

1969 Senate Bill 701

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CHAPTER 425, LAWS OF 1969

AN ACT to renumber 100.18 (7); and to create 100.18 (11) (b) to (e), 100.20 (6) and 100.26 (6) of the statutes, relating to fraudulent advertising and prescribing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 100.18 (7) of the statutes is renumbered 100.18 (11) (a).

SECTION 2. 100.18 (11) (b) to (e) of the statutes are created to read:

100.18 (11) (b) 1. The department of agriculture 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 with a brief statement of its reasons for not proceeding. The department of justice shall further provide the department of agriculture with periodic summaries of all activity under this section.

2. 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 a reasonable attorney's fee.

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 subsection (11) (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.

SECTION 3. 100.20 (6) of the statutes is created to read:

100.20 (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 judg-

ments as may be necessary to restore to any person any pecuniary loss suffered because of the uses 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.

SECTION 4. 100.26 (6) of the statutes is created to read:

100.26 (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 the violation of an injunction issued under s. 100.18 or an order issued under s. 100.20.
Approved February 12, 1970.
