CHAPTER 100

MARKETING; TRADE PRACTICES

Cross Reference: See definitions in 93.01.

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

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

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

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

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

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

(2) UNFAIR CONDUCT. It shall be unlawful:

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

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

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

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

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

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

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

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

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

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

History: 1983 a. 189.

100.02 Commission merchants, duties, must account. No person 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, referred to in this section as produce, for or on behalf of another, may 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 may any person knowingly and with intent to defraud make any false report or statement to the person from whom any produce was received, concerning the handling, condition, quality, quantity, sale or disposition thereof, nor may any person knowingly and with intent to defraud fail truly and correctly to account and pay over to the consignor therefor. The department of agriculture, trade and consumer protection shall by rule 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 shipping, receiving or financially interested in, such produce. Such rules 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 2 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 rules shall be prima facie evidence in all courts of the truth of the statements contained in the certificate 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 or her qualifications and authority and as to the truth of the statements contained in such certificate.

History: 1977 c. 29.

100.025 Classification of dairy heifer calves. (1) As used in this section, "dairy heifer calf" means a female bovine animal, of a recognized dairy breed, at least 2 weeks and less than 4 months of age.

(2) The owner of the herd of origin of any healthy dairy heifer calf may classify such calf as a "Wisconsin Blue Tag" dairy heifer calf by certifying that he is the owner of the herd of origin; that the sire of such calf is a registered purebred sire; and that the dam is of the same breed as the sire. Such certification shall be on forms prescribed by the department and shall include identification of the calf and its sire and dam, and such other information as the department requires. Dairy heifer calves so classified shall be identified by the owner of the herd of origin or his agent by inserting a blue ear tag in the right ear and shall be accompanied by the certificate.

(3) The owner of the herd of origin of any calf may identify such calf as a slaughter calf by notching the right ear with a "V" notch. It is unlawful for a buyer of such calf to falsely represent in writing that the calf will be slaughtered or resold only to a slaughterer for immediate slaughter. In addition to the penalties provided for violations of this section, any buyer falsely representing the slaughter of such calf shall be liable in the sum of $100 to the owner of the herd of origin in a suit brought to collect the same.

(4) Blue ear tags for dairy heifer calves shall be purchased from the department. Each tag shall bear a distinctive serial number. No person shall possess or use, for identification pursuant to this section, ear tags which have not been issued by the department. Ear tag applicators and other supplies may be purchased from the department.

(5) No person shall falsely execute any herd owner's certificate or falsely represent the identity or classification of any calves provided for in this section.

100.03 Food processing plant operators. (1) DEFINITIONS. In this section, unless the context requires otherwise:

(a) "Affiliate" means any officer, director or partner of a food processing plant operator, any firm or corporation owned or operated by an officer, director or partner of a food processing plant operator and any person acting as agent for a food processing plant operator, who is engaged in the business of buying farm products from, or contracting for the growing of farm products by, a producer on behalf of the food processing plant operator.

(b) "Asset" means anything of value owned.

(c) "Balance sheet" means a statement of the assets, liabilities and equity on a specific date.

(d) "Certified financial statement" means a financial statement examined by an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442, and certified by the accountant as fairly representing business operations, financial positions and changes in financial condition of the food processing plant operator for which the statement is rendered.

(e) "Cooperative doing business on a cooperative pooling basis" means a cooperative association that, in accordance with its articles and bylaws, pays producers a prorated share of sales proceeds for the marketing year after a final accounting and the deduction of marketing expenses and retained earnings.

(f) "Current assets" means cash and assets, including trade or investment items, which may be readily converted into cash in the ordinary course of business within one year.

(g) "Current liabilities" means those liabilities which are due and payable within a period of one year.

(h) "Equity" means the excess of total assets over total liabilities. "Equity" represents the ownership interest of one or more persons who invested in the enterprise.

(i) "Equity statement" means a report of the change in equity from the beginning to the end of the accounting period.

(j) "Financial statement" means a financial statement that meets the requirements of sub. (3) (e).

(k) "Food processing plant" has the meaning specified in s. 97.29 (1) (h).

(L) "Income statement" means a report of the financial results of business operations for a specific period.

(m) "Interim statement" means a financial statement prepared as of a date other than the end of a fiscal year.

(n) "Liability" means an obligation to pay money or other assets or to render a service to another person either now or in the future.

(o) "Maximum liability" means the largest amount of money owed to producers at any one time during the license year by a food processing plant operator and its subsidiaries and affiliates for farm products purchased or contracted for by the operator and its subsidiaries and affiliates.

(p) "Payment on delivery" means payment of the full agreed price when a producer delivers the produce to the food processing plant operator, subsidiary or affiliate, or payment of the full agreed price within 72 hours after delivery if the produce is graded.

(q) "Producer" means any person who produces and sells, or who grows under contract, raw or partly processed farm products.

(r) "Statement of changes in financial condition" means a report that summarizes the financing and investing activities of an entity, including funds generated from operations and changes in working capital.

(s) "Subsidiary" means a firm or corporation owned or controlled by a food processing plant operator and engaged in the business of buying farm products from, or contracting for the growing of farm products by, a producer on behalf of the food processing plant operator.

(t) "Verified financial statement" means a financial statement prepared by an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442 that is not certified by the accountant but that contains a notarized statement, signed and sworn to by the food processing plant operator or an officer of the operator, that the financial statement is correct.

(2) ANNUAL STATEMENTS. An applicant for an original or renewal license to operate a food processing plant under s. 97.29 shall include with the application a sworn statement as to all of the following, and shall notify the department whenever he or she knows or has reason to believe that any of the information reported is no longer correct:

(a) Whether the applicant and its subsidiaries and affiliates will be acquiring any farm products from producers during the ensuing license year.

(b) Whether the applicant and its subsidiaries and affiliates will be making payment on delivery during the ensuing license year.

(c) The maximum liability during the previous license year, if applicable, and the anticipated maximum liability in the ensuing license year.

(d) Whether all producers who have supplied or contracted to supply farm products to the applicant, its subsidiaries and affiliates prior to February 1 of the current year have been fully paid in cash at the agreed price, including interest if applicable.

(e) Whether the applicant is a producer-owned cooperative doing business on a cooperative pooling basis with producers.

(3) FINANCIAL STATEMENTS. (a) Except as provided under par. (b):

1. An applicant for an original license to operate a food processing plant under s. 97.29 shall file a financial statement with the department.

2. Each food processing plant operator shall file an annual financial statement with the department by the 15th day of the 4th month commencing after the close of the operator's fiscal year.

(b) Paragraph (a) does not apply to any applicant or operator who does any of the following:

1. Swears under sub. (2) (a) that he or she will not be acquiring any farm products from producers during the ensuing license year.

2. Swears under sub. (2) (b) that he or she will be making payment on delivery during the ensuing license year.

3. Files security with the department under sub. (5) (c) and (d).

4. Swears under sub. (2) (e) that he or she is a producer-owned cooperative doing business on a cooperative pooling basis with producers.

(c) Notwithstanding par. (b), the department may require any applicant or operator to file a financial statement or an interim statement at any time.

(d) 1. Beginning April 1, 1986, a financial statement filed under par. (a) by an applicant or operator spending more than $250,000 on farm products during the license year, including amounts spent by any subsidiaries or affiliates, shall be certified. The financial statements of other applicants and operators shall be certified or verified.

2. An applicant or operator may satisfy the requirement under subd. 1 by filing the consolidated certified financial statement of the applicant's or operator's parent company, if the parent company guarantees to the department that it will pay the obligations of the applicant or operator and the applicant's or operator's subsidiaries and affiliates under sub. (4).

(e) All financial statements under this section shall consist of a balance sheet, income statement, equity statement, statement of changes in financial condition and any other information required by the department, and shall be prepared in conformity with generally accepted accounting principles. Each such statement shall disclose, separately and clearly, the maximum liability of the food processing plant operator, its subsidiaries and affiliates.

(f) Notwithstanding s. 19.35, a financial statement is not a public record and the department shall keep a statement closed to the public. The department may utilize and release a financial statement in an enforcement action, administrative hearing or court proceeding to the parties, the hearing officer or judicial officer and the jury, if appropriate. If the statement is introduced into evidence, it shall be sealed at the conclusion of the proceeding and shall not be disclosed as part of the public record of the proceeding.

(4) FULL PAYMENT REQUIRED. (a) The department may not grant or renew a license to operate a food processing plant under s. 97.29 unless the applicant certifies that all producers who have supplied or contracted to supply farm products to the applicant or any subsidiary or affiliate of the applicant on or before December 31 of the current license year have been paid in cash at the agreed price under par. (b) or (c).

(b) Payment under par. (a) shall be made according to the terms of a written contract if the written contract requires such payment under one of the following:

1. By January 31 of the current license year, for farm products delivered on or before December 31 of the current license year; and by the 15th day of the month following the month in which the farm products are delivered or within 30 days after completion of delivery and inspection, for farm products delivered after December 31 of the current license year.

2. After January 31 of the current license year for farm products delivered on or before December 31 of the current license year. This subdivision applies only if the contract terms regarding time of payment have been approved by the producers who supplied the farm products to the food processing plant during the previous growing season according to the procedure under this subdivision. The food processing plant operator shall notify all such producers of a meeting called for the purpose of approving the proposed contract. The notice shall include a mail-in ballot which the producer may use in lieu of attending the meeting. The contract shall be approved by majority vote of those producers voting on the question. The authorized representative of the food processing plant operator presiding at the meeting shall file with the department a sworn statement, on forms provided by the department, certifying the results of such ballot.

(c) If no written contract exists, or if the written contract does not contain the provisions required under par. (b) 1 or 2, payment under par. (a) shall be made by the 15th day of the month following the month in which the farm products are delivered.

(d) If the applicant is unable to satisfy the requirement under par. (a) solely because an amount payable to a producer is in dispute, the department may grant or renew the applicant's license if the applicant deposits in escrow with the department an amount equal to the amount in dispute, to be held by the department until the dispute is resolved.

(e) This subsection does not apply to a producer-owned cooperative doing business on a cooperative pooling basis with producers.

(5) PAYMENT ON DELIVERY; MINIMUM FINANCIAL STANDARDS; SECURITY. No person may operate a food processing plant, and the department may not, under s. 97.29, grant or renew the license of any food processing plant operator, that does not make payment on delivery unless the operator meets the minimum financial standards under par. (a) or files security with the department under par. (c):

(a) *Minimum financial standards.* The minimum financial standards are met if the food processing plant operator maintains all of the following:

1. A minimum ratio of current assets to current liabilities as follows:

a. Until March 31, 1987, a ratio of 1 to 1.

b. From April 1, 1987, to March 31, 1989, a ratio of 1.1 to 1.

c. On and after April 1, 1989, a ratio of 1.2 to 1.

2. Total assets in excess of total liabilities.

(b) *Notification.* A food processing plant operator shall notify the department whenever he or she knows or has reason to believe that he or she is not meeting the minimum financial standards under par. (a).

(c) *Security.* Security filed with the department under this paragraph shall be in one or more of the following forms:

1. A continuous surety bond payable to the department on a form approved by the department and endorsed by a surety company licensed to do business in this state.

2. A pledge of one or more of the following assets:

a. Cash or negotiable securities.

b. Stocks, bonds or other marketable securities at current market value.

c. Property readily convertible to cash, including sales inventory and accounts receivable, subject to such rights of possession or control over the security as the department considers necessary.

3. Irrevocable bank letters of credit issued for a term of at least 6 months beyond the date final payment is due the producer.

4. Personal surety bonds or other 3rd-party guarantees supported by a pledge of assets described under subd. 2.

5. A set-aside agreement or a food processing plant operator's trusteeship providing for the set aside of processed produce equivalent to not less than 30% of the produce obtained from producers, in trust for the producers. An agreement under this subdivision shall:

a. Provide that no part of such set-aside may be released by the trustee unless an amount equivalent to the value of the released portion has been paid to apply proportionally on the claims of producers or is paid to the trustees for such payment.

b. Designate the individual responsible for carrying out the agreement on behalf of the applicant and be signed by that individual and by a trustee approved by the department.

c. Provide that the trustee has on file with the secretary of state under chs. 401 to 409 a first security interest and lien on the inventory and accounts receivable.

d. Specify that the applicant agrees to pay all expenses of the trust.

(d) *Amount.* 1. Security filed under par. (c) 1 to 4 shall be in an amount equal to at least 75% of the anticipated maximum liability during the ensuing license year.

2. The department may require a food processing plant operator to file additional security if existing security falls below the amount required under subd. 1 because of depreciation or because of an increase in maximum liability. The department shall notify the operator, giving the reasons why additional security is required and specifying the amount. The additional security shall be filed within 30 days after receipt of the notice, unless the department grants an extension. No extension may be granted in excess of 60 days.

(e) *Release of security.* 1. Except as provided under subd. 2, security filed under par. (c) may not be released until the food processing plant operator has achieved and maintained for 2 successive license years the minimum financial standards under par. (a) and has, through sound financial planning and management, demonstrated to the department's satisfaction a reasonable ability to meet producer payments when due.

2. Notwithstanding subd. 1, the department may release security if the operator's maximum liability has decreased and the department determines that there is little likelihood that such liability will be restored to former levels.

(6) CLAIMS. (a) Any person injured by the violation of this section by a food processing plant operator, subsidiary or affiliate may file with the department a verified proof of claim. Upon receipt of the claim or any other evidence of default, the department may order all interested creditors to file their verified proofs of claim before a certain date or be barred from participating in any recovery made by the department. Notice of the entry of the order shall be given by posting a copy on the premises described in the license and by publication of a class 3 notice, under ch. 985, in the affected area. The date of last insertion shall not be less than 30 days prior to the last date for the filing of such claims. The department shall make the necessary audit and by order allow or disallow all claims presented. Notice of allowance or disallowance and request for the payment within 30 days of the claims allowed shall be sent to the principal and surety by registered mail. The department may demand, collect and receive from the licensee or the trustee, or from the surety or sureties of either of them, the amount determined to be necessary to satisfy such claims. The department may commence an action for that purpose in the circuit court of the county in which the food processing plant is located. Upon receipt of the money to be applied to the satisfaction of such claims, the department shall distribute the money to the claimants in accordance with the order allowing claims, either in full or proportionally. No claims for the purchase price of any farm products the value of which was due and payable more than 60 days prior to the date the first written notice of default is received by the department shall be allowed under this section.

(b) The whole claim of any person against any food processing plant operator or its subsidiaries or affiliates on account of farm products sold or delivered to the operator, subsidiary or affiliate and any judgment on the claim shall be entitled to the same preference in any insolvency or other creditor's proceedings as is given by any law of this state to claims for labor. One claim may be filed for any number of producers and when so filed the preference shall be allowed on the amount due each producer. Such preference shall also be given in bankruptcy proceedings to the extent permitted by the federal law. This section does not affect or impair any other lien, security or priority for the claim or judgment.

