

CHAPTER 100.

MARKETING; WAREHOUSES; TRADE PRACTICES.

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Cross Reference: See definitions in 93.01.

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

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

(b) "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.

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

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

(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.

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

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.

History: 1961 c. 293.

100.03 Food processors' payments; bond or security. (1) (a) No operator of any food processing plant, for which a license is required by s. 97.06, shall buy or otherwise take title to or possession of any farm product from the producer thereof without paying to the producer the full agreed price at the time of obtaining such possession or control, unless the applicant shall first satisfy the department that his financial condition is such as to reasonably assure prompt payment to growers of the produce contracted for or received by him as and when the same becomes due and payable. Such application shall

be accompanied by a financial statement of the applicant's most recently completed fiscal year and such supplemental and additional information as the department may require.

(b) No operator of a food processing plant, for which a license is required by s. 97.06, shall, through a subsidiary or affiliate as herein defined, buy or otherwise take title to or possession of any farm product for which the producer thereof has not been paid the full agreed price, unless the applicant shall first satisfy the department that the financial condition of such subsidiary or affiliate is such as to reasonably assure prompt payment to such producers of the farm product processed by the applicant, in accordance with the contract between such producers and such subsidiary or affiliate. The term "subsidiary or affiliate" shall include any person who is a partner in an applicant partnership or is an officer or has a controlling interest in an applicant corporation, and any partnership of which the applicant is a partner, and any corporation controlled by the applicant, and any corporation controlled by the same person or persons controlling the applicant. In any case where the department is not satisfied that the financial condition of such subsidiary or affiliate reasonably assures such prompt payment, or finds that the current financial position of such subsidiary or affiliate is not accurately shown by the statement filed with the department, it may require as a condition to the issuance of a license that the applicant guarantee such payment to such producers by such subsidiary or affiliate and may require in addition to such guarantee that the applicant furnish bond or security as provided in sub. (2), conditioned upon the performance of such guarantee.

(2) In any case where the department is not satisfied that the financial condition of the applicant does reasonably assure such prompt payment, or finds that the applicant's current financial position is not accurately shown by the statement so filed, it may require as a condition to the issuing of such license that the applicant either:

(a) Make and file a surety bond in such sum as it deems sufficient, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety; such bond shall be in such form as the department may prescribe, be made payable to the state of Wisconsin for the benefit of producers who might suffer by reason of default of the principal, and be conditioned that the principal shall pay or cause to be paid to producers all sums owing producers for products contracted for or received by the principal as the same become due. In lieu of such bond the applicant may deposit cash or negotiable securities in such amount and in such manner and form as the department approves.

(b) Make and file with the department an agreement providing for the "set aside" of the processed produce equivalent to not less than 30 per cent of the produce obtained from producers, in trust for such producers. The agreement shall provide that no part of such "set aside" shall be released by the trustee unless an amount equivalent to the value of such released portion has been paid to apply pro rata on the claims of producers or is paid over to the trustee for such payment. The agreement shall designate the individual who shall be responsible for carrying out the agreement on behalf of the applicant, and shall be signed by him and by a trustee approved by the department. Willful failure of such individual or such trustee to carry out the terms of the agreement to the prejudice of such producers shall be fined not to exceed \$10,000 or imprisoned not to exceed one year, or both. The applicant shall agree to pay all expenses of such trust. The department may release the "set aside" upon the filing of a current financial statement.

(3) Upon receipt of evidence of default by any licensee in making payment to producers the department may commence an action for the recovery of claims of all producers or otherwise assist the producers to establish an organization for the purpose of making collection.

100.04 Grading of Swiss Cheese. (1) Swiss or Emmenthaler cheese, in drum or wheel style, shall be purchased, sold, exchanged, or offered for sale or exchange in this state only upon the basis of the grade established by law or by general order of the department under s. 93.09 as determined by a qualified cheese grader employed by the department, except as to any individual sale of 100 pounds or less or of more than 100 pounds when limited to one wheel. All such cheese shall be graded at the factory whenever practical.

(2) The cost of such grading shall be charged to and collected from the owners of the cheese so graded in the sum of one-fortieth cent per pound, except that the department may charge an average fee of 5 cents for each wheel.

100.06 Dairy licenses; financial condition. (1) (a) No person shall operate a dairy plant or receiving station, as defined in s. 97.04, 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. 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. 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 as provided in this section, the department shall make distribution to the claimants in accordance with the order allowing claims, in full or pro rata, 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. 97.04. Section 97.04 (9) and (10) shall apply to this section.

(7) The whole claim of any person against any licensee under s. 97.04 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: 1965 c. 252.

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.

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

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

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

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

(3) **LICENSE FEES, TERM.** (a) Every warehouseman before he is licensed shall pay into the state treasury an annual fee, as follows: For class 1, \$25; for class 2, \$50; for class 3, \$100; for class 4, \$150; and for class 5, \$200.

