

CHAPTER 100

MARKETING; TRADE PRACTICES

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100.01 Produce wholesalers, unfair conduct, liability for damages. (1) DEFINITIONS.

When used in this section:

- (a) “Broker” means a person engaged in negotiating sales or purchases of produce for or on behalf of the seller or the buyer.
- (b) “Commission merchant” means a person engaged in receiving produce for sale for or on behalf of another.
- (c) “Dealer” means a person who for resale buys, sells, offers or exposes for sale, or has in his or her possession with intent to sell, any produce except that raised by him or her and that purchased by him or her exclusively for his or her own sale at retail.
- (d) “Produce” means any kinds of fresh fruit or fresh vegetable, including potatoes and onions intended for planting.
- (e) “Produce wholesaler” means a commission merchant, dealer or broker.

(2) UNFAIR CONDUCT. It shall be unlawful:

- (a) For a dealer to reject or fail to deliver in accordance with the contract, without reasonable cause, produce bought or sold or contracted to be bought or sold by such dealer.
- (b) For a commission merchant, without reasonable cause, to fail to deliver produce in accordance with the contract.
- (c) For a commission merchant to fail to render a true itemized statement of the sale or other disposition of a consignment of produce with full payment promptly in accordance with the terms of the agreement between the parties, or, if no agreement, within 15 days after receipt of the produce. Such statement of sale shall clearly express the gross amount for which the produce was sold

and the proper, usual or agreed selling charge, and other expenses necessarily and actually incurred or agreed to in the handling thereof.

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

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

(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 the dealer receives notice of arrival of the produce, the dealer 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 conse-

quence of such violation and such liability may be enforced by suit in any court of competent jurisdiction.

History: 1983 a. 189; 1993 a. 492.

100.02 Commission merchants, duties, must account.

(1) No person receiving any fruits, vegetables, melons, dairy, or poultry products or any perishable farm products of any kind or character, other than cattle, sheep, hogs or horses, referred to in this section as produce, for or on behalf of another, may without good and sufficient cause therefor, destroy, or abandon, discard as refuse or dump any produce directly or indirectly, or through collusion with any person, nor may any person knowingly and with intent to defraud make any false report or statement to the person from whom any produce was received, concerning the handling, condition, quality, quantity, sale or disposition thereof, nor may any person knowingly and with intent to defraud fail truly and correctly to account and pay over to the consignor therefor.

(2) The department shall by rule provide for the making of prompt investigations and the issuing of certificates as to the quality and condition of produce received, upon application of any person shipping, receiving or financially interested in, the produce. The rules shall designate the classes of persons qualified and authorized to make the investigations and issue the certificates, except that any investigation shall be made and any certificate shall be issued by at least 2 disinterested persons in any case where the investigation is not made by an officer or employee of the department.

(3) A certificate made in compliance with the rules shall be prima facie evidence in all courts of the truth of the statements contained in the certificate as to the quality and condition of the produce; but if any such certificate is put in evidence by any party, in any civil or criminal proceeding, the opposite party shall be permitted to cross-examine any person signing the certificate, called as a witness at the instance of either party, as to his or her qualifications and authority and as to the truth of the statements contained in the certificate.

History: 1977 c. 29; 1993 a. 213.

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 or she 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 the owner’s agent by inserting a blue ear tag in the right ear and shall be accompanied by the certificate.

(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: 1991 a. 201; 1993 a. 492.

100.04 Livestock production contracts. (1) **DEFINITION.** In this section, “livestock” means swine, cattle, poultry, sheep, goats or farm-raised deer, as defined in s. 95.001 (1) (ag).

(2) **REQUIRED CONTRACT TERMS.** Every written contract under which livestock owned by one party is possessed by another party for breeding, feeding or the production of animal products shall

set forth, in clear language, the manner in which any payments received because of the destruction of the livestock due to disease, fire or other unanticipated cause shall be divided between the party owning the livestock and the party possessing the livestock.

