

CHAPTER 100.

MARKETING; WAREHOUSES; TRADE PRACTICES.

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Cross Reference: See definitions in 93.01.

100.01 Produce wholesaler license. (1) When used in this section:

(a) "Person" includes a partnership, corporation, association, trust, and every other form under which natural persons can do business.

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

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

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

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

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

(2) (a) No person shall carry on business or advertise or hold himself out as a produce wholesaler or as a commission merchant, dealer or broker without an annual license issued in the name under which the business operates.

(b) Application for license shall give such pertinent information, in such form, as the department requires, and be accompanied by the fee.

(c) The annual fee is \$5. No part of a fee shall be returned after the license is issued nor after any investigation has been made on the application.

(d) Every produce wholesaler shall execute and file with the department a bond in such form and with such surety or sureties as it directs, conditioned that he will faithfully perform his obligations and comply with all laws and regulations governing his business. The filing of such bond is a condition of granting license. Whenever the department determines that a bond is insufficient it may require additional bond, which shall be filed within such reasonable time as the department fixes in a written demand. Failure to make timely application or to file bond does not relieve a produce wholesaler of liability for any part of the license fee.

(e) Upon receiving the proper application, fee and bond, the department shall issue to the applicant a license, which shall expire one year after the beginning of the license term unless sooner suspended or revoked; but the license shall be suspended automatically whenever and so long as the required bond is not in effect, provided the department has sent the licensee notice of cancellation of the bond at least 30 days in advance.

(f) The license certificate or a duplicate issued by the department shall be posted in a conspicuous place in each fixed place of business of the licensee. The department shall issue duplicates for \$1 each.

(g) The licensee and each person representing him in buying or selling produce or negotiating therefor elsewhere than at the licensee's fixed place of business shall carry on his person an identification card issued by the department showing his name and that he is such licensee or the representative of the licensee named thereon. The department shall issue such card without charge for the individual licensee or for one member of the partnership or one officer of the corporation licensee, and on request of the licensee, shall issue additional cards for \$1 each.

(h) No action on a bond may be maintained by a person claiming damage because of a breach thereof unless the written approval of the department is attached to and made a part of the complaint. Before commencing action the claimant shall state the facts to the department in writing. Prior to granting approval the department may hold a hear-

ing, giving the party complained of reasonable notice of the charges and of the time and place of hearing. If a hearing is held, the department shall report its findings and conclusions to both parties. The record of a hearing shall be competent evidence in court.

(i) If a licensee is liable for breach of the bond to more than one person in a total greater than the amount of the bond, the department may commence an action on the bond. The amount collected shall be deposited with the department, and, subject to the approval of the court, if action has been commenced, it shall apportion such amount pro rata among all valid claims presented to the department. The department may employ counsel to carry out this paragraph, but shall pay therefor only out of the amount recovered on the bond.

(3) It shall be unlawful:

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

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

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

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

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

(f) For a dealer to fail to accept or reject produce promptly. If the dealer fails to notify the seller of rejection by wire or telephone within 24 hours after he receives notice of arrival of the produce, he will be deemed to have accepted it as being in accordance with the contract.

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

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

(i) For a produce wholesaler to fail to comply with a state law relating to marketing produce, including grading and marking requirements.

(4) The state department of agriculture shall enforce this section, and may make regulations necessary for that purpose. [1933 c. 351 s. 2; 1935 c. 44, 550 s. 333; 1939 c. 127, 476; 1943 c. 229; 1943 c. 375 s. 28; 1943 c. 401 s. 26; 1943 c. 515 s. 8; 1945 c. 226]

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

is put in evidence by any party, in any civil or criminal proceeding, the opposite party shall be permitted to cross-examine any person signing such certificate, called as a witness at the instance of either party, as to his qualifications and authority and as to the truth of the statements contained in such certificate.

(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; 1943 c. 229]

100.03 [Repealed by 1943 c. 179; 1943 c. 515 s. 9]

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. [1939 c. 217; 1943 c. 375 s. 30; 1943 c. 401 s. 27; 1943 c. 515 s. 10]

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

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 section 97.04, 97.05 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 section 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), (9), (10) and (11) of section 97.04 shall apply to this section. [1933 c. 405; 1935 c. 550 s. 338; 1939 c. 471; 1943 c. 179; 1943 c. 401 s. 28]

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, and no license shall be issued therefor until there has been filed a 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 and accrued at any one time, for dairy products except to a dairy products dealer or operator of a dairy plant. 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 20 per cent above the basis of the security without first having on file corresponding additional security.