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

(4) **BOND.** (a) Every warehouseman, before he is licensed, shall file with the department a bond to the state, with one or more sureties, who shall justify in double the amount of such bond, or with a surety company licensed by this state as surety. Such bond must be acceptable to the department and shall be conditioned that the warehouseman will faithfully perform his obligations as a warehouseman. Any person whose property is stored in any such licensed warehouse may apply to the department to determine the sufficiency of such bond. When the department determines that a bond is insufficient, or when such bond or insurance policy lapses or is canceled without approval of the department, the warehouseman shall correct such defect within 20 days after written notice from the department and, if such defect is not corrected within such period, such warehouseman's license shall be considered automatically revoked without further action as of the expiration of such 20-day period. Any warehouseman may, in lieu of such bond, file with the department a certified copy of a legal liability insurance policy of like amount which is acceptable to the department and payable to the state for the benefit of the owners of stored property, and which provides that the policy shall not be canceled during the license period except upon 15 days' notice in writing to the department.

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

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

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

(7) **TRANSACTING BUSINESS WITHOUT A LICENSE.** No person shall act or hold himself out as a warehouseman or advertise for or solicit business as a warehouseman without a

warehouseman's license, or when his bond has become void or has been found insufficient.

(8) VIOLATIONS. The department in the name of the state may commence action to enjoin violation of this section and may prosecute such violation in any court of appropriate jurisdiction.

History: 1963 c. 224; 1965 c. 356, 647.

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

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

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

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

(3) Notwithstanding sub. (1), it shall be lawful to give, offer, issue, furnish or deliver, in connection with the sale of goods, wares, merchandise or services, stamps, tokens, tickets, or similar devices, without any stated cash value, when such stamps, tokens, tickets, or similar devices are redeemable only in payment for parking privileges for automobiles or fares on urban passenger transit facilities.

See note to 215.16, citing 51 Atty. Gen. 151.

There is no constitutional prohibition against trading stamps being redeemed in merchandise as well as cash. 52 Atty. Gen. 78.

The legislature may, by proper classification, prohibit issuance of trading stamps in connection with certain business. 52 Atty. Gen. 131; 55 Atty. Gen. 43.

Promotional scheme requiring certificate and proof of purchase for refund would violate (1). 55 Atty. Gen. 136.

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

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 advertising. (1) No person, firm, corporation or association, or agent or employe thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employe thereof, directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, merchandise, securities, service or employment or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

(2) 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 to fail to state the price or amount which must be paid for the property or services included in such sale, along with any other requirement which is a condition to the receipt of such property or services. 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.

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

(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.

(7) The state department of agriculture shall enforce the provisions of this section. Actions to enjoin violation of this section or any regulations thereunder may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction. This remedy is not exclusive.

(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 subsection 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.

(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 such price is not more than the price which retailers regularly pay for such merchandise. The effective date of this act shall be January 1, 1962.

History: 1961 c. 44, 376, 469; 1963 c. 6.

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.

(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 attorney-general may file a written complaint with the department alleging that the person named therein 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 therein alleged, and the attorney general may appear before the department in such proceedings. He shall be entitled to judicial review of the decisions and orders of the department as provided in chapter 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.

A contract for the installation of siding void, the plaintiff could still recover on and for considerable other work would not quantum meruit. *Zbichorski v. Thomas*, 10 be void even if in violation of the rules of W (2d) 625, 103 NW (2d) 536. the department of agriculture referring to Administrative regulation of commercial roofing and siding contracts, and even if activities in Wisconsin. 1965 WLR 133.

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

(a) "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.

(b) "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.

(c) "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.

(d) 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) (a), 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 co-operative, and any officer, director or partner, of a corporation, co-operative, or partnership which is a retailer of selected dairy products, and any individual, corporation, co-operative, 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.

(e) 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 co-operative, and any officer, director or partner, of a corporation, co-operative, or partnership which is a wholesaler of selected dairy products is deemed to be a wholesaler of selected dairy products.

(f) "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.

(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 subsection, 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) (a), 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 as provided in 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 provided in s. 409.403 insofar as applicable. If the wholesaler makes said sale under a security agreement, the terms of sale shall be no more favorable to the retailer than those provided in sub. (2) (d).

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) (d) 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.

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.

(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 such 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 such retailer or any other person doing business with such retailer. 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.

