

CHAPTER 133

TRUSTS AND MONOPOLIES

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133.01 Unlawful contracts; conspiracies.

(1) Every contract or combination in the nature of a trust or conspiracy in restraint of trade or commerce is hereby declared illegal. Every combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in this state, to be produced or sold therein or constituting a subject of trade or commerce therein, or which combination, conspiracy, trust, pool, agreement or contract shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or fix any standard or figure in which its price to the public shall be in any manner controlled or established, is hereby declared an illegal restraint of trade. Every person, corporation, copartnership, trustee or association who shall either as principal or agent become a party to any contract, combination, conspiracy, trust, pool or agreement herein declared unlawful or declared to be in restraint of trade, or who shall combine or conspire with any other person, corporation, copartnership, association or trustee to monopolize or attempt to monopolize any part of the trade or commerce in this state shall forfeit for each such offense not less than \$100 nor more than \$5,000. Any such person, corporation, copartnership, trustee or association shall also be liable to any person transacting or doing business in this state for threefold the damages he may sustain by reason of the doing of anything forbidden by this section, and the cost of suit including a reasonable attorney's fee. As used in this section, the words "article or commodity in general use in this state" includes newspapers, magazines,

periodicals, and advertising, including radio advertising. Nothing in this section or section 133.21 shall be construed as abridging the liberty of speech or of the press guaranteed by article I, section 3, of the constitution.

(2) The department of justice shall enforce this section and bring an action for the recovery of the forfeiture whenever complaint is made to the attorney general and evidence produced to his satisfaction that there has been a violation. Any district attorney shall institute such actions or proceedings as the attorney general deems necessary to recover any forfeiture incurred on account of the violation of this chapter. A representative of the department of justice designated by the attorney general may appear as counsel in any such case.

(3) Whoever violates sub. (1) may be fined not more than \$100,000 if a corporation. Any person other than a corporation who violates sub. (1) may be imprisoned not less than 30 days nor more than 5 years and fined not more than \$50,000.

History: 1975 c. 224.

Contracts by Blue Cross with hospitals which provide for a 3% discount on bills does not amount to an unreasonable restraint of trade since 182.032 authorizes the contracts. *Reese v. Associated Hospital Service*, 45 W (2d) 526, 173 NW (2d) 661.

Factors to be considered in fixing attorneys' fees discussed. Punitive damages may not be awarded in addition to treble damages. *John Mohr & Sons, Inc v. Jahnke*, 55 W (2d) 402, 198 NW (2d) 363.

See note to 801.50, citing *State ex rel. Nordell v. Kinney*, 62 W (2d) 558, 215 NW (2d) 405.

133.02 Injunction; pleading; practice. The several circuit courts may prevent or restrain, by injunction or otherwise, the formation of any such contract or combination or the execution of the purposes thereof. Any district attorney shall, upon the advice of the attorney general institute such actions or proceedings by complaint or

information as in ordinary actions. A representative of the department of justice designated by the attorney general may appear as counsel in any such case. A private party by complaint may institute actions or proceedings deemed necessary to prevent or restrain a violation of s. 133.01, setting forth the cause and grounds for the intervention of the court and praying that such violation, whether intended or continuing be enjoined or prohibited. When the parties informed against or complained of have been served with a copy of the information or complaint and cited to answer the same the court shall proceed, as soon as may be in accordance with its rules, to the hearing and determination of the case; and pending the filing of the answer to such information or complaint may, at any time, upon proper notice, make such temporary restraining order or prohibition as is just. Whenever it appears to the court that the ends of justice require that other persons be made parties to the action or proceeding the court may cause them to be made parties in such manner as it directs. Where the action or proceeding is brought and maintained by a private party he may demand and recover costs and reasonable attorney fees, and all pleadings shall be served on the department of justice.

133.03 Examination of adverse party. (1)

The examination of any party, or if a corporation be a party, of the president, secretary, other principal officer or the general managing agent thereof, or of the person who was such president, secretary, officer or agent at the time or the occurrence of the facts made the subject of the examination, or of any person acting for another or for a corporation or partnership, other than as a witness on a trial, may be taken by deposition at the instance of the attorney-general in any such action or proceeding at any time intermediate the commencement thereof and final judgment. Such deposition shall be taken within the state before a judge at chambers or a court commissioner on a previous notice to such party and any other adverse party or the attorney thereof of at least five days, and may be taken without the state in the manner provided in these statutes for taking other depositions.