(c) The department may require that the claims of any officer, agent, partner or stockholder, or members of their families, against a food processing plant operator who has filed security under sub. (5) (c) 1 to 4 shall be subordinate to the prior interest or claims of producers.

(7) LIABILITY. (a) A food processing plant operator is liable to a producer if a subsidiary or affiliate of the operator fails to fully pay the producer, in cash and according to the terms of the contract between the subsidiary or affiliate and the producer, amounts owed the producer by the subsidiary or affiliate.

(b) Any corporation or cooperative that owns, controls or is the operator of a food processing plant is liable to a producer if the food processing plant fails to fully pay, in cash and according to the terms of the contract between the operator and the producer, amounts owed the producer by the operator. The department shall commence an action in the circuit court of the county in which the food processing plant is located to enforce this paragraph.

(8) DENIAL OR REVOCATION OF LICENSE. If the department determines that a food processing plant operator has violated this section, the department shall notify the operator of the determination by certified mail or personal service. If the food processing plant operator fails to correct the violation within 30 days after receipt of the notice, the department may summarily deny or revoke the operator's license. The order denying or revoking a license is subject to a right of hearing if

requested by the operator within 10 days after the date the order is received, but enforcement of the order may not be stayed pending the hearing.

(9) RULES. The department may promulgate rules to implement and administer this section.

(10) PENALTY. Any person who violates this section or any rule promulgated or order issued under the authority of this section may be fined not less than $100 nor more than $10,000 or imprisoned for not more than one year or both.

History: 1985 a. 226; 1987 a. 399.

100.05 Butter and cheese manufacturers; accounts accessible. No operator of a butter factory or cheese factory wherein the value of the milk or cream delivered is determined by the sale of the product manufactured shall use or allow any other person unless he is entitled to the benefit thereof to use any milk or cream brought to him, without the consent of the owner thereof, and such operator shall keep or cause to be kept a correct account (which shall be open to the inspection of any person furnishing milk to him and to the department, its chemists, assistants, inspectors and agents) of the amount of milk or cream received daily, and of the number of pounds of butter, and the number and style of cheese made each day, and of the number of cheese cut or otherwise disposed of and the weight of each, and the number of pounds of whey cream sold, with the test.

100.057 Wisconsin cheese logotype. The department shall design an official logotype appropriate for affixation to and display in connection with natural cheese meeting quality standards established by the department and manufactured in this state entirely from milk which is produced under standards which are equal to or greater than standards established under s. 97.24 and rules adopted under s. 97.24 or under minimum sanitary and quality standards prescribed under s. 97.52 and rules adopted under s. 97.52. The design shall consist of an outline of the boundaries of the state and the words "100% Wisconsin Cheese" and such other specifications as the department deems appropriate. Nothing in this section shall prohibit the use of other appropriate labels or logotypes.

History: 1975 c. 323; 1977 c. 157.

100.06 Dairy licenses; financial condition. (1) (a) No person shall operate a dairy plant or receiving station, as defined in s. 97.20, and no license therefor shall be issued unless he shall have first satisfied the department that his financial condition is such as to reasonably assure prompt payment to the producers for the milk and cream to be purchased by him as and when the same becomes due and payable.

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

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

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

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

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

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

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

(4) Any person injured by the breach of any obligation under this section may file with the department a verified proof of claim. Upon receipt of such claim or any other evidence of default, the department, by order, may require all interested creditors to file their verified proofs of claim before a certain date or be barred from participating in any recovery made by the department. Notice of the entry of such order shall be given by posting a copy thereof on the premises described in the license and by publication of a class 3 notice, under ch. 985, in the affected area. The date of last insertion shall not be less than 30 days prior to the last date for the filing of such claims. The department shall make the necessary audit and by order allow or disallow all claims presented. The licensee or trustee, or surety or sureties of either of them, shall pay the interest on any claim that the department allows unless the claimant has waived the payment of that interest in writing. The interest shall accrue from the first day of the breach of the obligation under this section for which the verified claim is filed until full payment of the allowed claim is made. The department, by rule, shall establish the interest rate that applies to any claimant except that if the claimant has contracted the interest rate in writing with the licensee or has specified the interest rate in a written confirmation of purchase delivered to the licensee within a reasonable time of purchase to which interest rate the licensee did not object in writing within 10 days of receipt of that confirmation, the interest rate in the contract or confirmation shall apply to the claimant under this subsection. Notice of allowance or disallowance and interest and request for the payment within 30 days of the claims allowed shall be sent to the principal and surety by registered mail. The department may demand, collect and receive from the licensee or the trustee, or from the

surety or sureties of either of them, the amount determined to be necessary to satisfy such claims, plus interest. It may commence an action for that purpose in the circuit court of the county in which the licensed plant is located. Upon receipt of the money to be applied to the satisfaction of such claims plus interest as provided in this section, the department shall make distribution to the claimants in accordance with the order allowing claims plus interest, in full or proportionally, as the case may be. No claims for the purchase price of any milk, cream or dairy products the value of which was due and payable more than 30 days prior to the date the first written notice of default is received by the department, nor claims covering transactions wherein the seller has granted to the licensee any voluntary extension of credit, shall be allowed or paid under this section.

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

(6) Compliance with this section shall be an additional requirement for the license and noncompliance shall be ground for denial, suspension or revocation of license, under s. 97.20. This subsection does not apply to any dairy plant, as defined in s. 97.20 (1) (a), operated by this state.

(7) The whole claim of any person against any licensee under s. 97.20 on account of milk, cream or dairy products sold or delivered to such licensee and any judgment therefor shall be entitled to the same preference in any insolvency or other creditor's proceedings as is given by any law of this state to claims for labor. One claim may be filed for any number of producers and when so filed the preference shall be allowed on the amount due each producer. Such preference shall also be given in bankruptcy proceedings to the extent permitted by the federal law. This section shall not affect or impair any other lien, security or priority for said claim or judgment.

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

History: 1979 c. 110 s. 60 (12); 1987 a. 273, 399.

The department could find an implied contract that a dairy plant would pay producers of milk a competitive price and that when less was paid the difference was to be made up from the security funds of the producer. Columbus Milk Producers v. Dept. of Agriculture, 48 W (2d) 451, 180 NW (2d) 617.

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

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

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

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

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

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

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

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

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

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

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

100.14 Uniform labels and trademarks. (1) The department may adopt uniform labels and trademarks for brands of Wisconsin products and shall, upon request, permit the use of such labels and trademarks 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 trademarks.

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

100.15 Regulation of trading stamps. (1) No person may use, issue or furnish within this state, in connection with the sale of any goods, any trading stamp or similar device, which entitles the purchaser to procure any thing of value in exchange for the trading stamp or similar device.

(3) This section does not apply to:

(a) Stamps, tokens, tickets, or similar devices, without any stated cash value, if such stamps, tokens, tickets, or similar devices are redeemable only in payment for parking privileges for automobiles or fares on urban passenger transit facilities.

(b) A person who issues a trading stamp or other similar device, with the sale of any goods, which bears upon its face a stated cash value and is redeemable in cash upon presentation in amounts aggregating 25 cents or over of redemption value, or in merchandise at the option of the holder.

(c) The publication by or distribution through newspapers, or other publications, of coupons in advertisements other than their own.

(d) A 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.

(e) A coupon, certificate or similar device, which is within, attached to, or a part of any package or container as packed by the original manufacturer or retailer and which is to be redeemed by a retailer or another manufacturer if:

1. The coupon, certificate or similar device clearly states the names and addresses of both the issuing manufacturer or retailer and any redeeming manufacturer; and

2. The issuing manufacturer or retailer is responsible to redeem the coupon, certificate or similar device if the redeeming retailer or manufacturer fails to do so.

(f) A coupon, ticket, certificate, card or similar device issued, distributed or furnished by a retailer and redeemed by that retailer for any product or service the retailer sells or provides in the usual course of business. Redemption under this paragraph shall be made by the issuing retail outlet on request of the customer, and may be made by any other retail outlet operating under the same business name.

(g) An entry blank or game piece redeemed for merchandise in a chance promotion exempt under s. 100.16 (2).

History: 1977 c. 268; 1981 c. 351; 1983 a. 406.

100.16 Selling with pretense of prize; in-pack chance promotion exception. (1) 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.

(2) This section does not apply to an in-pack chance promotion if all of the following are met:

(a) Participation is available, free and without purchase of the package, from the retailer or by mail or toll-free telephone request to the sponsor for entry or for a game piece.

(b) The label of the promotional package and any related advertising clearly states any method of participation and the scheduled termination date of the promotion.

(c) The sponsor on request provides a retailer with a supply of entry forms or game pieces adequate to permit free participation in the promotion by the retailer's customers.

(d) The sponsor does not misrepresent a participant's chances of winning any prize.

(e) The sponsor randomly distributes all game pieces and maintains records of random distribution for at least one year after the termination date of the promotion.

(f) All prizes are randomly awarded if game pieces are not used in the promotion.

(g) The sponsor provides on request of a state agency a record of the names and addresses of all winners of prizes valued at $100 or more, if the request is made within one year after the termination date of the promotion.

History: 1981 c. 351.

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

100.18 Fraudulent representations. (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) (a) In advertising or otherwise representing the sale or furnishing of any property or services combined with or conditioned on the purchase of any other property or services described in such advertisement or other representation, it is deceptive for a retailer to:

1. Fail to state the price or amount which must be paid for the property or services included in such sale, along with any other condition to the receipt of such property or services, if the advertisement or representation does not refer to the price of the property or services as the "regular price". The price or amount which must be paid shall be set forth clearly, conspicuously and in such manner that the total price or amount to be paid may be readily ascertained.

2. Sell the property or services at more than the regular price or fail to state any other condition to the receipt of the property or services included in the sale, if the advertisement or representation refers to the price of the property or services as the "regular price".

3. Mark up the regular price of the property or services which must be purchased.

4. Substitute property or services of inferior value or quality for the property or services which must be purchased.

(b) This subsection does not apply to advertisements or representations concerning custom-made property.

(c) In this subsection, "regular price" means the lowest price for the same quantity and quality of product or the same services, at which the seller or advertiser of the product or services openly and actively sold the product or services in the geographic trade area of the advertisement or representation during the seller's or advertiser's most recent and regular 30-day course of business.

(3) It shall be deemed deceptive advertising, within the meaning of this section, for any person, firm or corporation, engaged in the business of buying or selling new or second-hand 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.

(3m) It is deceptive advertising to represent the retailing of merchandise to be a selling-out or closing-out sale if the merchandise is not of a bankrupt, insolvent, assignee, liquidator, adjuster, administrator, trustee, executor, receiver, wholesaler, jobber, manufacturer, or of any business that is in liquidation, that is closing out, closing or disposing of its stock, that has lost its lease or has been or is being forced out of business or that is disposing of stock on hand because of damage by fire, water or smoke. This subsection does not apply to any "closing-out sale" of seasonable merchandise or any merchandise having a designated model year if the person conducting the sale is continuing in business.

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

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

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

(8) Every wholesaler and every other person selling or distributing motor fuel in this state shall keep posted in a conspicuous place, most accessible to the public at his place of business, and on every pump from which delivery is made directly into the fuel tank attached to a motor vehicle, a placard showing the net selling price per gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. On pumps or other dispensing equipment from which motor fuel is sold and delivered directly into fuel supply tanks attached to motor vehicles, such posting shall be in figures not less than one inch high, except that no such placard shall be required on a computer pump whereon the total net selling price per gallon including all taxes is legibly shown on its face. All sales shall be made at the posted price and delivery slips shall also show the net selling price per gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. If the wholesaler or person has more than one place of business in this state, the wholesaler or person shall post said placard at all of his places of business. All prices posted shall remain in effect for at least 24 hours after they are posted. It shall be deemed deceptive advertising to advertise or represent in any manner the price of motor fuel offered for sale at retail to be less than the price so posted on each pump.

(9) (a) It is deemed deceptive advertising, within the meaning of this section, for any person or any agent or employe thereof to make, publish, disseminate, circulate or place before the public in this state in a newspaper or other publication or in the form of book, notice, handbill, poster,

bill, circular, pamphlet, letter, sign, placard, card, label or over any radio or television station or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to the purchase, sale, hire, use or lease of real estate, merchandise, securities, service or employment or to the terms or conditions thereof which advertisement, announcement, statement or representation is part of a plan or scheme the purpose or effect of which is not to sell, purchase, hire, use or lease the real estate, merchandise, securities, service or employment as advertised.

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

(9m) It is deemed deceptive advertising to misrepresent the nature of a local energy resource system under s. 101.175.

(10) (a) It is deceptive to misrepresent the nature of any business by use of the words manufacturer, factory, mill, importer, wholesaler or words of similar meaning, in a corporate or trade name or otherwise.

(b) It is deceptive to represent the price of any merchandise as a manufacturer's or wholesaler's price, or a price equal thereto, unless the price is not more than the price which retailers regularly pay for the merchandise. The effective date of this subsection shall be January 1, 1962.

(11) (a) The department of agriculture, trade and consumer protection shall enforce 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.

(b) 1. The department of agriculture, trade and consumer protection may request that the department of justice commence an action to enjoin a violation of this section, in which event the latter department shall proceed with the requested action within a reasonable period of time or provide the department of agriculture, trade and consumer protection with a brief statement of its reasons for not proceeding. The department of justice shall further provide the department of agriculture, trade and consumer protection with periodic summaries of all activity under this section.

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

3. No action may be commenced under this section more than 3 years after the occurrence of the unlawful act or practice which is the subject of the action. No injunction may be issued under this section which would conflict with general or special orders of the department or any statute, rule or regulation of the United States or of this state.

(c) 1. Whenever the department has reason to believe that a person is in possession, custody or control of any information or documentary material relevant to the enforcement of this section it may require that person to submit a statement or report, under oath or otherwise, as to the facts and circumstances concerning any activity in the course of trade or commerce; examine under oath that person with respect to any activity in the course of trade or commerce; and execute in writing and cause to be served upon such person a civil investigative demand requiring the person to produce any relevant documentary material for inspection and copying.

2. The department, in exercising powers under this subsection, may issue subpoenas, administer oaths and conduct hearings to aid in any investigation.

3. Service of any notice by the department requiring a person to file a statement or report, or service of a subpoena upon a person, or service of a civil investigative demand shall be made in compliance with the rules of civil procedure of this state.

4. If a person fails to file any statement or report, or fails to comply with any civil investigative demand, or fails to obey any subpoena issued by the department, such person may be coerced as provided in s. 885.12, except that no person shall be required to furnish any testimony or evidence under this subsection which might tend to incriminate him.

(d) The department or the department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may in its discretion, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, provided proof thereof is submitted to the satisfaction of the court. The department of justice may subpoena persons, require the production of books and other documents, and may request the department to exercise its authority under par. (c) to aid in the investigation of alleged violations of this section.