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 shall prevent, as to transactions with retailers, any of the following:

a. Differences in wholesale price, including any discount, rebate or allowance, not in violation of par. (b).

b. The furnishing of hostesses or demonstrators at any retailer's premises to promote the wholesaler's own brands of products.

c. The giving away of merchandise to be consumed on the premises.

d. The furnishing or installation of point of sale advertising material to any retailer that remains inside such retailer's premises made of paper, cardboard or other material not permanent in nature or indoor advertising signs, all of which have no use other than the promotion of the wholesaler's own brands of products and do not identify the retailer.

e. The furnishing or installation of indoor clocks bearing only the wholesaler's advertising and having a value of not more than \$30.

f. Advertising allowances which do no more than reimburse a retailer for his costs in advertising the wholesaler's own brands of products.

g. The furnishing or installation of outdoor signs advertising the wholesaler's own brands of products but not more than one-third of the space or cost of such signs may be used to identify the retailer.

h. The advertising by a wholesaler of his own brands of products through any media which does not identify any retailer or involve any transaction or conduct otherwise prohibited by this section.

i. Offers of premiums for which the consumer pays a separate fee which covers in full the wholesaler's costs of making such premiums available.

j. Transactions otherwise permitted by pars. (d), (e), (f), (g) and (h) and sub. (3).

(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 under s. 97.05) within this state, or the wholesaler 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 3 mills per hundredweight of 3.5% butterfat raw milk equivalent on all selected dairy products defined in sub. (1) (a) 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 2 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 him 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 he produces records satisfying the department that such products are not subject to assessment.

(am) In addition to the fees authorized by par. (a) and required to be paid by persons designated therein, such persons shall pay additional fees not to exceed 1 mill per hundredweight of 3.5% butterfat raw milk equivalent on all selected dairy products defined in sub. (1) (a) 1 and not to exceed 1 mill per gallon on all ice cream mix and ice milk mix for a period not longer than 12 months beginning the month following December 10, 1965.

(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. 133.17 and 133.185 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.

(9) PENALTIES. (a) Violation of this section shall be a misdemeanor punishable as provided herein. Any person violating any of the provisions of this section shall be fined not less than \$100 nor more than \$5,000 for each offense.

(b) The department, after public hearing held pursuant to 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 person violating any special order issued hereunder shall be fined not less than \$100 nor more than \$5,000.

(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.

History: 1961 c. 242; 1963 e. 158, 243, 517; 1965 c. 425.

Note: Section 7 of ch. 242, laws 1961, which amended this section, provides:
"SECTION 7. It is the intention of this act to adapt the principles of price discrimination set forth in the Robinson-Patman act to the sale of selected dairy products in Wisconsin."

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

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

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

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

History: 1961 c. 386.

This section is constitutional. *White House Milk Co. v. Reynolds*, 12 W (2d) 143, 106 NW (2d) 441.

100.23 Contracts; void. All contracts or agreements made in violation of any of the provisions of section 100.22 shall be void.

100.24 Revocation of corporate authority. Any corporation, foreign or domestic, which violates s. 100.22 or 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: 1961 c. 335, 386; 1963 c. 15.

Legislative Council Note, 1963: Section 100.24 was amended by chapters 335 and 386, laws of 1961. This bill is intended to reconcile the 2 acts and simplify s. 100.24, without changing the substance of the statute. (Bill No. 13-A)

This state is not precluded, by reason of alleged conflict with congressional policy as expressed in a federal statute, from bringing an action to enforce an order of the state department of agriculture, issued pursuant to our unfair-competition statute, 100.20, which order forbids rebates by wholesalers of gasoline to retailers thereof, and forbids wholesalers of gasoline to enter into any agreement whereby discrimination is made in the price at which the wholesaler sells gasoline to retailers thereof. *State v. Texaco*, 14 W (2d) 625, 111 NW (2d) 918.

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

100.26 Penalties. (1) Any person who violates any provision of this chapter 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 any of the provisions of section 100.02 shall be guilty of a felony and upon conviction shall be punished by a fine of not less than fifty dollars nor more than three thousand dollars, or by imprisonment for not less than thirty days nor more than three years, or both.

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

(5) Any person violating s. 100.03 or 100.06 or any order or regulation of the department thereunder, or s. 100.13 (7) or 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 shall constitute a separate offense.

History: 1965 c. 647.

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

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

(a) "Cost to retailer" means the invoice cost of the merchandise to the retailer within 30 days prior to the date of sale, or replacement cost of the merchandise to the retailer, whichever is lower, less all trade discounts except customary discounts for cash,

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.

(b) "Cost to wholesaler" means the invoice cost of the merchandise to the wholesaler within 30 days prior to the date of sale, or the replacement cost of the merchandise to the wholesaler, whichever is lower, less all trade discounts except customary discounts for cash, 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 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.

(c) "Replacement cost" means the cost computed as specified in par. (a) or (b) at which the merchandise sold could have been bought by the seller at any time within 30 days prior to the date of sale if bought in the same quantity as the seller's last purchase of the said merchandise.

