 100.22, he shall forthwith bring an action in the name of the state to have the license or authority of such corporation to do business in this state canceled, and to oust such corporation from all business of every kind and character in this state. [1935 c. 550 s. 362]

100.25 Cumulative remedies. Nothing in sections 100.22 to 100.24, inclusive, shall be construed as repealing any other law of this state, but the remedies herein provided shall be cumulative to all other remedies provided by law in and for such cases. [1935 c. 550 s. 363]

100.26 Penalties. (1) Any person violating any of the provisions of sections 100.17 or 100.18, or of paragraph (a) of subsection (2) of section 100.01, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than sixty days, or by both such fine and imprisonment.

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

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

(4) Any person who shall violate any of the provisions of section 100.16 or of subsection (4) of section 100.03, or who shall intentionally refuse, neglect or fail to obey any general order made under section 100.03, shall be punished for each offense by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail not more than thirty days. Each day's violation of subsection (4) of section 100.03 or of a general order made under section 100.03 shall constitute a separate offense.

(5) Any person violating section 100.05 or 100.06 or any order or regulation of the department thereunder, or subsection (7) of section 100.12 or subsection (4) of section 100.13, shall be fined not less than twenty-five dollars nor more than one thousand dollars, or imprisoned in the county jail or state prison not more than one year, or both. Each day shall constitute a separate offense. [1933 c. 112; 1935 c. 550 s. 364 to 368; 1937 c. 39, 369; 1939 c. 217, 471]

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

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

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

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

adding thereto cartage and markup, and a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be 2 per cent of the cost to the wholesaler as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup.

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

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

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

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

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

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

(i) The term "retailer" and the term "wholesaler" shall both be applied to all merchants buying at wholesale and receiving the wholesalers' profit and discounts on merchandise to be sold at retail by such merchants, and both the wholesale markup of two per cent to cover in part the cost of doing business, and the retail markup of six per cent to cover in part the cost of doing business, shall be added to the invoice cost on all merchandise where the wholesale function is performed by such merchants.

(j) When one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more other items, each and all of said items shall for the purposes of this section be deemed to be advertised, offered for sale, or sold, and the price of each item named shall be governed by the provisions of paragraph (a) or (b) of subsection (2) hereof.

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

(4) **PENALTIES.** Any retailer who, with the intent of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, shall advertise, offer to sell, or sell at retail any item of merchandise at less than cost to the retailer as defined in this section; or any wholesaler who, with the intent of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, shall advertise, offer to sell, or sell at wholesale any item of merchandise at less than cost to the wholesaler as defined in this section, shall be guilty of a misdemeanor punishable upon conviction by a fine of not less than \$10, nor more than \$500. Evidence of any advertisement, offer to sell, or sale of any item of merchandise by any retailer or wholesaler at less than cost as defined in this section shall be prima facie evidence of intent to induce the purchase of other merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a competitor.

(5) **SPECIAL REMEDY.** In addition to the penalties provided, the courts of this state

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

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

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

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

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

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

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

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

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

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

(7) **UNCONSTITUTIONALITY.** If any subsection, sentence, clause or provision of this section shall for any reason be held invalid or unconstitutional, the validity of the remaining parts hereof shall not be affected thereby. [1939 c. 56; 43.08 (2); 1941 c. 75]

Note: Where a defendant pleads not guilty and comes forward with evidence indicating an honest effort to anticipate and meet competition and to conserve his capital investment, which even if disbelieved would do no more than create an absence of testimony, or where a defendant merely pleads not guilty, the defendant cannot be found guilty of a violation of this section, if the only fact proved by the state is that the defendant advertised or sold merchandise below cost, since no case warranting a

conviction thereunder is made out until there is proof beyond a reasonable doubt that the act of the defendant was in contravention of the stated policy of the statute. *State v. Twentieth Century Market*, 236 W. 215, 294 NW 873.

Under 100.30, Stats. 1939, merchant may offer commodities for sale or sell at price not lower than invoice or "replacement cost" as defined, whichever is lower. 28 Atty. Gen. 700.