(2) The attendance of the party to be examined may be compelled by subpoena, without prepayment of witness' fees, and the examination shall be subject to the same rules as govern that of other witnesses; but he shall not be compelled to disclose anything not relevant to the controversy. If the examination shall be taken before issue joined, the notice of taking it shall be accompanied by the affidavit of the attorney-general, district attorney or some party

stating the general nature and object of the action, that discovery is sought to enable the party to plead and the points upon which such discovery is desired; such examination shall be confined to the discovery of the facts relevant to the points so stated, unless the court or the presiding judge thereof, on motion and one day's notice, shall, before the examination is begun, by order further limit the scope thereof. Such examination shall not preclude the right to another examination after issue is joined upon all the questions in the cause, and the party examining shall in all cases be allowed to examine upon oral interrogatories.

(3) The examination shall not be compelled in any other county than that of the party's residence except in the county of Dane; provided, that whenever the defendant is a nonresident of the state his deposition may be taken as in other cases.

133.04 What organizations included. The word "person" wherever used in ss. 133.01 to 133.03 shall be deemed to include, besides individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States, any of the territories, of this or any other state or of any foreign country; provided, that nothing therein shall be construed to affect labor unions or any other association of laborers organized for the purpose of promoting the welfare of its members, nor associations or organizations intended to legitimately promote the interests of trade, commerce or manufacturing in this state. Provided further that nothing therein shall be construed to affect associations, corporate or otherwise, of farmers, gardeners or dairymen, including livestock farmers and fruit growers engaged in making collective sales or marketing for its members or shareholders of farm, orchard or dairy products produced by its members or shareholders.

133.05 Certain organizations not forbidden. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws. The labor of a human being is not a commodity or article of commerce.

133.06 Inquisitorial proceeding. (1) Whenever the attorney general files with any circuit court commissioner a statement that he has reason to believe and does believe that a contract, agreement, combination, trust or conspiracy in restraint of trade as defined by s. 133.01 or 133.21 exists or that a violation of either of said sections has occurred said commissioner shall issue his subpoena for the persons requested by the attorney general. It shall not be necessary to pay mileage or witness fees in advance but claims for such mileage and fees duly verified and approved by the attorney general shall be audited and paid out of the state treasury and charged to the appropriation provided by s. 20.455 (2) (d), and shall be at the same rates as witnesses in the circuit court.

(2) The testimony shall be taken by a stenographic reporter, transcribed, read to or by the witness and subscribed by him, unless the parties represented shall stipulate, upon the record (which they may do), that the reading of the transcript of such testimony to or by the witness and his signature thereto are waived, and that the transcript may be used with like force and effect as if read and subscribed by him. The attendance of the witness for the purpose of reading and subscribing the transcript may be compelled in the same manner that his attendance to be examined may be compelled.

(3) The commissioner shall be entitled to the fees as provided in s. 252.17. All such fees and all other costs and expenses incident to such inquiry shall be paid out of the appropriation provided by s. 20.455 (2) (d).

History: 1971 c. 125 s. 522 (1)

133.07 Working people may organize; injunction not to restrain certain acts. (1)

Working people may organize themselves into or carry on labor unions and other associations or organizations for the purpose of aiding their members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character; the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit.

(2) No restraining order or injunction shall be granted by any court of this state, in any case between an employer and employes, or between employers and employes, or between employes, or between persons employed and persons seeking employment, involving or growing out of

any dispute whatsoever concerning employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to be the applicant, or by his agent or attorney. No such restraining order or injunction shall be granted except by the circuit court or by a court of concurrent jurisdiction in equity, and then only upon such reasonable notice of application therefor as a presiding judge of such court may direct by order to show cause, but in no case less than forty-eight hours, which shall be served upon such party or parties sought to be restrained or enjoined as shall be specified in such order to show cause.

(3) No such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any laws of this state.

(4) Whenever in any matter relating to the violation of any such restraining order or injunction an issue of fact shall arise, such issue, whether presented in a civil or a criminal proceeding, shall be tried by a jury, in the same manner as provided for the trial of other cases. All contempt proceedings, whether civil or criminal, brought for the alleged violation of any such restraining order or injunction, are, and hereby are declared to be independent, original, special proceedings, and shall require a unanimous finding of the jury. The requirement for trial by jury shall not apply to direct contempts committed in the immediate presence of the court.

133.08 Collective bargaining. Sections 133.01, 133.04 and 133.21 shall be so construed as to permit collective bargaining by associations of producers of agricultural products and by associations of employes when such bargaining is actually and expressly done for the individual benefit of the separate members of each such association making such collective bargain.