(d) "Cost to retailer" and "cost to wholesaler" as defined in pars. (a) and (b) 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.

(e) "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 seller's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing.

(f) "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 seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing.

(g) "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 making both sales at retail and sales at wholesale, such term shall be applied only to the retail portion of such business.

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

(i) "Retailer" and "wholesaler" shall both be applied to any merchant who buys merchandise for resale at retail from the manufacturer or producer thereof and, as to such merchandise, the terms "cost to retailer" and "cost to wholesaler" as defined in pars. (a) and (b) shall both be applied, including the markup requirements.

(j) 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 par. (a) or (b); and if any of the items included therein are separately priced, such separate price shall be subject to the requirements of this section.

(k) "Sell", "sale" or "sold" includes any advertising or offer to sell or any transfer of merchandise where title is retained by the seller 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.

(l) The term "trade discount" shall not include advertising, display or promotional allowances in the absence of a statement in writing from the grantor that receipt of such allowance is not conditioned on the performance of any service or expenditure of any money for promotion, advertising or any other purpose.

(m) Any person who sells at retail and who also sells to other retailers shall use the invoice cost to other retailers in computing his selling price at retail under par. (a); and if such person is a manufacturer or producer, both pars. (a) and (b) shall be used in computing his 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 pars. (a) and (b).

(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.** Any retailer who, with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, sells at retail any item of merchandise at less than cost to the retailer as defined in this section; or any wholesaler who, with intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, sells at wholesale any item of merchandise at less than cost to the wholesaler as defined in this section, shall be fined not less than \$50, nor more than \$500 for the first offense and not less than \$200 nor more than \$1,000 for the 2nd and each subsequent offense, or, for each offense, imprisoned not less than one month nor more than 6 months or both.

(5) **SPECIAL REMEDY.** In addition to the penalties under sub. (4):

(a) It is the duty of the several district attorneys to institute proceedings in equity to prevent and restrain violations of this section.

(b) The department may also bring an action to enjoin violations of this section. Such action may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction, either in the county where the offense occurred or in Dane county, without being compelled to allege or prove that an adequate remedy at law does not exist.

(c) Any person damaged, or who is threatened with loss or injury, by reason of a violation of this section, shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation hereof and, upon granting of such relief, the person initiating such action shall be entitled to recover all costs including a reasonable attorney's fee.

(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 seller 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 person may claim the exemptions under par. (a) 1 to 4 if he limits or otherwise restricts the quantity of such merchandise which can be purchased by any buyer or if he 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.

History: 1961 c. 44; 1965 c. 629.

A competing seller who attempts to enjoin competitors from violating this section must prove damage or loss more than the loss of one sale and the fact that sales were being made below cost. A seller may not claim to be meeting competition when he fixes prices below the legal or illegal prices of his competitors. *Heiden v. Ray's, Inc.* 34 W (2d) 632, 150 NW (2d) 467.

(2) (j) is constitutional and prohibits the

pricing of one combination item below cost even though there is sufficient profit on both items to meet the required markup. The statutory presumption in (3) is constitutional. *State v. Eau Claire Oil Co.* 35 W (2d) 724, 151 NW (2d) 634.

Discussion of (2) and (6) relative to dealers doing business below cost. Burden of proof when provisions of the statutes are not followed. 53 Atty. Gen. 1.

100.31 Marketing authority law, Milwaukee. (1) **SHORT TITLE.** This section may be referred to as the "Marketing Authority Law."

(2) **PURPOSE.** The purpose of this section is to provide a permissive method for establishment of markets in cities of the first class to facilitate efficient and economic

handling of farm commodities, primarily fresh fruits and vegetables, at wholesale in the interest of the grower, the food trade and the consuming public.

(3) **DECLARATION OF NECESSITY.** It is found and declared that large quantities of fruits and vegetables, grown in Wisconsin for domestic and foreign markets or brought from foreign states or countries into this state for consumption, must pass through wholesale marketing systems which are obsolete and inadequate to meet present and future requirements; that the inadequacy of these systems contributes to high handling costs and deterioration with concomitant losses to growers, handlers and the consuming public; that improvement of these systems would annually result in large savings to the consuming public, handlers and agricultural producers alike, all for the general welfare; that the efforts of the public officers, the produce trade and other interested industries to achieve these improvements by purely private means have not succeeded; that the establishment and operation of terminal markets become and are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; that it is in the public interest to permit creation of marketing facilities which are to be organized and operated on a nonprofit, self-liquidating basis.

(4) **DEFINITIONS.** In this section, unless the context otherwise requires:

(a) "Farm products" include all agricultural, floricultural, vegetable and fruit products of the soil, live stock and meats, poultry, eggs, dairy products, and any and all products which have their situs of production on the farm.

(b) "Food products" include any and all products either in a natural or processed state used by man or animal as food.