(e) In lieu of instituting or continuing an action pursuant to this section, the department or the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this section from the person who has engaged in such act or practice. The acceptance of such assurance by either the department or the department of justice shall be deemed acceptance by the other state officials enumerated in par. (d) if the terms of the assurance so provide. An assurance entered into pursuant to this section shall not be considered evidence of a violation of this section, provided that violation of such an assurance shall be treated as a violation of this section, and shall be subjected to all the penalties and remedies provided therefor.

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

History: 1977 c. 29 s. 1650m (4); 1979 c. 89, 327, 350; 1981 c. 351; 1983 a. 215; 1985 a. 284, 332.

Cross Reference: See 136.001 (2) concerning future service plans.

(1) applies to oral representations made in private conversations to prospective purchasers. State v. Automatic Merchandisers, 64 W (2d) 659, 221 NW (2d) 683.

The complaint, alleging deceptive advertising contrary to (1) states a cause of action not only against the corporate defendant but against its officer personally where the complaint's use of the word "continue" indicates reference to both past and future conduct and where use of the word "defendants" refers to both the corporation and its officer. State v. Advance Marketing Consultants, Inc. 66 W (2d) 706, 225 NW (2d) 887.

Sub. (2) is constitutional. State v. Amoco Oil Co. 97 W (2d) 226, 293 NW (2d) 487 (1980).

State may join as party defendant assignee of contracts allegedly obtained by deceptive practices even though assignee did not engage in deception. State v. Excel Management Services, 111 W (2d) 479, 331 NW (2d) 312 (1983).

Consumer is protected from untrue, deceptive or misleading representations made to promote sale of product; advertising need not be involved. Bonn v. Haubrich, 123 W (2d) 168, 366 NW (2d) 503 (Ct. App. 1985).

Elements of violations of (1) and (9) discussed. State v. American TV, 140 W (2d) 353, 410 NW (2d) 596 (Ct. App. 1987).

This section is reasonably geared toward notice and workable precision and is not so imprecise as to be constitutionally vague. Carpets By The Carload, Inc. v. Warren, 368 F Supp. 1075.

Protection for consumers against unfair and deceptive business. Jeffries, 57 MLR 559.

Private enforcement of consumer laws in Wisconsin. Waxman. WBB May 1983.

100.182 Fraudulent drug advertising. (1) In this section, "drug" has the meaning specified in s. 450.01 (10).

(2) No person may advertise the availability of any drug or publish or circulate such an advertisement with the intent of selling, increasing the consumption of or generating interest in the drug if the advertisement contains any untrue, deceptive or misleading representations material to the effects of the drug.

(3) No person may expressly or impliedly represent that a substance may be used to obtain physical or psychological effects associated with the use of a drug in order to promote the sale of the substance unless it is lawfully marketed for human consumption under the United States food, drug and cosmetic act under 21 USC 301 to 392. A representation that the substance is not intended for human consumption is not a defense to prosecution for violating this subsection.

(4) No person may advertise a drug that the person knows is intentionally manufactured substantially to resemble a controlled substance or that the person represents to be of a nature, appearance or effect that will allow the recipient to display, sell, distribute or use the drug as a controlled substance, unless the drug is controlled under ch. 161.

(5) (a) Any district attorney, after informing the department of justice, or the department of justice or the department of agriculture, trade and consumer protection may seek a temporary or permanent injunction in circuit court to restrain any violation of this section. Prior to entering a final judgment the court may award damages to any person suffering monetary loss because of a violation. The department of justice may subpoena any person or require the production of any document to aid in investigating alleged violations of this section.

(b) In lieu of instituting or continuing an action under this subsection, the department of agriculture, trade and consumer protection or the department of justice may accept a written assurance from a violator of this section that the violation has ceased. If the terms of the assurance so provide, its acceptance by either department prevents the other department and all district attorneys from prosecuting the violation. An assurance is not evidence of a violation of this section but violation of an assurance is subject to the penalties and remedies of violating this section.

History: 1981 c. 90; 1985 a. 146 s. 8.

100.183 Fraud, advertising foods. (1) No person, firm, corporation or association shall, with intent to sell, or increase the consumption thereof, or create an interest therein, make, publish, disseminate, circulate, or place before the public in this state, or cause, directly or indirectly to be made, published, disseminated, 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 or pamphlet, or in any other manner, an advertisement of any sort regarding articles of food, which advertisement contains any assertion, representation or statement which is untrue, deceptive or misleading.

(2) It shall be unlawful to advertise any dairy or other food product which is of a grade or quality inferior to or less valuable than the usual and ordinary grade established by common understanding or law for such product, or from which a more valuable portion has been removed, without plainly and conspicuously stating that the article advertised is below and inferior to the usual and ordinary grade.

(3) No person, for himself, or as an agent, shall advertise at a stated price the sale of turkeys, which have been graded by the U.S. department of agriculture, unless the federal grade is set forth in such advertisement in not less than 10-point type.

100.184 Advertising foods for sale. No person shall, himself, or by his servant or agent, or as the servant or agent of any other person, advertise for sale any article of food in package form when the retail price is mentioned in such advertisement unless the actual weight or volume of the contents of such package as stated on the label shall be plainly and conspicuously set forth in such advertisement in not less than 5-point type.

100.186 Linseed oil, white lead, zinc oxide, turpentine; standards; sale. (1) No person shall sell as and for "raw flaxseed oil" or "raw linseed oil" any oil unless it is obtained from the seeds of the flax plant and unless it fulfills all the requirements for linseed oil laid down in the U.S. Pharmacopoeia; or as and for "boiled linseed oil" or "boiled flaxseed oil" any oil unless it has been prepared by heating pure raw linseed oil with or without the addition of not to exceed 4% of drier to a temperature not less than 225 degrees Fahrenheit. It is a violation of this section if said boiled linseed oil does not conform to the following requirements: First, its specific gravity at 60 degrees Fahrenheit must be not less than 935 thousandths and not greater than 945 thousandths; 2nd, its saponification value (koettstorfer figure) must not be less than 186; 3rd, its iodine number must not be less than 160; 4th, its acid value must not exceed 10; 5th, the volatile matter expelled at 212 degrees Fahrenheit must not exceed one-half of one per cent; 6th, no mineral or other foreign oil or free rosin shall be present, and the amount of unsaponifiable matter as determined by standard methods shall not exceed 2.5%; 7th, the film left after flowing the oil over glass and allowing it to drain in a vertical position must dry free from tackiness in not to exceed 20 hours, at a temperature of about 70 degrees Fahrenheit.

(2) Nor shall any person sell any raw or boiled linseed oil except under its true name, and unless each tank car, tank, barrel, keg, can or vessel of such oil has distinctly and durably marked thereon in ordinary bold-faced capital letters, not smaller than 60-point type, the words "Pure Linseed Oil—Raw" or "Linseed Oil—Boiled," and the name and address of the manufacturer.

(3) Linseed oil compounds designed to take the place of raw or boiled linseed oil, whether sold under invented proprietary names or titles, or otherwise, shall bear conspicuously upon the containing receptacle in which the same is sold, in ordinary bold-faced capital letters not smaller than 60-point type, the word "Compound," followed immediately with the true distinctive names of the actual ingredients in the order of their greater preponderance, in the English language, in plain legible type of the same style, not smaller than 36-point type, in continuous list with no intervening matter of any kind and shall also bear the name and address of the manufacturer.

(4) No person shall sell:

(a) As and for dry white lead any substance other than basic carbonate of lead or basic sulfate of lead;

(b) As and for white lead in oil, any product other than basic carbonate of lead ground in pure linseed oil or basic sulfate of lead ground in pure linseed oil;

(c) Any basic carbonate of lead ground in linseed oil, unless each receptacle containing it has distinctly and durably marked thereon the words, "white lead, basic carbonate, in oil," and the name and address of the manufacturer or jobber;

(d) Any basic sulfate of lead ground in linseed oil, unless each receptacle containing it has distinctly and durably marked thereon the words "white lead, basic sulfate, in oil," and the name and address of the manufacturer or jobber;

(e) As and for dry oxide of zinc, or zinc oxide, or zinc white, any substance other than commercially pure oxide of zinc;

(f) As and for oxide of zinc in oil, or zinc oxide in oil, or zinc white in oil, any product other than commercially pure oxide of zinc ground in pure linseed oil;

(g) Any oxide of zinc ground in linseed oil, unless each receptacle containing the same has distinctly and durably marked thereon the words "oxide of zinc in oil" or "zinc oxide in oil" or "zinc white in oil" and the name and address of the manufacturer or jobber.

(5) No person shall sell:

(a) As and for turpentine, spirits of turpentine or oil of turpentine, any article except pure oil of turpentine distilled from the natural gum, dip or scrape of pine trees and unmixed with kerosene or other mineral oil or other foreign substance;

(b) As and for wood turpentine or wood spirits of turpentine any article except the distillates and spirits prepared directly from or by the distillation of the wood of pine trees, and unmixed with kerosene or other mineral oil or other foreign substance;

(c) Any oil of turpentine or wood spirits of turpentine except under its true name, and unless each tank car, tank, barrel, keg, can or vessel of such oil has distinctly and durably marked thereon in ordinary bold-faced capital letters, not smaller than 60-point type, the words "Oil of Turpentine" or "Wood Spirits of Turpentine" and the name and address of the manufacturer or jobber.

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

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

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

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

(1m) It is an unfair trade method of competition in business to represent the retailing of merchandise to be a selling-out or closing-out sale if the merchandise is not of a bankrupt, insolvent, assignee, liquidator, adjuster, administrator, trustee, executor, receiver, wholesaler, jobber, manufacturer, or of any business that is in liquidation, that is closing out, closing or disposing of its stock, that has lost its lease or has been or is being forced out of business or that is disposing of stock on hand because of damage by fire, water or smoke. This subsection does not apply to any "closing-out sale" of seasonable merchandise or any merchandise having a designated model year if the person conducting the sale is continuing in business.

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

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

(4) The department of justice may file a written complaint with the department alleging that the person named is employing unfair methods of competition in business or unfair trade practices in business or both. Whenever such a complaint is filed it shall be the duty of the department to proceed, after proper notice and in accordance with its rules, to the hearing and adjudication of the matters alleged, and a representative of the department of justice designated by the attorney general may appear before the department in such proceedings. The department of justice shall be entitled to judicial review of the decisions and orders of the department under ch. 227.

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

(6) The department may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction the violation of any order issued under this section. The court may in its discretion, prior to entry of final judgment make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, provided proof thereof is submitted to the satisfaction of the court. The department may use its authority in ss. 93.14 and 93.15 to investigate violations of any order issued under this section.

History: 1975 c. 308; 1985 a. 284.

Cross Reference: See 136.001 (2) concerning future service plans.

Rules of the department of agriculture prohibiting a chain distributor scheme are valid. Unfair practices which may be prohibited are not limited to those affecting competitors. HM Distributors of Milwaukee v. Dept. of Agriculture, 55 W (2d) 261, 198 NW (2d) 598.

The standard applied in the International News Service case is consistent with the public policy of the state as stated in (1). Mercury Record v. Economic Consultants, 64 W (2d) 163, 218 NW (2d) 705.

Trial court properly relied upon administrative rule promulgated under (2) in instructing jury. State v. Clausen, 105 W (2d) 231, 313 NW (2d) 819 (1982).

See note to 100.18, citing State v. Excel Management Services, 111 W (2d) 479, 331 NW (2d) 312 (1983).

Attorney fees for successful appellate work are recoverable under (5). Fees are recoverable even when person is represented at no charge by legal services organization. Shands v. Castrovinci, 115 W (2d) 352, 340 NW (2d) 506 (1983).

Sub. (6) does not require threat of future harm in order to obtain injunction. State v. Fonk's Mobile Home Park & Sales, Inc. 117 W (2d) 94, 343 NW (2d) 820 (Ct. App. 1983).

Plaintiff-tenant who prevails in action for violation of order under this section is entitled to attorney fees irrespective of amount of damages landlord may recover in counterclaim. Paulik v. Coombs, 120 W (2d) 431, 355 NW (2d) 357 (Ct. App. 1984).

Allegations that the department's regulation prohibiting chain distributor schemes as an unfair trade practice abridged 1st amendment protection of commercial speech were not so obviously without merit so as to be insubstantial for purposes of the statute requiring hearing and determination by 3-judge court. Holiday Magic, Inc. v. Warren, 497 F (2d) 687.

Order of department declaring chain distributor schemes to be unfair trade practice was not void for vagueness. Holiday Magic, Inc. v. Warren, 357 F Supp. 20.

Protection for consumers against unfair and deceptive business. Jeffries, 57 MLR 559.

100.201 Unfair trade practices in the dairy industry. (1) DEFINITIONS. Unless context requires otherwise:

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

(b) 1. "Retailer" means every person making any sale of selected dairy products at retail within this state unless otherwise excepted; provided, that in the case of a person making both sales at retail and sales at wholesale such term shall apply only to the retail portion of such sales. "Retailer" does not include the United States, the state, any municipality as defined in s. 345.05 (1) (c), or any religious, charitable or educational organization or institution, but does include any other person engaged in the business of making retail sales wholly or in part for his own profit at an institution operated by such an exempt party.

2. For the purpose of this section any subsidiary or affiliate corporation or cooperative, and any officer, director or partner, of a corporation, cooperative, or partnership which is a retailer of selected dairy products, and any individual, corporation, cooperative, partnership, association or any other business unit which owns, controls or franchises any retailer or which has any retailer as an affiliate, member or subsidiary, is deemed to be a retailer of selected dairy products and the prohibitions of sub. (2) shall also apply to any such person or business unit which sells any selected dairy product at wholesale.

(c) "Selected dairy products" means: 1. milk, skim milk, fortified milk, flavored milk, flavored skim milk, buttermilk, cream, sour cream, half and half, whipping cream, whipped cream and cottage cheese; and 2. ice cream, ice milk, sherbet, custard, water ices, quiescently frozen ices and frozen dessert novelties manufactured from any such products. The department may by rule after hearing designate as selected dairy products such other products derived in whole or in part from milk as it finds necessary to effectuate the purposes of this section; but in no event shall there be designated as selected dairy products any of the following: powdered dry milk or powdered dry cream, condensed, concentrated or evaporated milk in hermetically sealed containers, butter or cheese, other than cottage cheese.

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

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

(f) 1. "Wholesaler" means every person making sales of selected dairy products at wholesale within this state, unless otherwise excepted; provided, that in the case of a person making both sales at retail and sales at wholesale such term shall apply only to the wholesale portion of such business.

2. For the purpose of this section any subsidiary or affiliate corporation or cooperative, and any officer, director or partner, of a corporation, cooperative, or partnership which is a wholesaler of selected dairy products is deemed to be a wholesaler of selected dairy products.

(1m) APPLICABILITY. This section is applicable to consignment sales and a consignor shall be deemed to be a wholesaler and a consignee to be a retailer for the purposes of this section.