133.17 Unfair discrimination in trade; unlawful selling. (1) Any person, firm or corporation, foreign or domestic, doing business in this state and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of injuring or destroying the competition of any regular, established dealer in such commodity or to prevent competition of any person who, in good faith, intends or attempts to become such dealer, discriminate between different sections, communities, or cities of this state, or between persons, firms, associations or corporations in any locality of this state, by selling such commodity at a lower rate or price in one section, community, or city, or any portion thereof, or to any person, firm, association or corporation in any locality of this state, than the rate or price at which such person, firm or corporation, foreign or domestic, sells such commodity in another section, community, or city, or to another person, firm, association or corporation in any locality of this state, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

(2) Any person, firm, company, association or corporation, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred dollars, nor more than five thousand dollars for each offense, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

133.18 Same; unlawful buying. (1) Any person, firm, company, association or corporation, foreign or domestic, doing business in this state and engaged in the business of collecting or buying any product, commodity or property of any kind, that shall intentionally, for the purpose of injuring or destroying the business or trade of a competitor in any locality of this state, or to prevent competition by any person who in good faith intends or attempts to engage in such business, discriminate between the different sections, communities, or cities of this state, or

between persons, firms, associations or corporations in any locality of this state, by buying any product, commodity or property of any kind, and paying therefor a higher rate or price in one section, community, or city or to any person, firm, association or corporation in any locality of this state, than is paid for the same kind of product, commodity or property by said person, firm, company, association or corporation, foreign or domestic, in another section, community or city, or to another person, firm, association or corporation in any locality of this state, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

(2) Any person, firm, company, association or corporation, and any officer, agent, or receiver of any firm, company, association or corporation, or any member of the same, or any individual violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred dollars nor more than five thousand dollars for each offense, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

133.185 Secret rebates; unfair trade practice; prohibited; penalty. (1) The secret payment or allowance of rebates, refunds, commissions or unearned discounts, whether in the form of money or otherwise, or the secret extension to certain purchasers of special services or privileges not extended to all purchasers purchasing upon like terms and conditions, such payment, allowance or extension injuring or tending to injure a competitor or destroying or tending to destroy competition, is an unfair trade practice and is prohibited.

(2) Any person, firm or corporation violating any of the provisions of subsection (1) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not to exceed 6 months, or by both such fine and imprisonment.

133.19 Prosecutions. The attorney general shall institute, manage, control and direct, in the proper county, all prosecutions for violations of ss. 133.17 to 133.185 and for such purpose shall have and exercise all powers conferred upon district attorneys in such cases. The district attorney in the county in which any such prosecution is instituted or pending shall cooperate with and assist the department of justice in such prosecution.

133.20 Revoke charter. Complaints that a corporation is guilty of unfair discrimination, as defined by ss. 133.17 to 133.185 may be made to the attorney general. The department of justice shall investigate such complaints. For investigative purposes the department of justice may subpoena witnesses, administer oaths, take testimony and require the production of books or other documents. If the department of justice determines that sufficient grounds exist, it may prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of the corporation and to permanently enjoin the corporation from doing business in this state. On proof of a substantial and wilful violation the court may, upon such terms as it deems just and in the public interest, annul the charter or revoke the permit of the corporation, and permanently enjoin the corporation from transacting business in this state.

133.21 Domestic and foreign corporations; cancellation of charters or certificates of authority for restraining trade; affidavit. (1) Any corporation organized under the laws of this state or foreign corporation authorized to transact business in this state pursuant to a certificate of authority from the secretary of state which shall enter into any combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in this state, or constituting a subject of trade or commerce therein, or which shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or fix any standard or figure by which its price to the public shall be in any manner controlled or established, shall, upon proof thereof, in any court of competent jurisdiction, have its charter or authority to transact business in this state canceled and annulled. Every corporation shall, in its annual report filed with the secretary of state, show the facts in regard to the matters specified in this section. As used in this section, the words "article or commodity in general use in this state" includes newspapers, magazines, periodicals, and advertising, including radio advertising.

(2) Whoever violates this section may be fined not more than \$5,000 or imprisoned not more than 5 years or both.

133.22 Duty of department of justice. Whenever the attorney general is notified or has reason to believe that any corporation has violated s. 133.21 the department of justice shall address to any such corporation or to any

director or officer inquiries deemed necessary for the purpose of determining whether or not such corporation has violated any provision of said section. The corporation, director or officer so addressed shall promptly and fully answer in writing, under oath, such inquiries; and in case such corporation, director or officer fails or neglects to do so within 60 days from the receipt of such inquiries, unless such time is extended in writing by the attorney general the department of justice shall proceed against such corporation under s. 133.23.

133.23 Ouster. If a complaint is made and evidence produced to the satisfaction of the attorney general that any corporation has violated s. 133.21 or 133.22, the department of justice shall bring an action in the name of the state in any circuit court of this state to have the charter, or certificate of authority to transact business in this state, of such corporation forfeited, canceled and annulled, and upon proof to the satisfaction of the court, judgment shall be entered therefor. All contracts or agreements made by any person while a member of any combination, conspiracy, trust or pool prohibited by s. 133.01 or 133.21, and which contract or agreement is founded upon, or is the result of, or grows out of, or is connected with, any violation of said sections, either directly or indirectly, shall be void and no recovery thereon or benefit therefrom shall be had by or for any such person. Any payments made upon, under or pursuant to such contract or agreement to or for the benefit of such person, may be recovered in an action by the party making any such payment, his heirs, personal representatives or assigns; provided that suit for such recovery is brought within 6 years after the making of said contract or agreement.