(3) (a) Each bond given under this section shall be in such form as the department may prescribe and be made payable to the state of Wisconsin for the benefit of the persons who would otherwise suffer by reason of any default of the principal named in said bond. Such bond shall be conditioned that the principal shall pay or cause to be paid to the persons lawfully entitled thereto, as herein provided, all sums of money owing for dairy products sold to or received by the said principal, as the same become due. When personal sureties are furnished on such bond or bonds, said sureties shall give or make due proof of their financial status by supplying to the department a verified financial statement showing in detail their net worth.

(b) Any person injured by the breach of any obligation under this section may file with the department a verified proof of claim. Upon receipt of such claim or any other evidence of default, the department, by order, may require all interested creditors to file

their verified claims before a certain date. Notice of the entry of such order shall be given by posting a copy thereof on the dairy plant or receiving station operated by the principal at least 30 days prior to the last date for filing such claims. Such notice shall also be printed once a week for 3 successive weeks in a newspaper having a general circulation in the community. The date of the last publication shall be not less than 30 days prior to the last date for filing such claims. The department shall make the necessary audit and, by order, allow or disallow all claims presented. The department may demand, collect by action or otherwise and receive from the principal and surety or sureties the amount determined to be necessary to satisfy such claims. Upon receipt of money to be applied to the satisfaction of such claims in accordance with this section, the department shall make distribution to the claimants in accordance with the proofs filed, in full or pro rata as the case may be.

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

(4a) Contracts by which payment for dairy products is secured to some person in trust for the use of the producers shall be accepted by the department only if the person named to so act shall have been selected by the majority of such producers at least once annually.

(5) The department may accept, in lieu of the security, a statement prepared by a certified public accountant or a registered public accountant, or a sworn statement on a form prescribed by the department, 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 or registered 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; 1943 c. 298]

Note: Subsection (4), Stats. 1941, is explained at great length and applied in *Woodke v. Procknow*, 238 W 422, 300 NW 173.

100.07 Milk payments; audits. (1) Whenever petitions signed by more than 60 per cent of the producers of milk delivered to any dairy plant or petitions signed by more than 60 per cent of the producers comprising any municipal milk shed shall be presented to the department asking for the audit of payments to producers, the department by investigation and public hearing shall determine the facts in support of and against such petition and render its decision thereon. The department by order shall define the plants and areas affected. All persons receiving from producers in any such plant or area milk any part of which is used for fluid distribution shall keep adequate records of all purchases and all usage or disposition of milk and shall make reports thereof as prescribed

by the department. The department shall have free access to such records and shall after entry of such order audit the receipts and usage or disposition of milk and cream at intervals sufficiently frequent to keep the producers informed for bargaining purposes.

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

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

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

(5) Any person who violates this section by failing to pay to the department the deductions required by this section, or by failing to make or to keep the required records or reports, or by wilfully making any false entry in such records or reports, or by wilfully failing to make full and true entries in such records or reports, or by obstructing, refusing or resisting other than through judicial process any department audit of such records, shall be punished by a fine of not more than \$100 or by imprisonment in the county jail not more than 6 months, or by both such fine and imprisonment.

(6) Action to enjoin violation of this section may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction. [1941 c. 325; 1945 c. 273]

100.12 [Repealed by 1943 c. 229]

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

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

(c) A person desiring a warehouseman's license shall make application on a form furnished by the department and shall set forth the location, size, character and equipment of the building or premises to be used by him, the kinds of goods intended to be stored, the name of each partner, if a partnership, and the names of the officers, if a corporation, and such other facts as the department requires to show that the property proposed to be used is suitable for a warehouse and that the applicant is qualified as a warehouseman. If the property proposed to be used is suitable for a warehouse and the applicant is entitled to a license, he shall be notified of the fact and upon payment of the license fee and giving the bond required a license shall issue.