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

(a) 1. Give or extend discounts or rebates, directly or indirectly, to retailers or other wholesalers on selected dairy products or give or extend to such purchasers any services connected with the delivery, handling or stocking of such products except in accordance with published price lists. A wholesaler may sell selected dairy products at a price different from or with services less than or additional to those in said published price list in order to meet a bona fide offer by a competitor to a particular retailer or wholesaler, but such discount, rebate or service shall not be given until the wholesaler first makes a written record of the date of such competitive offer, the terms thereof, the name of the retailer or wholesaler to whom made and the name of the competitor by whom made. Such record shall be available within this state for inspection and copying by any retailer or wholesaler upon his written request therefor. It is the duty of every wholesaler under this subsection to prepare and publish as hereinafter provided current price lists giving the prices of all selected dairy products sold by him at wholesale, directly or indirectly, to retailers or other wholesalers, including all discounts, rebates and services connected with the delivery, handling or stocking of such products, giving the effective dates of such prices, and giving the amount paid or anything of value given or granted by him for such sales made through a broker as commission, brokerage, allowance or other compensation. Such price lists shall be available within this state for inspection and copying by any retailer or wholesaler upon his written request therefor.

2. Every wholesaler shall file with the department the address of his principal business office in this state, if any. If a wholesaler has such a principal business address in this state written request for any record or price list required to be made available under this subsection shall be sent to such business office and the information requested shall be made available there. A wholesaler having no principal business office within this state shall file with the department or a designated agent approved by the department such current records or price lists required to be made available under this subsection. Such current records or price lists shall be available for inspection and copying by any retailer or wholesaler upon his written request therefor. The failure or refusal of any wholesaler to make available for inspection and copying any record or price list required to be made available under this subsection within 24 hours after a request has been received or to file with the department current records or price lists as required shall be prima facie evidence of a violation of this subsection.

3. In case of the failure or refusal of any wholesaler to make available or file any record or price list as required by this paragraph, any court of record of competent jurisdiction shall, upon a showing of such failure or refusal, and upon

notice, order said wholesaler to give to the retailer or wholesaler so requesting, within a specified time, an inspection thereof, with permission to make a copy therefrom, or to file such information with the department.

(b) Discriminate in price, directly or indirectly, between different purchasers of selected dairy products of like grade and quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them. Proof made at any proceeding under this paragraph that there has been discrimination in price shall be prima facie evidence of the truth of such charges. The burden of rebutting such prima facie evidence by a showing of justification shall be upon the person charged with the violation. Nothing in this paragraph shall prevent any person charged with a violation of this paragraph from rebutting such prima facie evidence by showing that his lower price was made in good faith to meet an equally low price of a competitor. Nothing in this paragraph shall be construed to apply to the submission of bids to or sales to the United States, the state, any municipality as defined in s. 345.05 (1) (c), or any religious, charitable or educational organization or institution. Nothing in this paragraph shall prevent:

1. Price differentials which merely allow for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such selected dairy products are sold or delivered to such purchasers.

2. Persons engaged in selling selected dairy products from selecting their own customers in bona fide transactions and not in restraint of trade.

3. Price changes from time to time resulting from changing conditions affecting the market for or the marketability of the selected dairy products concerned, including but not limited to actual or imminent deterioration, obsolescence, distress sales under court process, or sales in good faith in discontinuance of business in the selected dairy products concerned.

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

(d) Make or underwrite loans to a retailer or become bound in any manner for the financial obligation of any retailer except that a wholesaler may lend money to a retailer for the purchase of equipment for the storage, transportation and display of selected dairy products, provided the loan is for not more than 90% of the purchase price, bears at least a 5% annual interest rate, is payable in equal monthly instalments over a period of not more than 48 months, and is secured by a security interest created by a security agreement specifying all payments by the retailer and duly filed by the wholesaler within 10 days after the making or underwriting of said loan, as provided in ss. 409.401 and 409.402.

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

1. The wholesaler, under a bill of sale or security agreement describing the property sold and specifying the price and terms of sale duly filed by him under ss. 409.401 and 409.402 within 10 days after delivery of the equipment described therein, may sell equipment for the storage, transportation and display of selected dairy products to the retailer but the selling price shall be not less than the cost to the wholesaler, less 10% per year depreciation, plus transportation and installation costs, plus at least 6%, but in no event shall it be less than $100 per unit. In filing bills of sale under this section, the filing officer shall follow the procedure under s. 409.403 insofar as applicable. If the wholesaler makes the sale under a security agreement, the terms of sale shall be no more favorable to the retailer than those under sub. (2) (d). Failure by any wholesaler to enforce his security interest under this paragraph or sub. (2) (d) if a retailer is in default for more than 90 days shall constitute prima facie evidence of a violation of this section. No wholesaler shall renegotiate a security agreement which is in default.

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

3. The wholesaler may furnish equipment to retailers for the storage, transportation or display of selected dairy products for one period of not longer than 10 consecutive days a year to any one retailer for use at a fair, exhibition, exposition or other event for agricultural, industrial, charitable, educational, religious or recreational purposes.

4. A wholesaler who furnishes, lends or rents the use of equipment for the storage or display of selected dairy products to any person exempt under sub. (1) (b) 1 shall not sell selected dairy products which will be stored or displayed in such equipment to any retailer using the equipment on the premises of such exempt person unless such retailer purchases said equipment in accordance with this paragraph or par. (d). Nothing in this paragraph shall limit sales of selected dairy products to retailers in conjunction with equipment furnished under subd. 3.

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

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

(h) 1. Sell or offer to sell, directly or indirectly, any selected dairy product at less than cost with the purpose or intent of injuring, destroying or eliminating competition or a competitor or creating a monopoly, or where the effect may be any of the same. This paragraph shall apply to all sales, including those made to any instrumentality of state or local government and to all religious, charitable or educational organizations or institutions, but does not apply to sales made to the United States.

2. "Cost" of a selected dairy product to a wholesaler means that portion of all of the cost of raw product plus all costs of manufacturing, processing, packaging, handling, sale, delivery and overhead of such wholesaler which, under a system of accounting in accordance with sound accounting principles and reasonably adapted to the business of such wholesaler, is fairly allocable to such selected dairy product and the sale thereof to its customers or to a particular class thereof. Such cost shall include, but not be limited to, all expenses for labor, salaries, bonuses, fringe benefits, administration, rent, interest, depreciation, power, raw and processed ingredients, materials, packaging, supplies, maintenance of equipment, selling, advertising, transportation, delivery, credit losses, license and other fees, taxes, insurance, and other fixed and incidental operating expenses and costs of doing business.

3. The department may by rule after hearing adopt a uniform system of accounting to be used by the department in determining the cost of a selected dairy product and to require wholesalers to file reports of such cost based upon such adopted system of accounting.

4. Proof made at any proceeding under this paragraph of a sale or offer to sell, directly or indirectly, any selected dairy product at less than cost as determined by department rule, if adopted, shall be prima facie evidence that it was made with the purpose or intent of injuring, destroying or eliminating competition or a competitor or creating a monopoly and that the effect may be any of the same. The burden of rebutting such prima facie evidence shall be upon the person charged with a violation of this paragraph. Nothing in this paragraph shall prevent any person charged with a violation of this paragraph from rebutting such prima facie evidence by showing that his sale or offer to sell was made in good faith to meet competition.

5. This paragraph shall also apply to any retailer who owns, operates or otherwise contracts for, directly or indirectly, facilities for manufacturing or processing any selected dairy product, and to the cost of a selected dairy product, as defined in this paragraph, shall be added both the wholesale and retail markup as provided in s. 100.30.

(i) 1. Give, offer to give, furnish, finance or otherwise make available, directly or indirectly, to any retailer or to any other person doing business with a retailer anything of value which is connected with, or which aids or assists in, or which may induce or encourage, the purchase, handling, sale, offering for sale or promotion of the sale of the wholesaler's selected dairy products by a retailer or any other person doing business with a retailer, unless given, offered, furnished, financed or otherwise made available on proportionately equal terms to all other retailers or persons doing business with retailers. The term "anything of value" as used herein includes, but is not limited to:

a. Any payment, discount, rebate, allowance, gift, goods, merchandise, privilege, contest, service or facility, whether or not given, offered, furnished, financed or otherwise made available in combination with or contingent on a purchase, or as compensation for or in consideration of the furnishing of any service or facility by or through a retailer.

b. Any transaction involving the use of a coupon, token, slip, punch card, trading stamp or other device similar in nature, including any part of a container or package intended to be used as such device, and which transaction involves any participation by or purchase from a retailer.

2. Nothing in subd. 1 prevents:

a. The good faith meeting of competition by offering or making available services and facilities offered or made available by a competitor.

b. Transactions with retailers otherwise permitted under pars. (d), (e), (f) and (g) and sub. (3).

3. Nothing in this paragraph authorizes the sale of selected dairy products, or the furnishing of services or facilities in violation of pars. (a) to (h).

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

(4) UNLAWFUL ACTS OF RETAILERS. It is unlawful for any retailer or any officer, director, employe or agent thereof to solicit or receive, directly or indirectly, from or through a wholesaler, broker or another retailer, anything which is prohibited by sub. (2), where he knows or, in the exercise of reasonable prudence, should know that the same is prohibited.

(5) UNLAWFUL ACTS OF BROKERS. (a) It is unlawful for a broker, or any officer or agent thereof, to participate, directly or indirectly, in any unfair trade practice described in sub. (2).

(b) It is unlawful for a wholesaler to engage or offer to engage in any unfair trade practice described in sub. (2), directly or indirectly, through a broker.

(6) FEE ON DAIRY PRODUCTS. (a) For the purpose of administering and enforcing this section the first person who processes or manufactures any selected dairy product for sale at wholesale or sale at retail (except sales at retail by counter freezer operators licensed as retail food establishments under s. 97.30 or 97.41) within this state, or the wholesaler or retailer who first receives any such product already processed from outside the state for sale within the state, shall pay to the department on or before the 25th day of each month following the month in which such wholesaler receives, processes or sells such selected dairy products, a fee as determined by the department, but not to exceed 5 mills per hundredweight of 3.5% butterfat raw milk equivalent on all selected dairy products defined in sub. (1) (c) 1 sold within the state in final consumer package or container to retailers or consumers or sold in such packages or containers to other wholesalers of selected dairy products for further sale within the state to retailers or consumers, and not to exceed 3.5 mills per gallon on all ice cream mix and ice milk mix made for freezing into ice cream and ice milk and ultimately sold within the state, whether in the form of mix or finished ice cream and ice milk. Products upon which fees have been paid shall be exempt from further fees in successive transactions. Any person claiming that products sold by the person are not subject to assessment under this subsection by reason of the fact that they were not sold or resold within the state shall have the burden of so proving, and shall be obligated to pay assessment on such products unless and until the person produces records satisfying the department that such products are not subject to assessment.

(b) A failure on the part of any person to pay on demand any assessments due hereunder shall be punishable as a violation of this section. The department may, by appropriate proceedings in any court of competent jurisdiction, recover the amount of any assessments due hereunder, together with interest at the rate of 2% per month, for each month such payments are delinquent.

(7) APPLICABILITY. The provisions of ss. 133.04 and 133.05 shall not apply to any conduct either permitted, required or prohibited under this section.

(8) ENFORCEMENT. It is the duty of the department to investigate, ascertain and determine whether this section or lawful orders issued hereunder are being violated and for such purposes the department shall have all the powers conferred by ch. 93.

(8m) JURISDICTION. This section shall apply to transactions, acts or omissions which take place in whole or in part outside this state. In any action or administrative proceeding the department has jurisdiction of the person served under s. 801.11 when any act or omission outside this state by the defendant or respondent results in local injury or may have the effect of injuring competition or a competitor in this state or unfairly diverts trade or business from a competitor, if at the time:

(a) Solicitation or service activities were carried on within this state by or on behalf of the defendant or respondent; or

(b) Selected dairy products processed, serviced, distributed or manufactured by the defendant or respondent were received for resale in this state at retail or wholesale without regard to where sale or delivery takes place.

(9) PENALTIES. (a) Any person violating this section shall forfeit not less than $100 nor more than $5,000 for each violation.

(b) The department, after public hearing held under s. 93.18, may issue a special order against any person requiring such person to cease and desist from acts, practices or omissions determined by the department to violate this section. Such orders shall be subject to judicial review under ch. 227. Any violation of a special order issued hereunder shall be punishable as a contempt under ch. 785 in the manner provided for disobedience of a lawful order of a court, upon the filing of an affidavit by the department of the commission of such violation in any court of record in the county where the violation occurred.

(c) The department, in addition to or in lieu of any other remedies herein provided, may apply to a circuit court for a temporary or permanent injunction to prevent, restrain or enjoin any person from violating this section or any special order of the department issued hereunder, without being compelled to allege or prove that an adequate remedy at law does not exist.

(d) The provisions of s. 93.06 (7) shall be applicable to violations of this section insofar as permits, certificates, registrations or licenses issued by the department for the manufacture, distribution, and sale of selected dairy products are concerned, provided that any suspension or revocation thereof pursuant to s. 93.06 (7) can be ordered only for failure to comply with any special order issued pursuant to par. (b) or with any permanent injunction issued pursuant to par. (c), should such failure continue after such order or such injunction becomes final on the completion of any review proceedings. In such proceedings the department shall follow the hearing procedure set forth in s. 93.18 for special orders. Judicial review shall be as provided in ch. 227.

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

(f) Any retailer or wholesaler may file a written verified complaint with the department alleging facts which, if proved, would support a charge that a person named therein is engaging in unfair trade practices as defined in this section. Whenever such a complaint is filed it is the duty of the department to proceed to hearing and adjudication as provided in par. (b).

(g) A final judgment, decree or order hereafter rendered in any civil or criminal action or special proceeding, or in any special order proceeding under par. (b), brought by or on behalf of the state under this section to the effect that a defendant or respondent has violated said law shall be prima facie evidence against such defendant or respondent in any action or special proceeding brought by any other party against such defendant or respondent under said law, as to all matters respecting which said judgment, decree or order would be an estoppel as between the parties thereto but this subsection shall not apply to judgments, decrees or special orders entered by consent.

(10) REMOVAL OR SALE OF EQUIPMENT. Any equipment furnished by wholesalers to retailers prior to August 17, 1963, shall be removed from the retailers' premises or sold pursuant to sub. (2) (d) or (e) by January 1, 1964. The minimum selling price of such equipment, if fully depreciated in accordance with sub. (2) (e), shall not be less than $10 per unit.

(11) RULE MAKING. The department may promulgate rules which are necessary for the efficient administration of this section. The department may also promulgate rules which set standards for the nondiscriminatory sale and furnishing of services or facilities in connection with the sale or distribution of selected dairy products and for the good faith meeting of competition.