133.24 No privilege from self-accusation. No person shall be excused from answering any of the inquiries herein provided for, nor from attending and testifying, nor from producing any books, papers, contracts, agreements or documents in obedience to a subpoena issued by any lawful authority in any case or proceeding based upon or growing out of any alleged violation of any of the provisions of s. 133.21, or of any law of this state in regard to trusts, monopolies or illegal combinations on the ground of or for the reason that the answer, testimony, evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may answer, testify or produce evidence, documentary or otherwise, in

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obedience to any request under these provisions or any subpoena, or either of them, in any case or proceeding, except that the charter of any corporation may be vacated and its corporate existence annulled or its certificate of authority to transact business in this state may be canceled and annulled as hereinbefore provided, and except that no person testifying in any case or proceeding aforesaid shall be exempt from punishment for perjury committed in so testifying.

Fifth amendment privilege must be claimed as to each question. *State v. Hall*, 65 W (2d) 18, 221 NW (2d) 806.

133.245 Action to cancel or revoke charter; judgment. In any action to forfeit, cancel, revoke or annul the charter of any corporation organized under the laws of this state, or the license or authority to do business in this state of any foreign corporation, or to enjoin any such corporation from doing business in this state, because of violation of any provision relating to the unlawful restraint of trade or commerce, judgment for such forfeiture, cancellation, revocation, annulment or injunction may, upon such terms as the court shall deem just and in the public interest, be rendered by the court, but only upon proof of a substantial and wilful violation of such statutory provision.

133.25 Certain contracts not in restraint of trade; exceptions. (1) This section may be cited as the "Fair Trade Act".

(2) As used in this section, "producer" means grower, baker, maker, manufacturer, and "commodity" means any subject of commerce.

(3) Except as provided in subsections (4) and (6), no contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trademark, brand or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others, shall be deemed a contract or combination in the nature of a trust or conspiracy in restraint of trade or commerce by reason of any of the following provisions contained in such contract:

(a) That the buyer will not resell such commodity except at the price stipulated by the vendor.

(b) That the vendee or producer shall require that any person to whom delivery of a commodity is made for the purpose of resale shall agree that the latter will not, in turn, resell except at the price stipulated by the vendor or vendee.

(4) Every contract containing the provisions referred to in subsection (3) shall include the provision that such commodity may be resold

without reference to such contract in the following cases:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing delivering any such commodity.

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

(c) When the goods are sold to the state or a municipality, as defined in s. 66.29 (1) (b).

(5) Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract referred to in subsection (3), whether or not the person so advertising, offering for sale or selling is a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

(6) This section does not apply to any contract between producers or between wholesalers or between retailers as to sale or resale prices.

(7) (a) Upon complaint of any person that any contract containing the provisions referred to in subsection (3) is unfair and unreasonable as to the minimum resale price therein stipulated, the department of agriculture may in its discretion serve by registered mail upon the parties to said contract notice of the time and place for a hearing on said complaint, at which hearing said parties shall show cause why the said contract should not be set aside. If upon such hearing the department shall find that such contract is unfair and unreasonable as to its minimum resale price provisions, said department may by special order declare such contract to be in restraint of trade.

(b) The department of agriculture shall assess the costs of such proceeding against such contracting parties in case it finds such contract unfair and unreasonable and against the complainant if it finds such contract fair and reasonable, provided, however, that the costs against any one complainant in any one complaint shall not exceed five dollars.

(c) Decisions in such cases shall be subject to judicial review as provided in chapter 227.

History: 1971 c. 215

Under (5), any persons damaged thereby, include not only producers, distributors, or vendors, but also other retailers bound by fair trade agreements with these same distributors. *Kujus v. Schmidman*, 66 W (2d) 544, 225 NW (2d) 484

133.26 Certain contracts declared illegal.

Any contract, express or implied, entered into in violation of any of the provisions of sections 133.17, 133.18 or 133.185, is an illegal contract and no recovery shall be had thereon.

The fact that plaintiff gave illegal rebates to competitors is no defense to an action for the price of goods sold. *Roux Laboratories v. Beauty Franchises*, 60 W (2d) 427, 210 NW (2d) 441

133.27 Legislative Intent declared. The intent of sections 133.17 to 133.185 and section 133.25 is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices under which fair and honest competition is destroyed or prevented. Said sections shall be liberally

construed so that their beneficent purposes may be subserved.

133.28 Statute superseded as to insurance business. The provisions of ss. 133.17, 133.18 and 133.25 as respects the business of insurance are superseded by ch. 628.

History: 1975 c. 371.