(c) "Person" means any individual, partnership, corporation, association or any other business entity.

(d) "Farmer" means any person principally engaged in the commercial production of farm products.

(e) "Wholesaler" means any person other than a farmer who engages primarily in the trading in farm and food products for resale to persons other than consumers.

(f) "Retailer" means any person other than a farmer who engages primarily in the selling of farm or food products directly to consumers.

(g) "Authority" means a public corporation, created under the provisions of this section.

(h) "Terminal market" or "market" means the physical areas, structures and appurtenances, located in a predominantly consuming area, and owned, leased or operated by the authority in connection with the performance of its functions under this section, primarily for the purpose of facilitating the sale or other disposal of farm and food products at wholesale.

(i) "City" means any city of the first class. "The city" means the particular city for which a particular marketing authority is created.

(5) **ESTABLISHING AUTHORITY; PETITION PROCEDURE.** Any organization or group of farmers, wholesalers, retailers, or any political subdivision of the state may, individually or jointly, petition the director of the state department of agriculture, in the manner hereinafter provided, for the establishment of a marketing authority in and for any city of the first class. The petition shall set forth:

(a) The territory in which the authority shall be designated to operate, the city of the first class in which the market is to be located;

(b) The name and post-office address of each petitioner, and the fact that each such petitioner operates within the territory of operation described in the petition; the qualifications of each such petitioner under the provisions of this section; the name and post-office address of the individual representative of each such petitioner empowered to execute the petition in its behalf; and a statement of the action by each such petitioner authorizing the submission of the petition under the provisions of this section and granting authority to its individual representative to execute the same;

(c) The proposed legal name of the authority which shall include the term "Marketing Authority";

(d) The purposes of the authority, and the need therefor, its proposed methods of financing, management and operation and its plans for construction and future development;

(e) The names and post-office addresses of the nominees from among whom the governor is to appoint the board of directors, as provided for in this section, together with the names and post-office addresses of those who participated in the nomination of each category of directors, as hereinafter provided.

(6) **HEARINGS ON PETITION.** Upon the receipt of a petition, meeting the requirements of subsection (5), the director of the state department of agriculture shall cause an in-

vestigation to be made; shall, within 3 months, cause a public hearing relative thereto to be held; and shall promptly report his findings with recommendations to the governor, taking into consideration in the holding of such hearings and the making of such recommendation, the type, plans and financial soundness of the authority, the trading area to be served, the proximity of existing or proposed markets, and the natural flow of produce in the territory of operation, and any other circumstances which in his opinion may be relevant.

(7) **CERTIFICATE OF AUTHORITY.** The governor, if he is satisfied that the purposes of this section will be effectuated, shall approve said petition and shall cause to be prepared and issued a certificate of authority creating such authority and granting to it the right of operation as a public corporation in accordance with the provisions of this section; provided, however, that the governor, prior to such approval, may direct the director of the state department of agriculture to hold further hearings and to submit new or additional recommendations.

(8) **FIRST BOARD OF DIRECTORS; AUTHORITY.** The first board of directors of a marketing authority shall consist of 9 members, as follows:

(a) The governor shall appoint 2 directors from a list of 4 wholesalers nominated by a majority vote at a general meeting of the wholesalers licensed under the U.S. perishable agricultural commodities act and operating within the territory of operation as defined in the certificate of authority; 2 directors from a list of 4 farmers nominated by a general farm organization or general farm organizations qualified in the opinion of the governor to represent agricultural producers residing and marketing their products within the territory; one director from a list of 3 consumers to be nominated by the chief executive officer of the city served by the authority; one director from a list of 3 businessmen, not wholesalers or retailers, nominated by the chief executive officer of the city served by the authority; and one director from a list of 3 retailers nominated by an association of retailers in the territory, through the formal action of the association's governing body or by a majority vote at a meeting of retailers, existing within the territory, called for that purpose by the petitioners upon publication of a class 2 notice, under ch. 985, in the territory;

(b) The chief executive officer of the city served by the authority shall serve as director or shall appoint a representative who shall be an official of the city;

(c) The director of the state department of agriculture, or his representative from the department of agriculture appointed by him, shall be a member of the board of directors, who shall be entitled to a vote at all meetings of the board.

(9) **TENURE OF OFFICE OF FIRST BOARD OF DIRECTORS.** Of the first board of directors of a marketing authority, one farmer director and one wholesaler director shall be appointed for a term of 3 years; one director representing farmers, one director representing wholesalers, and the director representing the city shall be appointed for a term of 2 years; and the director representing consumers, the director representing retailers, and the director representing businessmen, shall be appointed for one year. Each director shall be appointed and qualify.