History: 1971 c. 238; Sup. Ct. Order, 67 W (2d) 774; 1975 c. 39, 199, 401; 1979 c. 32 s. 92 (13); 1979 c. 209 s. 4; 1983 a. 62; 1983 a. 189 ss. 133 to 135, 329 (20), (31); 1987 a. 399.

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

100.205 Motor vehicle rustproofing warranties. (1) In this section:

(a) "Advertisement" means any oral, written, printed or graphic statement, claim or representation concerning rustproofing which is made in connection with the solicitation or sale of rustproofing.

(b) "Retail customer" means the person for whom rustproofing is ultimately intended.

(c) "Rustproofing" means the application of materials and processes intended or represented to prevent or control rusting or corrosion of a motor vehicle as defined in s. 340.01 (35).

(d) "Seller" means any person who sells rustproofing to a retail customer, including a person who sells a motor vehicle which has rustproofing listed as an element of the total selling price, whether or not ordered by the retail customer.

(e) "Warranted party" means the retail customer or another person to whom warranty rights have been assigned or transferred under the warranty.

(f) "Warrantor" means any person who gives or offers to give a warranty.

(g) "Warranty" means any written representation, made to a retail customer, which asserts that the rustproofing will meet a specified level of performance or duration or establishes conditions under which the warrantor will compensate the retail customer or rectify any failure to meet the specified level of performance or duration.

(2) All rustproofing warranties shall be in writing and contain the following provisions:

(a) The duration of the warranty.

(b) Clear identification of all warrantors and their addresses, the name and address of the person to whom warranty claims are to be made and the place where inspection of the warranted motor vehicle is to be made.

(c) Each condition limiting the warranted party's rights under the warranty.

(d) The name and address of the insurer of the warranty in the event of the warrantor's insolvency or bankruptcy.

(3) No rustproofing warranty may contain:

(a) A limit on the number of claims which can be made under the warranty.

(b) A warrantor's option of returning the purchase price in lieu of other remedies under the warranty.

(c) A limit on the liability of the warrantor for any reason relating to misapplication of the rustproofing product.

(d) An invalidation of the warranty on failure of the retail customer or the seller to register the warranty with the warrantor, if the retail customer or the seller has documentary proof that the rustproofing was paid for.

(e) An exclusion of warranty coverage for manufacturer defects unless the part of the motor vehicle excluded and the basis for exclusion is specified in the warranty.

(f) A limit on the transferability of a warranty during the specified term of the warranty.

(4) Nothing in this section prevents a warrantor from designating a representative to perform duties under the warranty or relieves a warrantor of his or her responsibilities

to a warranted party. A representative designated to perform duties under a warranty is not a warrantor unless he or she gives or offers to give a warranty.

(5) (a) No person may make any warranty advertisement which is untrue, deceptive or misleading as provided in s. 100.18.

(b) The specified term of a warranty shall be limited to that period preceding an inspection by the warrantor which is required to maintain the validity or original coverage of the warranty.

(c) Use of "lifetime" or similar terms may not be used in an advertisement or warranty unless the term refers to the motor vehicle receiving the rustproofing and is not limited by the transfer of ownership of the motor vehicle.

(d) No warrantor may fail to have a motor vehicle inspected within 30 days after receiving a claim under the warranty, if the warranted party makes the motor vehicle available for inspection to the warrantor or the warrantor's designee within that period. The inspection shall be within 30 miles of the place of business of the seller of the rustproofing, unless waived by the warranted party.

(e) No warrantor may fail to notify a warranted party in writing within 30 business days after inspecting the motor vehicle whether the warranty claim will be allowed or denied. If a claim is denied in whole or in part, the reason for that denial shall be stated in writing. Notification is effective on mailing the warrantor's determination to the last address supplied to the warrantor by the warranted party or on personal delivery to the warranted party.

(f) No warrantor may fail to comply with the terms of its warranty.

(g) No warrantor or seller may impose a charge or require the purchase of any additional service by the warranted party in order to have an inspection completed if the continued validity of the warranty requires the inspection.

(6) Every warrantor shall purchase a policy of insurance covering the financial integrity of its warranties. The policy of insurance shall be on a form approved by the commissioner of insurance under s. 631.20 and shall have the following minimum provisions:

(a) The insurer shall be licensed to do business in this state or shall be an unauthorized foreign insurer, as defined in s. 600.03 (27), accepted by the office of the commissioner of insurance for surplus lines insurance in this state.

(b) Each warranty issued in this state shall be covered by a policy of insurance.

(c) In case of insolvency or bankruptcy of the warrantor, a warranted party may file a claim directly with the insurer.

(d) In case of insolvency or bankruptcy of the warrantor, the insurer, upon receipt of a claim, shall cause a warranted party's vehicle to be inspected at the insurer's expense.

(e) The termination provision shall state that the insurance provided shall continue with respect to all warranties issued before the date of termination.

(7) The department of justice, or any district attorney on informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may, before entry of final judgment and after satisfactory proof, make orders or judgments necessary to restore to any person any pecuniary loss suffered because of a violation of this section. The department of justice may conduct hearings, administer oaths, issue subpoenas and take testimony to aid in its investigation of violations of this section.

(8) The department of justice or any district attorney may commence an action in the name of the state to recover a forfeiture to the state of not more than $10,000 for each violation of this section.

(9) (a) In addition to other remedies, any person injured by a violation of this section may bring a civil action for damages under s. 100.20 (5).

(b) Any person injured by a breach of a contract for rustproofing may bring an action against the warrantor or its insurer or both to recover damages, costs and disbursements, including reasonable attorney fees, and other relief determined by the court.

History: 1983 a. 428; 1985 a. 29.

Remedies for motor vehicle purchasers. Nicks, WBB March, 1985.

100.21 Substantiation of energy savings or safety claims.

(1) DEFINITIONS. In this section:

(a) "Dwelling unit" means a dwelling, as defined under s. 101.61, a manufactured building, as defined under s. 101.71 or a manufactured home or mobile home, as defined under s. 101.91.

(b) "Energy savings or safety claim" means an advertisement or representation that:

1. A product is safe or meets any standard or measure of safety; or

2. A product or a consumer product, as defined in s. 100.42 (1) (c):

a. Increases fuel or electrical efficiency;

b. Reduces heat loss;

c. Reduces relative consumption of or expenditures for fuel or electricity; or

d. Meets any standard or measure of performance under subd. 2. a to c.

(c) "Insulation" means any material primarily designed to resist heat flow in a dwelling unit. "Insulation" does not include pipe or duct insulation except for duct wrap.

(d) "Motor vehicle" has the meaning provided under s. 340.01 (35).

(e) "Person" means any manufacturer, distributor, installer or seller of any product.

(f) "Product" means:

1. Insulation.

2. Any system or device used in or around a dwelling unit for the heating of space or water or the generation of electricity, including any attachment or additive to the system or device. "Product" does not include any system, device, attachment or additive included in the original construction of a dwelling unit or in the sale or transfer of a dwelling unit.

3. Any fuel additive, including any motor vehicle fuel additive.

4. Any article used in a motor vehicle to promote fuel efficiency. "Product" does not include any original part or equipment in a motor vehicle as sold by the manufacturer or a licensed dealer or any substantially identical replacement part or equipment for the motor vehicle.

(g) "'R' value" means the measure of resistance to heat flow through a material, computed as the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree Fahrenheit at 75 degrees Fahrenheit mean temperature.

(2) REASONABLE BASIS FOR CLAIMS. (a) No person may make an energy savings or safety claim without a reasonable and currently accepted scientific basis for the claim when the claim is made. Making an energy savings or safety claim without a reasonable and currently accepted scientific basis is an unfair method of competition and trade practice prohibited under s. 100.20.

(b) An energy savings or safety claim made by a person other than a manufacturer does not violate par. (a) if the person relies in good faith on written materials distributed by

the manufacturer and if the claim is limited to the representations in the materials. Any energy savings or safety claim made by a person other than a manufacturer, after the person is notified that no reasonable and currently accepted scientific basis for the claim has been submitted, is a violation of par. (a).

(3) SUBSTANTIATING THE CLAIM. (a) Any person making an energy savings or safety claim shall, upon written request by the department, submit information upon which the person relied to substantiate the claim. The department of justice may request the department to issue a written request under this paragraph for information to substantiate an energy savings or safety claim. Failure to submit information requested under this subsection is a violation of sub. (2) (a).

(b) The department shall make available to any person any information submitted under this subsection unless protected from disclosure by state or federal law.

(4) DEPARTMENT POWERS. (a) The department may, after public hearing, issue general or special orders under s. 100.20:

1. Prohibiting any energy savings or safety claim that violates sub. (2);

2. Regulating the manner in which the energy savings or safety claim is made, including requiring accompanying disclosures to prevent unfairness or deception;

3. Prescribing any test method or other reasonable criteria by which the adequacy of the basis for any energy savings or safety claim is determined; or

4. Requiring corrective advertising to correct a violation of sub. (2).

(c) The department shall cooperate with all other state agencies in the administration of this section, as provided in s. 20.901.

(6) RULE MAKING. The department shall adopt rules that set standards which determine if a reasonable and currently accepted scientific basis exists for an energy savings or safety claim under sub. (2). Adoption of rules is not a prerequisite to enforcement of this section. To the extent feasible, the department shall incorporate nationally recognized standards into the rules.

History: 1979 c. 221; 1983 a. 27 s. 2200 (25).

100.215 Unfair trade practices in the insulation industry. The department shall establish rules regulating home insulation trade practices. The rules shall include, without limitation because of enumeration:

(1) Standards for the type and amount of insulation to be installed.

(2) Standards for measuring compliance with the contract and warranty provisions protecting a consumer.

(3) Standards for safe installation of insulation and provision for the correction of unsafe installations.

History: History: 1981 c. 20 supp., 70 Atty. Gen. 189.

100.22 Discrimination in purchase of milk prohibited. (1) PROHIBITION. No person engaged in the business of buying milk from producers for the purpose of manufacture, processing or resale may discriminate between producers in the price paid for milk or in services furnished in connection with the purchase of milk if the discrimination injures producers or injures, destroys or prevents competition between competing purchasers of milk.

(2) CONTRACTS VOID. A contract in violation of this section or a special order issued under this section is void.

(3) JUSTIFICATION DEFENSE. It is a defense to a prosecution for violation of this section or a special order issued under this section to prove that the discrimination in price or services was done in good faith to meet competition or was commensurate with an actual difference in the quality or quantity of or transportation charges or marketing expenses for the milk purchased.

(4) ENFORCEMENT. (a) The department may, after hearing, issue a special order enjoining violations of this section.

(b) The department may, without alleging or proving that no other adequate remedy at law exists, bring an action to enjoin violations of this section or a special order issued under this section in the circuit court for the county where the alleged violation occurred.

(5) PENALTIES. (a) A person who violates this section shall forfeit not less than $100 nor more than $2,500.

(b) A person who violates a special order issued under this section shall forfeit not less than $200 nor more than $5,000.

History: 1981 c. 124.

100.23 Contract to market agricultural products; interference prohibited. (1) DEFINITION. In this section:

(a) "Agricultural product" includes, but is not limited to, any agricultural commodity, as defined in s. 94.67 (2).

(b) "Association" means an association of persons engaged in the production of agricultural products under 7 USC 291.

(c) "Contract" means an agreement between a producer and an association, which agreement provides that all or a specified part of the person's production of one or more agricultural products by the person will be exclusively sold or marketed through or by the association or any facility furnished by it.

(d) "Producer" means a person who produces agricultural products.

(2) TERMS. No contract may have a term in excess of 5 years. A contract may be made self-renewing for periods not exceeding 5 years each, except that either party may terminate at the end of any term by giving written notice to the other party at least 30 days before the end of the term.

(3) DAMAGES. A contract may require liquidated damages to be paid by the producer in the event of a breach of contract with the association. Liquidated damages may be either a percentage of the value of the products which are the subject of the breach, or a specified sum, but may not be more than 30% of the value of those products. If a specified sum is provided as liquidated damages, but such sum exceeds 30% of the value of the products which are the subject of the breach, the contract shall be construed to provide liquidated damages equal to 30% of the value of the products which are the subject of the breach.

(4) BREACH OF CONTRACT. (a) No person may breach, repudiate, interfere with, induce or attempt to induce or aid the breach of a contract.

(b) If any person who has notice of the contract violates or threatens to violate par. (a), the association which is a party to the contract is entitled to all of the following remedies against that person, except as provided under sub. (5):

1. An injunction, including a temporary restraining order, to prevent or terminate any conduct which is prohibited under par. (a).

2. A decree of specific performance.

3. Damages.

(c) If an association files a verified complaint showing a violation or threatened violation of par. (a), and a sufficient bond, the association is entitled to a temporary restraining order against any person violating par. (a).

(d) The county in which an association has its registered agent or its principal office in this state is a proper venue for an action under this subsection by or against that association.

(5) QUALIFICATIONS. No association is entitled to the remedies under sub. (4) (b) unless the association:

(a) Is governed by the following procedures:

1. No person other than an association member may vote at any member meeting of the association.

2. At any member meeting of the association, each association member entitled to vote shall have one vote, except that the articles or bylaws may permit either or both:

a. A member association to cast additional votes not exceeding a number equal to its membership.

b. An association whose member-patrons include other associations to base voting in whole or in part on a patronage basis.

3. Voting by proxy shall not be allowed in any association.

4. The bylaws of the association may provide for representation of members at any member meeting by delegates apportioned territorially or by other districts or units.

5. An annual member meeting shall be held by the association at the time and place fixed in or pursuant to the bylaws of the association. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the association's fiscal year at the call of the president or board.

6. Written notice, stating the place, day and hour of the association's annual member meeting shall be given not less than 7 days nor more than 60 days before the annual meeting at the direction of the person calling the meeting. Notice need be given only to members entitled to vote. Notice shall be given to members having limited voting rights if they have or may have the right to vote at the meeting.

7. At any annual member meeting at which members are to be represented by delegates, notice to such members may be given by notifying such delegates and their alternates. Notice may consist of a notice to all members or may be in the form of an announcement at the meeting at which such delegates or alternates were elected.

8. The association shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of meetings of its members, board and executive committee. The association shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. At any reasonable time, any association member or stockholder, or his or her agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the association at least one week in advance, may examine for a proper purpose any books or records pertinent to the purpose specified in the notice. The board may deny a request to examine books and records if the board determines that the purpose is not directly related to the business or affairs of the association and is contrary to the best interests of the association.

(b) Has a current annual report on file with the secretary of state which satisfies all of the following requirements:

1. Is signed by a principal officer or the general manager of the association.

2. Is on a form furnished to the association by the secretary of state using information given as of the date of the execution of the report.

3. Sets forth:

a. The association's name and complete address.

b. The names and addresses of the association's directors and principal officers.

c. A statement, by class and par value, of the amount of stock which the association has authority to issue, and the amount of stock issued.

d. A statement as to the general type of business in which the association was engaged during the 12 months preceding the date of the report.