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

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

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

(4) BOND. (a) Every warehouseman, before he is licensed, shall file with the department a bond to the state of Wisconsin, with one or more sureties, who shall justify in double the amount of such bond, or with a surety company licensed by this state as surety. Such bond must be acceptable to the department and shall be conditioned that the warehouseman will faithfully perform his obligations as a warehouseman. When the department determines that a bond is insufficient, it may require an additional bond, and unless it is given within the time fixed by a written demand therefor the license may be

suspended or revoked. Any warehouseman may, in lieu of such bond, file with the department a certified copy of a legal liability insurance policy of like amount which is acceptable to the department and payable to the state for the benefit of the owners of stored property, and which provides that the policy shall not be canceled during the license period except upon 15 days' notice in writing to the department. Failure to keep such bond or policy of insurance in force shall be cause for revoking the license.

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

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

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

(7) TRANSACTING BUSINESS WITHOUT A LICENSE. No person shall act or hold himself out as a warehouseman or advertise for or solicit business as a warehouseman without a warehouseman's license, or when his bond has become void or has been found insufficient. [1933 c. 456; 1935 c. 550 s. 347, 348; 1937 c. 395; 1939 c. 353; 1939 c. 513 s. 27; 1943 c. 229; 1943 c. 401 s. 30; 1943 c. 515 s. 11]

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 department, record any such label or trade-mark under sections 132.01 to 132.12. 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; 1943 c. 229]

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 redeemable 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 film 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 hun-

dred 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 advertising 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. 731.

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.

See note to 78.11, citing 31 Atty. Gen. 53.

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, or agent or employe thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employe thereof, directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, merchandise, securities, service or employment or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

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

(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 state department of agriculture shall enforce the provisions of this section. Actions to enjoin violation of this section or any regulations thereunder may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction. This remedy is not exclusive. [1935 c. 550 s. 353; 1939 c. 513 s. 28; 1941 c. 251; 1943 c. 229; 1945 c. 399]

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 writ-

ing 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 de-ceptive 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 distribution which is found by the department to cause waste or duplication as defined herein. The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of distribution or practice in distribution which is found by the department to avoid waste or duplication as defined herein. [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. [Stats. 1933] State ex rel. Waldorf v. Hill, 217 W 59, 258 NW 361.

In an action to enjoin the state department of agriculture from proceeding administratively against the plaintiff under 100.20, relating to unfair methods of competition and unfair trade practices an ex parte restraining order should not have been granted. Section 100.20 is not unconstitutional as delegating legislative power. Ritholz v. Ammon, 240 W 578, 4 NW (2d) 173.

An Illinois optical concern's business of fitting and furnishing eye glasses to the individual needs of a patient or purchaser, carried out through local retail stores in this state with the assistance of local physicians, and requiring the services of a local manager cannot be made into an "interstate" transaction and put beyond the police power of this state by arbitrarily designating the transaction a sale and ingeniously managing that the sale shall take place outside the state; and the concern's business activities are subject to regulation by the state as to unfair methods of competition and un-

fair trade practices, so far as the concern's methods of soliciting and conducting business within the state are concerned. Ritholz v. Ammon, 240 W 578, 4 NW (2d) 173.

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 [Repealed by 1943 c. 179; 1943 c. 515 s. 12]

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 cor-

porations in any locality of this state, by paying for such commodity at a higher price or rate in one section, community, town, village or city, or to any person, firm or corporation in any locality of this state, than is paid for the same commodity by said person, firm or corporation, foreign or domestic, in another section, community, town, village or city, or to another person, firm or corporation in any locality of this state, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful; provided, that it shall be a justification for such a discrimination in price if the difference is merely commensurate with an actual difference in the quality or quantity of the commodity purchased or in transportation charges or other expense of marketing involved in said purchase.

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

(3) Whenever the department is credibly informed that this section has been violated, it shall make investigation and shall report the results of the investigation to the attorney-general and the secretary of state. The department shall co-operate with the attorney-general in the securing of evidence of violations of this section. [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 who violates sections 100.17 or 100.18 or section 100.01 (2) (a) or (3) shall be fined not less than \$25 nor more than \$100, or imprisoned in the county jail not less than 30 nor more than 60 days, or both.

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

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

(4) Any person who violates section 100.16 shall be punished for each offense by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail not more than 30 days.

(5) Any person violating section 100.05 or 100.06 or any order or regulation of the department thereunder, or section 100.13 (7), shall be fined not less than \$25 nor more than \$1,000, 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; 1943 c. 179, 229; 1945 c. 226]

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 adver-

tising 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.

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

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

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

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

(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.