(10) **SUBSEQUENT BOARDS OF DIRECTORS.** At the expiration of the term of the first appointed directors, their successors shall:

(a) Be nominated and appointed, as provided in subsection (8) hereof, for terms of 3 years or until their respective successors shall have been appointed and qualify, except that the governor shall appoint the 2 wholesaler directors from a list of 4 wholesalers nominated by a majority of the wholesalers operating within the market. In the event of any of the above groups failing to nominate candidates for the board of directors under this section, the governor shall appoint a director or directors with similar qualifications.

(11) **REMOVAL OF DIRECTORS, VACANCIES.** The governor after notice and opportunity for hearing, may remove any director of any authority created hereunder, because of inefficiency, neglect of duty or misconduct in office. In the event that any director is unable or fails for any reason to complete his term, the governor shall appoint in his place for the unexpired term, nominated in the same manner as the director he is to succeed.

(12) **OATH OF OFFICE, CONDUCT OF BUSINESS.** Each member of the board of directors of any authority created hereunder, shall before entering upon the duties of his office, take the constitutional oath of office and file the same in the office of the secretary of state. Five members of the board of directors of a marketing authority shall constitute a quorum for the transaction of business; in each case the concurrence of a majority present at a meeting at which a quorum is present shall be necessary for the passage of any resolution, order or determination. The board of directors of either type of facility may appoint an executive committee and such other special committee as it deems proper. Each board shall meet at least once each quarter during the fiscal year, and during its

first meeting of each fiscal year, shall choose a chairman and a treasurer by a majority of all directors. The directors of a marketing authority shall receive \$10 for each meeting and shall be paid actual travel expenses not to exceed 5 cents per mile.

(13) POWERS. Any authority created under the terms of this section, shall, through the action of its board of directors, taken as provided in this section, have power:

(a) To acquire by purchase, lease, condemnation or otherwise, such land or any interest in land, or other property, real or personal, as may be necessary in its opinion to the operation of the market, and may mortgage, sell, lease, rent, exchange or otherwise dispose of, any such property as it may deem advisable; provided, however, that no real estate shall be sold unless the sale is approved by the governor and trustee of the bondholders, and provided further that no such real estate shall be used as a market, unless such property is acquired by a governmental agency;

(b) To plan, build, construct or operate, or cause to be built, constructed or operated such buildings, structures, equipment and appurtenances thereto as it may deem necessary for the operation of the market, including, without limiting the generality of the foregoing, restaurants, filling stations, garages and warehouses, provisions for sanitation and similar accessories for market operation;

(c) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations herein called "bonds" of the authority, said bonds to have a maturity date not longer than 30 years from the date of issue, and to secure the payment of such bonds or any part thereof by pledge or mortgage of all or any of its revenues, receipts or other assets, real or personal, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds whether issued or to be issued, as the authority shall deem advisable, and in general to provide for the security for said bonds and the rights of the holders thereof; provided, however, that no obligations incurred by the authority shall be a debt of the state or any of its political subdivisions, or a pledge of the credit or taxing power of the state or any political subdivision thereof. The authority is authorized to receive appropriations, gifts, and contributions of money, supplies, goods and services, or loans thereof, if approved by the governor or appropriate state agency, and the political subdivisions of this state are hereby authorized to make, upon such terms and in such manner as may be required by the laws of this state, such appropriations and loans to such authorities;

(d) To employ a market manager qualified to operate a market of the type contemplated by the authority and such additional employes as may be necessary for the management and operation of the market;

(e) To fix the salaries of the market manager and any other authorized employes of the market;

(f) To fix, alter, charge and collect rentals and charges for stores, stalls, space, buildings, equipment and other appurtenances, privileges, and services furnished or performed, in or in connection with the market, for the purpose of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations; provided, however, that such rentals and charges shall not be designed to render a profit to the authority;

(g) To promulgate reasonable rules or regulations relating to the use of the market, including, without limiting the generality of the foregoing, rules and regulations relating to hours of business, sanitation, traffic, and such other matters as are normally incidental to the proper management of a market; provided, that no such rule or regulation shall fix or regulate prices, profits or types of farm and food products dealt in;

(h) In its discretion, reasonably exercised, and after due notice and an opportunity to be heard, to suspend or revoke any or all rights or privileges of any person violating the rules and regulations provided for in paragraph (g), enjoyed in connection with his activities in the market;

(i) To make contracts of any name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(j) To enter into and maintain contracts for all such types of insurance as it may deem necessary to protect the authority against loss;

(k) To enter into contracts of group insurance for the benefit of its employes, and to set up a retirement or benefit fund for such employes;

(l) To adopt and use a corporate seal;

(m) To make by-laws for the management and regulation of its affairs;

(n) To sue and be sued in its corporate name;

(o) To delegate to the market manager or other officers of the authority such duties

and responsibilities in relation to the operation of the market as it may deem reasonably necessary;

(p) In general, to do such other acts and things as may be reasonably necessary or convenient to carry out the powers hereinabove enumerated, and to carry on the operations of a wholesale market for farm and food products in accordance with the general purposes of this section.