4. Is filed with the secretary of state in each year following the year in which the association first filed the annual report required under this paragraph, during the calendar year quarter in which the anniversary of the filing occurs.

(6) SECRETARY OF STATE DUTIES. The secretary of state shall:

(a) Provide forms for the report required under sub. (5) (b) to an association upon the request of that association.

(b) Send by 1st class mail a form for the report required under sub. (5) (b) to each association which filed that report in the previous year, no later than 60 days prior to the end of the calendar year quarter in which that association first filed its report.

(c) Upon receipt of a report required under sub. (5) (b), determine if the report satisfies the requirements of sub. (5) (b). If the secretary of state determines that the report does not satisfy all of those requirements, the secretary of state shall return the report to the association which filed it, along with a notice of any correction required. If the association files a corrected report within 30 days after the association receives that notice, the report shall be deemed timely filed for purposes of sub. (5) (b) 4.

History: 1987 a. 89.

100.235 Unfair trade practices in purchase of vegetable crops. (1) No processor of vegetable crops, who grows in this state more than 10% of the acreage of a species of vegetable, processed at a single processing plant, may pay to growers who sell vegetable crops under contract to the processor for processing at such plant, an average amount per ton less than the average cost per ton incurred by the processor in growing such vegetable species in this state during the past 3 consecutive years prior to the current contract year. If the processor has grown a vegetable species less than 3 consecutive years, the processor shall average the costs of the past 2 consecutive years, if applicable, or use the cost of the preceding year when it is the only one available.

(2) On the complaint of any grower filed with the department within 180 days after completion of the processing of a vegetable at a plant, alleging that the processor to whom the grower sold a vegetable crop under contract may have engaged in such unfair trade practice, the department shall make investigation thereof. In making its investigation the department may require the processor to submit reports of acreages, tonnages, costs of growing, and amounts paid to contract growers. For vegetables contracted on a tonnage basis and for open-market tonnage purchased, the processor shall report the estimated acreage based on this state's average yield per acre for the preceding year. All such reports shall be confidential and shall not be open to public inspection. The department may require such reports to be certified by a public accountant or the department may inspect the processor's records to verify such reports. Upon completion of its investigation, the department shall issue its determination as to whether the processor has engaged in an unfair trade practice. If the department finds that the processor has engaged in an unfair trade practice, it shall specify the amount per ton by which the processor's costs of growing the vegetable species exceeded the amount paid to contract growers. Either the complainant or the processor may demand a public hearing of the matter, before the department, within 30 days of receipt of the determination, and shall be entitled to judicial review of the department's order under ch. 227.

(3) The department, after public hearing, may by rule adopt a uniform system of cost accounting to be used by processors in determining and reporting growing costs. Such accounting system shall take into account cost differences

attributable to factors affecting prices for the vegetable species under the processor's contract with growers. If the contract provides for no seed charge or for cancellation of seed charges and charges for services furnished by the processor, if any, with respect to growers' nonharvested acreage, then the processor's cost of growing such species of vegetable shall not include the cost of the processor's nonharvested acreage. A violation of this section or any rule issued under this section is an unfair trade practice under s. 100.20.

History: 1975 c. 67, 199.

100.24 Revocation of corporate authority. Any corporation, foreign or domestic, which violates any order issued under s. 100.20 may be enjoined from doing business in this state and its certificate of authority or incorporation may be canceled or revoked. The attorney general may bring an action for this purpose in the name of the state. In any such action judgment for injunction, cancellation or revocation may be rendered by the court, upon such terms as it deems just and in the public interest, but only upon proof of a substantial and wilful violation.

History: 1981 c. 124.

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

100.26 Penalties. (1) Any person who violates any provision of this chapter, except s. 100.18 or 100.20, for which no specific penalty is prescribed shall be fined not to exceed $200, or imprisoned in the county jail not more than 6 months or both.

(2) Any person violating s. 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 s. 100.15 or 100.19, or who intentionally refuses, neglects or fails to obey any regulation or order made or issued under s. 100.19 or 100.20, shall, for each offense, be fined not less than $25 nor more than $5,000, or imprisoned in the county jail for not more than one year or both.

(4) Any person who violates s. 100.18 (1) to (8) or (10) or 100.182 is subject to a civil forfeiture of not less than $50 nor more than $200 for each violation.

(5) Any person violating s. 100.03 or 100.06 or any order or regulation of the department thereunder, or s. 100.18 (9), shall be fined not less than $100 nor more than $1,000, or imprisoned for not more than one year or both. Each day of violation constitutes a separate offense.

(6) The department of justice or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than $100 nor more than $10,000 for each violation of an injunction issued under s. 100.18, 100.182 or 100.20 (6) or an order issued under s. 100.20.

(7) Any person violating s. 100.182 shall be fined not less than $500 nor more than $5,000 or imprisoned not more than one year or both for each offense. Each unlawful advertisement published, printed or mailed on separate days or in separate publications, hand bills or direct mailings is a separate violation of this section.

History: 1975 c. 39; 1979 c. 327; 1981 c. 90; 1981 c. 124 s. 9; 1983 a. 500; 1985 a. 288.

It was constitutionally proper for the legislature in (3) to authorize the imposition of criminal penalties for the violation of department rules adopted pursuant to 100.20. State v. Lambert, 68 W (2d) 523, 229 NW (2d) 622.

"Intentionally" in (3) modifies only "refuses", not "neglects or fails". Multiplicitous charge must be avoided. State v. Stepniewski, 105 W (2d) 261, 314 NW (2d) 98 (1982).

Conviction under (3) without proof of criminal intent did not violate due process clause. Stepniewski v. Gagnon, 732 F (2d) 567 (1984).

100.28 Sale of cleaning agents and water conditioners containing phosphorus restricted. (1) DEFINITIONS. In this section:

(a) "Chemical water conditioner" means a water softening chemical or other substance containing phosphorus intended to treat water for machine laundry use.

(b) "Cleaning agent" means any laundry detergent, laundry additive, dishwashing compound, cleanser, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound or other substance intended to be used for cleaning purposes.

(2) RESTRICTIONS. Except as provided under sub. (3), no person may sell at retail:

(a) *General restriction; 0.5%.* Any cleaning agent which contains more than 0.5% phosphorus by weight, other than a cleaning agent for machine dishwashing or cleansing of medical and surgical equipment.

(b) *Restriction for machine dishwashing or cleansing of medical equipment; 8.7%.* Any cleaning agent for machine dishwashing or cleansing of medical and surgical equipment which contains more than 8.7% phosphorus by weight.

(c) *Restriction for water conditioner; 20%.* Any chemical water conditioner which contains more than 20% phosphorus by weight.

(3) EXEMPTION; INDUSTRIAL PROCESSES AND DAIRY EQUIPMENT. Cleaning agents used for industrial processes and cleaning or for cleansing dairy equipment are not subject to this section.

(4) PENALTY. A person who violates this section shall forfeit not more than $100.

History: 1983 a. 73.

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) 1. With respect to the sale of cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, "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, plus any excise taxes imposed on such merchandise or the sale thereof other than excise taxes collected by the retailer, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, to which shall be added 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% of the cost to the retailer as herein set forth.

2. With respect to the sale of merchandise other than cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, "cost to retailer" means the invoice cost of the merchandise to the retailer, or replacement cost of the merchandise to the retailer, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on such merchandise or the sale thereof other than excise taxes collected by the retailer, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth.

(b) "Cost to retailer" and "cost to wholesaler" as defined in pars. (a) and (c) 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. Prices at which purchases of merchandise are made by retailers or wholesalers cannot be justified by prevailing market conditions in this state when they are below the lowest prices at which the manufacturer or producer of such merchandise sells to other retailers or wholesalers in this state.

(c) 1. a. With respect to the sale of cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, "cost to wholesaler" means, except as provided in subd. 1. b, 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, plus any excise taxes imposed on the sale thereof prior to the sale at retail, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, to which shall be added, except for sales at wholesale between wholesalers, 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 3% of the cost to the wholesaler as herein set forth.

b. For every person holding a permit as a distributor as defined in s. 139.30 (3) or as a multiple retailer as defined in s. 139.30 (8), with respect to that portion of the person's business which involves the purchase and sale of cigarettes "cost to wholesaler" means the cost charged by the cigarette manufacturer, disregarding any manufacturer's discount or any discount under s. 139.32 (5), plus the amount of tax imposed under s. 139.31. Except for a sale at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business shall be added to the cost to wholesaler. In the absence of proof of a lesser cost, this markup shall be 3% of the cost to wholesaler as set forth in this subparagraph.

2. With respect to the sale of merchandise other than cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, "cost to wholesaler" means the invoice cost of the merchandise to the wholesaler, or the replacement cost of the merchandise to the wholesaler, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on the sale thereof prior to the sale at retail, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth.

(d) "Replacement cost" means the cost computed as specified in par. (a) or (c) at which the merchandise sold could have been bought by the retailer or wholesaler at any time if bought in the same quantity as the retailer's or wholesaler's last purchase of the said merchandise.

(e) "Retailer" includes every person engaged in the business of making sales at retail within this state, but, in the case of a person engaged in the business of selling both at retail and at wholesale, such term shall be applied only to the retail portion of such business.

(f) "Retailer" and "wholesaler" shall both be applied to any merchant who buys merchandise for resale at retail from the manufacturer or producer thereof and to any wholesaler under par. (L) 2 and, as to that merchandise or that wholesaler, the terms "cost to retailer" and "cost to wholesaler" as defined in pars. (a) and (c) shall both be applied, including the markup requirements.

(g) "Sell", "sale" or "sold" includes any advertising or offer to sell or any transfer of merchandise where title is retained by the retailer or wholesaler as security for the payment of the purchase price. In determining the selling price of merchandise by wholesalers and retailers under this section, all fractions of a cent shall be carried to the next full cent.

(h) "Sell at retail", "sales at retail" and "retail sale" mean any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the retailer's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing.

(i) "Sell at wholesale", "sales at wholesale" and "wholesale sales" include any transfer for a valuable consideration made in ordinary course of trade or the usual conduct of the wholesaler's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing.

(k) In the case of retail sales of alcohol beverages, "trade discount" shall not include discounts in the form of cash or merchandise.

(L) "Wholesaler" includes every person holding a permit as a multiple retailer under s. 139.30 (8) and every person engaged in the business of making sales at wholesale within this state except as follows:

1. In the case of a person engaged in the business of selling both at wholesale and at retail, "wholesaler" applies only to the wholesale portion of that business.

2. In the case of a person holding a permit as a multiple retailer as defined in s. 139.30 (8), "wholesaler" applies to that portion of the person's business involving the purchase and sale of cigarettes and to any wholesale portion of that person's business.

(2m) DEFINITIONS; CONSTRUCTION. (a) When one or more items of merchandise are furnished or sold in combination with or on condition of the purchase of one or more other items, or are so advertised, all items shall be included in determining cost under sub. (2) (a) or (c); and if any of the items included therein are separately priced, such separate price shall be subject to the requirements of this section.

(b) Any retailer who also sells to other retailers shall use the invoice cost to other retailers in computing the selling price at retail under sub. (2) (a); and if that retailer is a manufacturer or producer, both sub. (2) (a) and (c) shall be used in computing the selling price at retail. In the absence of sales to other retailers, the manufacturer's or producer's invoice cost to wholesalers shall be used in computing the manufacturer's or producer's selling price at retail as provided in sub. (2) (a) and (c).

(3) ILLEGALITY OF LOSS LEADERS. Any sale of any item of merchandise either by a retailer or wholesaler, 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. Such sales are prohibited. Evidence of any 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 or effect to induce the purchase of other merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a competitor.

(4) PENALTIES. For any violation of sub. (3), the department or a district attorney may commence an action on behalf of the state to recover a forfeiture of not less than $50 nor more than $500 for the first violation and not less than $200 nor more than $2,500 for each subsequent violation.

(5) SPECIAL REMEDIES. In addition to the penalties under sub. (4), both of the following remedies apply for a violation of sub. (3):

(a) The department may issue a special order as provided in s. 93.18 against a retailer or wholesaler requiring the retailer or wholesaler to cease and desist from violating this section in the sale of cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine or motor vehicle fuel. The department or a district attorney may commence an action on behalf of the state against a retailer or wholesaler who violates a special order issued under this paragraph to recover a forfeiture of not less than $200 nor more than $5,000 for each violation.

(b) The department or a district attorney may bring an action to enjoin a violation of this section without being compelled to allege or prove that an adequate remedy at law does not exist. An action under this paragraph may be commenced and prosecuted by the department or a district attorney, in the name of the state, in a circuit court in the county where the offense occurred or in Dane county, notwithstanding s. 801.50.

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

1. Merchandise is sold in bona fide clearance sales.

2. Perishable merchandise must be sold promptly in order to forestall loss.

3. Merchandise is imperfect or damaged or is being discontinued.

4. Merchandise is sold upon the final liquidation of any business.

5. Merchandise is sold for charitable purposes or to relief agencies.

6. Merchandise is sold on contract to departments of the government or governmental institutions.

7. The price of merchandise is made in good faith to meet an existing price of a competitor and is based on evidence in the possession of the retailer or wholesaler in the form of an advertisement, proof of sale or receipted purchase.

8. Merchandise is sold by any officer acting under the order or direction of any court.

(b) No retailer or wholesaler may claim the exemptions under par. (a) 1 to 4 if he or she limits or otherwise restricts the quantity of such merchandise which can be purchased by any buyer or if he or she fails to conspicuously disclose the reason for such sale in all advertisements relating thereto and on a label or tag on such merchandise or on a placard where the merchandise is displayed for sale.

(c) No person may claim the exemption under par. (a) 7 if that person holds a permit under subch. II of ch. 139.

(d) No retailer or wholesaler may claim the exemption under par. (a) 7 if that wholesaler or retailer holds a permit under subch. II of ch. 139.

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175.

Sub. (2) (Lm) [(2) (k), 1983 Stats.] qualifies the term "trade discount" in determining "cost to retailer" under (2) (a) for sales of fermented malt beverages and intoxicating liquors. Sub. (2) (Lm) [(2) (k), 1983 Stats.] is not a catch-all prohibition against all trade discounts and does not apply to bona fide quantity discounts. 63 Atty. Gen. 516.

This section doesn't violate federal antitrust laws or constitutional due process. OAG 37-88.

Wisconsin's unfair sales act — Unfair to whom? Waxman, 66 MLR 293 (1983).

100.31 Unfair discrimination in drug pricing. (1) DEFINITIONS. In this section:

(a) "Drug" means any substance subject to section 503 (b) of the federal food, drug and cosmetic act.

(b) "Purchaser" means any person who engages primarily in selling drugs directly to consumers.

(c) "Seller" means any person who trades in drugs for resale to purchasers in this state.