(14) **LIMITATION OF POWERS.** The exercise of the powers, granted in subsection (13), shall be deemed to be expressly limited as follows:

(a) The authority shall be subject to all of the zoning, building, fire, sanitary, health and other police ordinances and regulations of the state and political subdivisions in which it is established;

(b) The authority shall have no power to discriminate in its operations against the sale of any farm or food products, or against any producer of such products, on account of the county, state or political subdivision in which any such products are produced, or on account of the legal nature of the producer or other person engaged in the marketing of any such products, or on account of the conditions of employment or the nature of the labor employed in the production or marketing of such products or on account of the method of transportation; but every authority shall take every reasonable precaution to prevent any such discrimination;

(c) The authority shall have no power to acquire, construct, maintain or operate more than one market, nor shall it acquire, construct, maintain or operate a market which is not operated primarily for the purpose of handling farm and food products at wholesale;

(d) No member of the board of directors of any authority shall be interested directly or indirectly in any transaction with the authority except in connection with his normal business operations in the market;

(e) No authority shall itself engage directly or indirectly in the purchase or sale of farm or food products, or engage in any business other than that of managing the market authority;

(f) Since it is the purpose of this section to provide a market place where private enterprise can operate effectively and the management of which will remain in the hands of those using it, management shall not interfere with such incidents of private enterprise as profits, prices and types of farm or food products dealt in.

(15) **BONDS.** (a) 1. The bonds of the authority hereinabove referred to as authorized to be issued, shall be authorized by resolution or resolutions of the board thereof and shall be of such series, bear such date or dates, mature at such time or times, not exceeding 30 years from their respective dates, bear interest at such rates, not exceeding 6 per cent per annum, payable annually or semiannually, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption not exceeding 105 per cent of the principal amount thereof; and be entitled to such priorities with respect to the revenue or receipts of the authority, as all such resolution or resolutions may provide. The bonds shall be signed by such officers as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered notwithstanding that one or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupons, if any, shall have ceased to be such officer or officers at the time such bonds shall actually be delivered. Pending the preparation and delivery of definite bonds, interim receipts or temporary bonds may be issued and delivered to the purchaser or purchasers of such definite bonds, and may contain such terms and conditions as the authority may determine.

2. Said bonds may be sold at public or private sale for such price or prices as the authority shall determine, provided that the interest cost to maturity of the bonds shall not exceed 6 per cent per annum.

(b) Any resolution or resolutions authorizing the issuance of any bonds may contain provisions which shall be part of the contract with the holders thereof, as to:

1. Pledging the full faith and credit of the authority (with the express understanding that no obligations incurred by the authority shall be an obligation of the state or any of its political subdivisions, or a pledge of the credit and taxing power of the state or any political subdivisions thereof) as security for such obligations, or restricting such security to all or any part of the revenues of the authority from all or any of its properties;

2. The construction, improvement, operation, extension, enlargement, maintenance and repair of the properties of the authority, and the duties of the authority with refer-

ence thereto;

3. The terms and provisions of the bonds;
4. Limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued may be applied;
5. The rate of rentals and charges for stores, stalls, space, buildings, equipment and other appurtenances, privileges, and the services furnished or performed, on or in connection with the market;
6. The setting aside of reserves and sinking funds and the regulation and the disposition thereof;
7. Limitations on the issuance of additional bonds;
8. The terms and provisions of any deed of trust or indenture securing the bonds or under which the same may be issued, and
9. Any other or additional agreements with the holders of the bonds;
10. In order to secure any such bonds, any authority may enter into any mortgages, deeds of trust, indentures or other agreements with any bank or trust company, or other person or persons in the United States having power to enter into the same, including any federal agency, and may assign and pledge any or all of the revenues, receipts or other assets, real or personal, of the authority thereunder. Such mortgage, deed of trust, indenture or other agreement may contain such provisions as may be customary in such instruments, or as the authority may authorize, including but without limitation provisions as to (1) the construction, improvement, alteration, expansion, operation, maintenance and repair of any properties of the authority, and the duties of the authority with reference thereto, (2) the application of funds and the safeguarding of funds on hand or on deposit, (3) the rights and remedies of the trustee and the holders of the bonds (which may include restrictions upon the individual right of action of such bondholders) and (4) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(c) Said bonds shall have all the qualities of negotiable instruments under the law merchant and the negotiable instrument law of this state. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days; or in the event that the authority or any officers, agents or employes thereof shall fail or refuse to comply with the provisions of this section or shall default in any agreement made with the holders of the bonds, any holder of bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to any court of competent jurisdiction for the appointment of a receiver to represent the bondholders for the purposes herein provided, whether or not all bonds have been declared due and payable and whether or not such holders or trustee therefor are seeking or have sought to enforce any other right or exercise any remedy in connection with such bonds. Upon application the court may appoint, and if the application is made up the holders of or a trustee on behalf of the holders of 25 per cent in aggregate principal amount of such bonds then outstanding shall appoint, a receiver to represent the bondholders for the purposes herein provided.

(d) The receiver so appointed shall forthwith directly or by his agents and attorneys enter into and upon and take possession of the properties of the authority, and may exclude the authority, its officers, agents and employes and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the properties of the authority in the name of the authority, or otherwise, as the receiver may deem best and shall exercise all of the rights and powers of the authority with respect to such properties as the authority itself might do. Such receiver shall maintain, restore, insure and keep insured the properties of the authority and from time to time shall make all such necessary or proper repairs as may seem expedient to such receiver, and shall establish, levy, maintain and collect such rents and charges in connection with the properties of the authority as such receiver may deem necessary, proper or reasonable and shall collect and receive all revenues of the authority and deposit the same in a separate account and apply such revenues so collected and received in such a manner as the court shall direct.

(e) Whenever all that is due upon the bonds and interest thereon, and upon any other obligations and interest thereon, having a charge, lien or other incumbrance on the revenues of the authority under any of the terms of any covenants or agreements with the holders of bonds shall have been paid or deposited as provided therein, and all the faults shall have been cured and made good, the court may, in its discretion and after such notices and hearings as it deems reasonable and proper, direct the receiver to surrender possession of the properties of the authority to the authority, the same right of

the holders of the bonds to secure the appointment of a receiver to exist upon any subsequent default as herein provided.

(f) Such receiver shall in the performance of the powers hereinabove conferred upon him act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth therein.

(g) Notwithstanding anything in this section to the contrary, said receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority and useful therefor, but the authority of any such receiver shall be limited to the operation and maintenance of the authority and no court shall have any jurisdiction to enter any orders or decrees requiring or permitting said receiver to sell, assign, mortgage or otherwise dispose of any such assets.

(h) Subject to any contractual limitations binding upon the holders of any issue of bonds or trustee therefor included but not limited to the restrictions of the exercise of any remedy to a specified proportion or percentage of such holders, any holders of bonds, or trustee therefor, shall have the right and power for the equal benefit and protection of the holders of bonds similarly situated:

1. By mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the authority and any of its officers, agents or employes, and to require and compel such authority or any such officers, agents or employes to perform and carry out its and their duties and obligations under this section and its and their covenants and agreements with bondholders;

2. By action or suit in equity to require the authority to account as if it were the trustee of an express trust for the bondholders;

3. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

4. Bring suit on the bonds;

5. By notice in writing to the authority, declare all bonds due and payable, and if all defaults shall be made good then with the consent of the holders of 25 per cent or such other percentage as may be specified in any resolution, indenture or other instrument authorizing the issuance of such bonds of the principal amount of the bonds outstanding, to annul such declaration and its consequences.

(i) No remedy conferred by this section upon any holder of bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to any other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this section or any other law. No waiver of any default or breach of duty or contract, whether by any holder of bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the holders of bonds may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the bonds, or any trustee therefor, then and in every such case the authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

(16) EXEMPTION FROM TAXATION. The effectuation of the authorized purposes of the authorities created under this section, being public corporations, shall and will be in all respects for the benefit of all the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. Since such authority will be performing essential public functions in effectuating such purposes, the bonds issued by any such authority, their transfer and the income therefrom, shall at all times be free from taxation within this state. The authority shall be subject, however, to all state and local taxes except those from which it is exempted by this subsection.

(17) AUDIT AND PUBLICATIONS. (a) Immediately after the close of each fiscal year, every authority established pursuant to this section shall cause an audit to be made of its operations for such fiscal year. Such audit shall be made by a certified public accountant, or firm of accountants not regularly employed by the authority for its accounting purposes, or, with the approval of the proper state official, by a regular state accounting agency. Within 90 days after the close of its fiscal year each such authority shall file with the state department of agriculture a copy of such audit together with the names of the

officers and directors thereof. Any person violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor.

(b) Every authority established hereunder shall keep such records and make such reports to the state department of agriculture as may be required by the director thereof.

(c) In case any such authority shall fail or refuse to keep such records and to make such reports as are required by subsection (b), the director of the state department of agriculture through the attorneys for the state of the several counties and cities, may institute the necessary proceedings or otherwise, in his discretion, to have the directors, or such of them as are responsible for such failure or refusal, removed from office as provided herein.

History: 1965 c. 252.

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 section 100.26 (1).