(2) PRICE DISCRIMINATION PROHIBITED. Every seller shall offer drugs from the list of therapeutically equivalent drugs published by the federal food and drug administration to every purchaser in this state, with all rights and privileges offered or accorded by the seller to the most favored purchaser, including purchase prices for similar volume purchases, rebates, free merchandise, samples and similar trade concessions. Nothing in this subsection prohibits the giving of a discount for volume purchases.

(3) TREBLE DAMAGES. Any purchaser damaged by violation of this section may bring an action against the seller to recover treble damages sustained by reason of such violation.

History: 1975 c. 168, 421, 422; 1983 a. 188, 189.

State and local units of government are not "purchasers" under (1) (c) and sellers of drugs are not prohibited from offering or according to them pricing arrangements which are not made available to other purchasers. 65 Atty. Gen. 59.

100.33 Plastic container labeling. (1) DEFINITIONS. In this section:

(a) "Labeling" means attaching information to or embossing or printing information on a plastic container.

(b) "Material recovery" means the reuse, recycling, reclamation, composting or other recovery of useful materials from solid waste, with or without treatment.

(c) "Plastic container" means an individual, separate, rigid plastic bottle, can, jar or carton that is originally used to contain a product that is the subject of a retail sale, as defined under s. 100.30 (2) (h).

(d) "Reclamation" means the treatment of solid waste and its return to productive use in a form or for a use that is different from its original form or use.

(e) "Recycling" means the treatment of solid waste and its return to productive use in a form and for a use that is the same as or similar to the original form and use.

(f) "Reuse" means the return of solid waste to productive use without treatment and without changing its form or use.

(2) LABELING RULES REQUIRED. The department shall promulgate rules establishing labeling requirements for plastic containers. The requirements shall be designed to provide information needed by operators of material recovery programs to facilitate the recycling, reclamation or reuse of plastic containers. The rules promulgated under this subsection shall permit a manufacturer of plastic containers and a person who places products in plastic containers to choose an appropriate method of labeling plastic containers. The department shall make an effort to develop rules which are consistent, to the greatest extent practicable, with national

industry-wide plastic container coding systems. The rules shall exempt from the labeling requirements plastic containers that are readily identifiable because of their appearance and plastic containers for which there is no technological capability for recycling, reclamation or reuse or for which recycling, reclamation or reuse is not economically feasible. The rules may exempt from the labeling requirements plastic containers of a capacity of less than a specified minimum size. In determining the types of plastic containers to exempt from the labeling requirements, the department shall consult with the department of natural resources.

(3) PROHIBITION. On and after January 1, 1990, no person may sell or offer for sale in this state a plastic container or a product in a plastic container that does not comply with the labeling requirements under sub. (2).

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

History: 1987 a. 293, 403.

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

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

100.36 Frauds; substitute for butter; advertisement. No person shall use the word "butter" in any way in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter. No person shall use terms such as "cream", "creamery" or "dairy", or the name or representation of any breed of dairy cattle, or any combination of such words and representation, or any other words or symbols or combinations thereof commonly used in the sale of butter unless at least 40% of the substitute is butterfat. If the term "butter" is used in connection with the name of any such product, it shall be qualified so as to distinguish it from butter as defined in s. 97.01 (1).

History: 1983 a. 189 s. 329 (20).

100.37 Hazardous substances act. (1) In this section:

(a) "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action, but does not refer to action on inanimate surfaces.

(b) "Extremely flammable" applies to any substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue open cup tester, and "flammable" applies to any substance which has a flash point of above 20 degrees to 80 degrees Fahrenheit, as determined by the Tagliabue open cup tester; "combustible" applies to any substance which has a flash point above 80 degrees Fahrenheit to 150 degrees as determined by the Tagliabue open cup tester, except that flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods as prescribed under the federal hazardous substances act (15 USC 1261 et seq) or found by the department to be generally applicable to such materials or containers, and established by rules adopted by the department, which shall also define "flammable", "combustible" and "extremely flammable" in accordance with such methods.

(c) "Hazardous substance" means:

1. Any substance or mixture of substances, including a toy or other article intended for use by children, which is toxic, is corrosive, is an irritant, is a strong sensitizer, is flammable or combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

2. Any substances which the department by rule finds, pursuant to sub. (2) (a), meet the requirements of subd. 1.

3. Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this section in order to protect the public health.

4. Any toy or other article intended for use by children which the department by rule determines in accordance with this section to present an electrical, mechanical or thermal hazard.

5. Except as otherwise provided in this section, "hazardous substance" does not apply to pesticides subject to ss. 94.67 to 94.71, to foods, drugs and cosmetics, to bullets or other ammunition, or gun powder for reloading ammunition, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house, nor does it include any source material, special nuclear material or by-product material as defined in the atomic energy act of 1954, as amended, and regulations of the nuclear regulatory commission under such act.

(d) "Highly toxic" means any substance which falls within any of the following categories: Produces death within 14 days in half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered; or produces death within 14 days in half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor or 2 milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by persons when the substance is used in any reasonably foreseeable manner; or produces death within 14 days in half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less. If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above named dosages or concentrations, the human data shall take precedence.

(e) "Immediate container" does not include package liners.

(f) "Irritant" means any substance not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

(g) "Label" means a display of written, printed or graphic matter upon the immediate container of any substance or upon an article or tag attached thereto in the case of unpackaged articles; and a requirement made by or under authority of this section that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if there is any, unless it is easily legible through the outside container or wrapper, and on all accompanying literature where there are directions for use, written or otherwise.

(h) "Misbranded package" or "misbranded package of a hazardous substance" means a hazardous substance in a container intended or suitable for household use, and includes a toy or other article intended for use by children whether or not in package form, which, except as otherwise provided under sub. (2), fails to bear a label:

1. Which states conspicuously the name and place of business of the manufacturer, packer, distributor or seller; the common or usual name, or the chemical name if there is no common or usual name, of the hazardous substance or of each component which contributes substantially to its hazard, unless the department by rule permits or requires the use of a recognized generic name; the signal word "DANGER" on substances which are extremely flammable, corrosive or highly toxic; the signal word "WARNING" or "CAUTION" on all other hazardous substances; an affirmative statement of the principal hazards, such as "Flammable", "Combustible", "Vapor harmful", "Causes burns", "Absorbed through skin" or similar wording descriptive of the hazard; precautionary measures describing the action to be followed or avoided, except when modified by rule of the department pursuant to sub. (2); instruction, when necessary or appropriate, for first-aid treatment; the word "poison" for any hazardous substance which is highly toxic; instructions for handling and storage of packages which require special care in handling or storage; and the statement "Keep out of the reach of children", or its practical equivalent or, if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

2. On which any statements required under subd. 1 are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label.

(i) "Radioactive substance" means a substance which emits ionizing radiation.

(j) "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substances and which is designated as such by the department. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(k) "Toxic" applies to any substance, other than a radioactive substance, which has the capacity to produce personal injury or illness to persons through ingestion, inhalation, or absorption through any body surface.

(1m) (a) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(b) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness 1) from fracture, fragmentation or disassembly of the article, 2) from propulsion of the article, or any part or accessory thereof, 3) from points or other protrusions, surfaces, edges, openings or closures, 4) from moving parts, 5) from lack or insufficiency of controls to reduce or stop motion, 6) as a result of self-adhering characteristics of the article, 7) because the article, or any part or accessory thereof, may be aspirated or ingested, 8) because of instability or 9) because of any other aspect of the article's design or manufacture including the capability of producing sounds at a level of 138 decibels or higher.

(c) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

(2) (a) Whenever in the judgment of the department such action will promote the objectives of this section by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance, for the purposes of this section, any substance or mixture of substances which it finds meets the requirements of sub. (1) (c) 1.

(b) If the department finds that the requirements of this section are not adequate for the protection of the public health and safety in view of the special hazards presented by any particular hazardous substance, it may by rule establish such reasonable variations or additional requirements as it finds necessary for the protection of the public health and safety.

(c) If the department finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this section is impracticable or is not necessary for the adequate protection of the public health and safety, it may exempt such substances from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

(d) The department may by rule prohibit the sale of a hazardous substance if it finds that notwithstanding cautionary labeling that is or may be required the degree or nature of the hazard involved in the presence or use of such substance is such that the public health and safety can only be protected by keeping such substance out of the channels of commerce in this state.

(e) The department may summarily ban the sale or distribution of any hazardous substance or article if it finds that the hazard to public health or safety is so great that such hazard should not be permitted to continue. The department shall follow the procedure specified in s. 93.18 (3).

(f) The department may by rule prescribe the methods of sale of hazardous substances, including but not limited to glues, cements and hobby kit fuels, and may regulate the manner of display and restrict access by the general public to hazardous substances.

(g) The department may by rule prescribe package safety standards, including type of package material and safety closures for hazardous substances and pesticides, and may prohibit the sale of noncomplying or defective packages.

(h) The department may by rule limit or ban the use of any ingredient or combination of ingredients in any hazardous substance if it finds such action necessary to adequately protect the public health and safety.

(3) The following acts and the causing thereof are prohibited:

(a) The sale, or offering or exposing for sale of any misbranded package of a hazardous substance.

(b) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is held for sale, and results in the hazardous substance being in a misbranded package.

(c) The sale, or offering or exposing for sale of a hazardous substance in a reused food, drug or cosmetic container or in a container which, though not a reused container, is identifi-

able as a food, drug or cosmetic container by its labeling or by other identification. The reuse of a food, drug or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being in a misbranded package.

(d) The sale or offering for sale of any hazardous substance contrary to this section or to any rule or order of the department issued under this section.

(e) The sale or offering for sale, in violation of this section, of any article or substance which is a hazardous substance within the meaning of this section or the federal hazardous substances act (15 USC 1261 et seq).

(4) The department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating sub. (3); irrespective of whether or not there exists an adequate remedy at law.

(5) If the department has reasonable cause to believe that any substance is in violation of this section or poses an imminent hazard to public health or safety, it may deliver to the owner or custodian thereof an order prohibiting the sale or movement of such substance until an analysis or examination has been completed. Such holding order is not effective for more than 14 days from the time of delivery thereof. The substance described in any such holding order may not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the substance described in such order is not in violation of this section, it shall promptly notify the owner or custodian thereof and such notice shall terminate the holding order. If the analysis or examination shows that the substance is in violation of this section, the owner or custodian thereof shall be so notified in writing within the effective time of the holding order. Upon receipt of such notice the owner or custodian may dispose of the substance only as authorized by the department. The owner or custodian of the substance or article may within 10 days of receipt of such notice petition for a hearing as provided in s. 93.18.

(6) Nothing in this section shall affect the application of any law of this state specifically regulating any substance regulated by this section.

(7) Any manufacturer, distributor or retailer of a misbranded or banned package containing a hazardous substance shall, on demand of any person purchasing such products from it, if the package is misbranded or banned at the time of sale, repurchase such product and refund the full purchase price thereof to the purchaser making the demand for refund. If the purchaser is required to return the product to the manufacturer, distributor or retailer as a condition to the repurchase and refund, the purchaser shall be reimbursed for any reasonable and necessary charges incurred in its return.

(8) Whoever violates this section may be fined not more than $5,000 or imprisoned not more than one year in the county jail or both.

History: 1975 c. 94 s. 91 (10); 1975 c. 117; 1983 a. 189 ss. 140, 141, 329 (20).

Federal preemption—The consumer product safety act of 1976 and its effect on Wisconsin law. 1977 WLR 813.

100.38 Antifreeze. (1) DEFINITION. "Antifreeze" includes all substances intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines in order to prevent freezing of the cooling liquid, or to lower its freezing point.

(2) ADULTERATION. An antifreeze is adulterated if:

(a) It consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine; or

(b) It will make the operation of an engine dangerous to the user; or

(c) Its strength, quality or purity falls below the standards represented.

(3) MISBRANDING. An antifreeze shall be deemed to be misbranded if:

(a) Its labeling is false or misleading in any particular; or

(b) When in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor, together with an accurate statement of the quantity of the content in terms of weight and measure on the outside of the package; or

(c) It does not bear a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze, and which complies with the requirements of s. 100.37.

(5) INSPECTION. The department shall enforce this section by inspection, chemical analyses or any other appropriate method and the department may promulgate such rules as are necessary to effectively enforce this section.

(6) ENFORCEMENT. It is unlawful to sell any antifreeze which is adulterated or misbranded. In addition to the penalties provided under sub. (7), the department may bring an action to enjoin violations of this section.

(7) PENALTY. Any person violating this section may be fined not less than $50 or not more than $500 for each offense.

History: 1971 c. 40 s. 93; 1979 c. 89, 342.

100.39 Potato industry act. (1) DEFINITIONS. In this section:

(a) "Board" means the potato industry board.

(b) "Handle" means to grade, pack, process, sell, transport, purchase or in any other way to place potatoes or cause potatoes to be placed in the current of commerce, except the transportation or delivery of field-run potatoes by the producer of such potatoes to a handler for grading, storage or processing.

(c) "Handler" means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes, including a producer who handles potatoes of his own production.

(d) "Hundredweight" means each 100 pounds of bulk, package or combination of packages making 100 pounds of any shipment of potatoes placed in the current of commerce and may be based on invoice, bill of lading manifest or both.

(e) "Potatoes" means all varieties of Irish potatoes grown by producers in this state.

(f) "Producer" means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

(2) BOARD: MEMBERSHIP AND DISTRICTS. (a) *Qualifications.* A board member shall be a potato grower who is actually engaged and who has been engaged in growing and producing potatoes within this state for at least 2 consecutive years immediately prior to his appointment, and have derived a substantial portion of his income from such activity. A member shall be a resident of the district he represents.

(b) *Nominations.* The board shall hold a meeting or meetings of producers prior to May 31 of each year to nominate members to fill vacancies on the board resulting from expiration of terms. The board shall give producers at least 10 days written notice of such a meeting. The board shall make nominations to fill other kinds of vacancies. The board chairman shall submit at least 2 nominations for any vacancy to the secretary in written form.

(c) *Secretary; appointments.* The secretary may appoint board members from those persons whose nominations are

confirmed to him under par. (b). The appointees shall be from the districts defined in par. (d) as follows: one each from districts 1 and 2; 3 from district 3; and 4 from district 4.

(d) *Appointive districts.* The appointive districts for board membership shall consist of the following counties, respectively:

1. District 1: Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Fond du Lac, Grant, Green, Iowa, Jefferson, Kenosha, Kewaunee, Lafayette, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha and Winnebago.

2. District 2: Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, La Crosse, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, Vilas and Washburn.

3. District 3: Forest, Florence, Langlade, Marinette, Menominee, Oconto and Shawano.

4. District 4: Adams, Green Lake, Juneau, Marquette, Portage, Waupaca, Waushara and Wood.

(e) *Rules of order.* The board shall operate under the rules prescribed in the most recent edition of Robert's Rules of Order, except where otherwise provided by law.

(3) BOARD POWERS. The board may:

(a) Adopt, amend or repeal rules appropriate and necessary to effect the board's purposes, subject to ch. 227.

(b) Issue both general and special orders as provided under s. 93.18.

(c) Develop programs to stabilize and protect the potato industry and to safeguard the interest of potato consumers.

(d) Cooperate with any public or private organization or agency engaged in potato industry programs similar to those of the board.

(e) Accept gifts, donations, grants, bequests and devises to carry out the purposes for which made.

(f) Make, conduct or carry on studies and research with established institutions and agencies in connection with the raising, production and marketing of potatoes, including study and research dealing with industrial and other uses of potatoes and their by-products, and the extension and stabilization of markets for such commodities and disseminate information with respect to such study and research.

(g) Advertise or conduct publicity, sales promotions and contract for such services if necessary, to foster the growth of the potato industry.

(h) Aid, educate and inform the industry in production and marketing of potatoes.

(4) ADMINISTRATION AND ENFORCEMENT. (a) The department shall provide all necessary administrative and personnel support to the board in the execution of its functions under this section, collect, receive and disburse all moneys paid or payable to the board and enforce the board's rules and orders, all under the guidance and direction of the board.

(b) The board shall reimburse the department for all actual and necessary expenses incurred by the department which are wholly attributable to carrying out the department's responsibilities under this section. Reimbursement for any such expense shall be made within 2 years from the date the expense is incurred from the appropriation under s. 20.115 (3) (k).

(5) REPORTS; BOOKS AND RECORDS. (a) The secretary shall maintain accurate books, records and accounts of all board transactions, which books, records and accounts shall be subject to audit by the department auditor.

(b) Each handler shall maintain a separate record for each producer for whom he handled potatoes and for potatoes handled which he himself produced. He shall report to the board pursuant to board rule or request. Such reports may include, but shall not be limited to, the following:

1. Total quantity of potatoes handled for each producer and for himself, including those exempt under this section.

2. Total quantity of potatoes handled for each producer and for himself subject to this section.

3. Name and address of each person from whom he collected an assessment and the respective amounts collected.

4. Date collection was made from each person listed.

(c) Each handler shall maintain and make available for inspection by the board, the secretary, or their authorized agents such books and records as are necessary to effect the purposes of this section. Such records shall be maintained for at least 2 years beyond the marketing year of their applicability.

(d) All information obtained from such books, records or reports shall be confidential and only the secretary may authorize disclosure, and then only in a suit or administrative hearing brought at the direction or request of the secretary or involving any officer of this state as a party, and involving this section.

(e) Nothing in this section shall prohibit:

1. The issuance of general statements based upon reports of a number of handlers, which statements shall not identify the person furnishing the information.

2. The publication, by direction of the secretary, of the name of any person violating this section, together with a statement of the nature of the charge and details of the violation.

(f) The secretary shall mail a financial report for the prior fiscal year, together with a summary of the proposed budget for the current fiscal year, to each grower no later than August 1 each year.

(6) ASSESSMENTS. (a) An assessment rate of 2 cents per hundredweight on all potatoes grown in this state and entered into the current of commerce shall be levied and imposed upon all growers and shippers within this state. The board may adjust the assessment rate by rule, except that the adjustment may not exceed one-quarter cent per hundredweight in a fiscal year without the prior approval of potato producers participating in the assessment program under this section. The secretary shall by referendum determine if the potato producers approve the adjustment. An adjustment exceeding one-quarter cent per hundredweight in a fiscal year shall not become effective unless 51% or more of the voting potato producers approve the proposed adjustment. The assessment shall not be imposed upon potatoes retained by a grower to be used for seed purposes or for home consumption.

(b) An assessment rate of two cents per hundredweight may be levied and imposed upon such class or classes of handlers as the board may prescribe by rule. Not more than one such assessment may be collected on any potatoes.

(c) Each handler designated by the board to pay assessments shall pay assessments on all potatoes handled by him, including potatoes he produced. Assessments shall be paid at such time and in such manner as the board prescribes by rules adopted under this section. The designated handler may collect the assessments from the producer, or deduct such assessments from the proceeds paid to the producer on whose potatoes the assessments are made.

(d) The board may exempt potatoes used for nonfood purposes from this section and shall establish adequate safeguards against improper use of such exemptions.

(7) PRODUCER REFUNDS. Any producer who has paid an assessment under this section and who is not in favor of

supporting the program developed under this section shall have the right to demand and receive from the board a refund of such assessment upon submission of proof satisfactory to the board that he paid the assessment for which refund is sought. Any such demand shall be made personally by such producer on a form and within a time period prescribed by the board pursuant to regulations. Such time period shall give the producer at least 90 days from the date of collection to submit the refund request form to the board. The secretary, with the consent of the board, shall make such refund within 60 days after demand. No handler shall be eligible for a refund except on potatoes produced by him.

(8) NONPAYMENT OF ASSESSMENTS. If any handler, dealer or grower, fails, neglects or refuses to make collection, file a required report or pay any assessment within the time required by board order or rule, the department may, by appropriate proceedings, recover the amount of any assessments due under sub. (6), together with the costs, disbursements and attorney's fees in the action.

(9) TERMINATION; REFERENDUM. (a) Upon written petition of at least 10% of the potato producers participating in the assessment program under this section, the secretary shall hold a referendum to determine if potato producers favor termination of the board and its programs. If a majority of those voting in such referendum favor termination, the secretary shall prepare and submit to the legislature a request for legislation terminating the board and its programs. Pending legislative and executive approval or disapproval of such requested legislation, the secretary and board shall suspend all board operations.

(b) If the board and its programs are terminated by legislative action, the board shall, to the extent practicable, refund unencumbered assessments and other funds to those persons who paid such amounts to the board.

(10) SUSPENSION. The board, with the consent of the secretary, may suspend operations under this section when in the public interest because of national emergency or other reason deemed meritorious by the secretary. The secretary shall implement such suspension until directed otherwise by the board. This subsection shall not apply to sub. (2).

(11) APPLICATION OF FUNDS. All money collected or otherwise received pursuant to this section shall be used solely for administration of this section.

(12) INJUNCTIONS. The board, in addition to or in lieu of any other remedies provided under this section, may apply to a circuit court for a temporary or permanent injunction to prevent, restrain or enjoin any person from violating this section or any special order of the board issued under this section, without being compelled to allege or prove that an adequate remedy at law does not exist.

History: 1973 c. 299; 1981 c. 305.

100.41 Flammable fabrics. (1) DEFINITIONS. In this section:

(a) "Article of wearing apparel" means any costume or article of clothing worn or designed to be worn by individuals.

(b) "Clear and present hazard" means a hazard found by the department to constitute a demonstrable danger to human safety, life or property.

(c) "Fabric" means any material woven, knitted, felted or otherwise produced from or in combination with any natural or synthetic fiber, film or substitute therefor which is manufactured or designed for use and may reasonably be expected to be used in any product or to cover any product.

(d) "Federal act" means the federal flammable fabrics act, 15 USC 1191 et seq.

(e) "Furnishing" means any type of furnishing made in whole or in part of fabric or related material and which is manufactured or designed for use and may reasonably be expected to be used in or around homes, offices or other places of assembly or accommodation.

(f) "Product" means any article of wearing apparel, fabric or furnishing, including tents, awnings and knapsacks.

(g) "Related material" means paper, plastic, rubber, synthetic film or synthetic foam which is manufactured or designed for use or which may reasonably be expected to be used in or on any product.

(2) STANDARDS OF FLAMMABILITY. The department may by rule prescribe standards of flammability that have been promulgated pursuant to the federal act.

(3) PROHIBITED ACTS. No person may manufacture for sale, sell or offer for sale in this state any furnishing, product, fabric or related material in violation of this section or of any standards or rules adopted by the department under this section, or which fails to conform with applicable standards under the federal act.

(4) RULES. In addition to standards of flammability, the department may by rule prescribe labeling requirements that have been established by rules promulgated pursuant to the federal act, and may ban the sale of any product or material if it finds that its flammability is such as to constitute a clear and present hazard to personal safety or property.

(5) REMOVAL FROM SALE. The department may summarily ban the sale or distribution of any furnishing, fabric, product or related material if it finds that the hazard of flammability is so great that such hazard should not be permitted to continue prior to the time a hearing can be held. The department shall follow the procedure specified in s. 93.18 (3).

History: 1975 c. 117.

100.42 Product safety. (1) DEFINITIONS. In this section:

(a) "Aircraft" has the meaning given under s. 114.002 (3).

(b) "Boat" has the meaning given under s. 30.50 (2).

(c) "Consumer product" means any article, or component part thereof, produced or distributed for sale, or sold to consumers for personal use, consumption or enjoyment in or around the home, or for recreational or other purposes; but does not include bullets or other ammunition, or gun powder for reloading ammunition, motor vehicles or motor vehicle equipment, aircraft or aircraft equipment, boats or marine equipment, pesticides, hazardous substances, food and drugs, including animal feeds and drugs, or other products to the extent that they are regulated under other state or federal laws, or the state is specifically preempted from further regulation under federal law.

(d) "Drug" has the meaning given under s. 450.01 (10).

(e) "Federal act" means the federal consumer product safety act, 15 USC 2051 et seq.

(f) "Food" has the meaning given under s. 97.01 (6).

(g) "Labeling" means all labels and other written, printed or graphic matter on or attached to or accompanying any consumer product.

(h) "Motor vehicle" has the meaning given under s. 340.01 (35).

(i) "Pesticide" has the meaning given under s. 94.67 (25).

(2) SAFETY STANDARDS. The department may by rule adopt consumer product safety standards that have been promulgated pursuant to the federal act.

(3) REMOVAL FROM SALE; REPAIR OR REPLACEMENT. (a) The department may summarily ban the sale of any consumer product manufactured, sold or distributed in violation of this section or any rule adopted under this section, or which presents an unreasonable risk of injury or imminent hazard to

the public health, welfare and safety. Any such product may be summarily banned notwithstanding the existence of applicable safety standards or action taken toward the development or adoption of a standard. The department shall follow the procedure specified in s. 93.18 (3).

(b) If the department determines that a product presents a substantial hazard or risk of injury, the department may, after notice and opportunity for hearing under s. 93.18, order the manufacturer, distributor or retailer of such product:

1. To bring such product into compliance with requirements of applicable consumer product safety standards, to recall such product or to repair any defects in products which have been sold;

2. To replace such product with a like or equivalent product which complies with applicable consumer product safety standards or which does not contain the defect; or

3. To refund the purchase price of the product.

(4) PROHIBITED ACTS; ENFORCEMENT. No person may manufacture, sell or distribute for sale any consumer product which is not in compliance with applicable consumer product safety standards under the federal act or rules of the department, or which has been banned as a hazardous product or ordered from sale by the department. No person may fail or refuse to comply with an order under sub. (3) (b) or any other rule or order under this section. In addition to other penalties and enforcement procedures, the department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this section or rules adopted under this section.

(5) EXEMPTIONS. Except with respect to a consumer product which is the subject of a temporary or permanent injunction or an order of the department banning its manufacture, sale or distribution, sub. (4) does not apply to any person who holds a certificate issued in accordance with section 14 (a) of the federal act to the effect that such consumer product conforms to all applicable consumer product safety standards under such act, unless such person knows that such consumer product does not conform; or to any person who relies in good faith on the representation of the manufacturer or distributor of such product that the product is not subject to an applicable safety standard under the federal act.

History: 1975 c. 117; 1977 c. 106 s. 15; 1981 c. 20 s. 2202 (51) (a); 1983 a. 27 s. 2202 (38); 1983 a. 189 s. 329 (20); 1985 a. 146 s. 8.

Federal preemption—The consumer product safety act of 1976 and its effect on Wisconsin law. 1977 WLR 813.

100.43 Packaging standards; poison prevention. (1) DEFINITIONS. In this section:

(a) "Cosmetic" means articles other than soap, applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, or any component of any such article.

(b) "Drug" has the meaning given under s. 450.01 (10), and includes animal drugs.

(c) "Federal act" means the federal poison prevention packaging act, 15 USC 1471 et seq.

(d) "Food" has the meaning given under s. 97.01 (6), and includes animal feeds.

(e) "Hazardous substance" has the meaning given under s. 100.37 (1) (c).

(f) "Household substance" means any substance customarily produced, distributed for sale, or sold to individuals for consumption or use in or about the household, or which is customarily kept or stored by individuals in or about the household, and which is a hazardous substance, a pesticide, a food, drug or cosmetic, or a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(g) "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance.

(h) "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use or storage by individuals in or about the household and, for purposes of labeling conventional packaging under sub. (3), includes any outer container or wrapping used for retail display of any such substance to consumers. The term does not apply to shipping containers or wrappings used solely for the transportation of household substances in bulk or quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or to containers or wrappings used by retailers to ship or deliver household substances to consumers, unless they are the only containers or wrappings used to ship or deliver the household substance to the consumer.

(i) "Pesticide" has the meaning given under s. 94.67 (25).

(j) "Special packaging" means packaging designed or constructed to make it significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the household substance contained therein within a reasonable time, but which may be readily opened by normal adults.

(2) PACKAGING STANDARDS. The department may by rule adopt special packaging standards that have been promulgated pursuant to the federal act.

(3) CONVENTIONAL PACKAGING EXEMPTIONS. (a) The manufacturer or packer of a household substance subject to special packaging standards may, as necessary to make such substance available to elderly or handicapped persons unable to use such substances when packaged in compliance with such standards, package any household substances subject to such standards in conventional packaging of a single size which does not comply with such standard if:

1. The manufacturer or packer also supplies such substance in packages which comply with applicable standards; and

2. The packages bear conspicuous labeling stating: "This package for households without young children", or such other statement as may be prescribed under applicable standards.

(b) If it is determined that a household substance packaged in noncomplying package is not also being supplied by the manufacturer or packer in popular size packages which comply with special packaging standards, the department may by special order require the manufacturer or packer of such substance to package it exclusively in special packaging complying with applicable standards.

(c) A household substance, subject to special packaging standards, which is dispensed pursuant to a prescription of a physician, dentist, or other licensed medical practitioner may be sold in conventional or noncomplying packages when directed in such prescription or requested by the purchaser.

(4) PROHIBITED ACTS; ENFORCEMENT. (a) No person may manufacture, distribute or sell any household substance which is not packaged in compliance with applicable special packaging standards under the federal act or rules of the department. No person may violate this section or any rule or order issued under this section.

(b) The department may summarily ban the sale or distribution of any household substance which is sold or offered for sale in violation of this section or of any rules or order issued under this section. The department shall follow the procedure specified in s. 93.18 (3).

(c) The department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this section, or any rule or order issued under this section.

History: 1975 c. 117; 1977 c. 106 s. 15; 1977 c. 272; 1983 a. 189 s. 329 (20); 1985 a. 146 s. 8.