(3) **RESPONSIBLE PARTY.** The party who drafts or otherwise provides the text of a written contract described in sub. (2) is responsible for including language that fulfills the requirement of sub. (2).

(4) **RESOLUTION OF DISPUTES.** If a written contract described in sub. (2) does not include language that fulfills the requirement of sub. (2) and one of the parties to the contract begins an action claiming an interest in payments received because of the destruction of livestock, the court shall divide the payments among the parties in an equitable manner.

History: 1995 a. 210; 2001 a. 56.

100.05 Butter and cheese manufacturers; accounts accessible.

(1) No operator of a butter factory or cheese factory wherein the value of the milk or cream delivered is determined by the sale of the product manufactured shall use or allow any other person, unless the other person is entitled to the benefit thereof, to use any milk or cream brought to the operator, without the consent of the owner thereof.

(2) The operator of a butter or cheese factory wherein the value of the milk or cream delivered is determined by the sale of the product manufactured shall keep or cause to be kept a correct account of the amount of milk or cream received daily, and of the number of pounds of butter, and the number and style of cheese made each day, and of the number of cheese cut or otherwise disposed of and the weight of each, and the number of pounds of whey cream sold, with the test.

(3) The account kept under sub. (2) shall be open to the inspection of any person furnishing milk to the operator and to the department, its chemists, assistants, inspectors and agents.

History: 1993 a. 492; 1995 a. 225.

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

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

100.07 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 willfully making any false entry in such records or reports, or by willfully 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 or she 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, bylaws and regulations adopted thereunder.

History: 1993 a. 492.

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

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

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

(3) This section does not apply to:

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

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

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

(d) A coupon, certificate or similar device, which is within, attached to, or a part of any package or container as packed by the original manufacturer and is directly redeemed by such manufacturer.

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

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

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

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

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

History: 1977 c. 268; 1981 c. 351; 1983 a. 406; 1993 a. 213.

100.16 Selling with pretense of prize; in-pack chance promotion exception. (1) No person shall sell or offer to sell anything by the representation or pretense that a sum of money or something of value, which is uncertain or concealed, is enclosed 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 the sale.

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

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

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

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

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

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

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

(g) The sponsor provides on request of a state agency a record of the names and addresses of all winners of prizes valued at \$100

or more, if the request is made within one year after the termination date of the promotion.

History: 1981 c. 351; 1997 a. 253.

A plan whereby a soft drink company would include with specified purchases a coupon for a Wisconsin lottery ticket that the customer could redeem at a retail lottery outlet would violate this section. 77 Atty. Gen. 303.

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.

100.171 Prize notices. (1) DEFINITIONS. In this section:

(a) “Prize” means a gift, award or other item or service of value.

(b) 1. “Prize notice” means a notice given to an individual in this state that satisfies all of the following:

a. Is or contains a representation that the individual has been selected or may be eligible to receive a prize.

b. Conditions receipt of a prize on a payment from the individual or requires or invites the individual to make a contact to learn how to receive the prize or to obtain other information related to the notice.

2. “Prize notice” does not include any of the following:

a. A notice given at the request of the individual.

b. A notice informing the individual that he or she has been awarded a prize as a result of his or her actual prior entry in a game, drawing, sweepstakes or other contest, if the individual is awarded the prize stated in the notice.

c. A notice given in the form of an in-pack chance promotion if it meets the requirements of s. 100.16 (2).

(c) “Solicitor” means a person who represents to an individual that the individual has been selected or may be eligible to receive a prize.

(d) “Sponsor” means a person on whose behalf a solicitor gives a prize notice.

(e) “Verifiable retail value” of a prize means:

1. A price at which the solicitor or sponsor can demonstrate that a substantial number of the prizes have been sold by a person other than the solicitor or sponsor in the trade area in which the prize notice is given.

2. If the solicitor or sponsor is unable to satisfy subd. 1., no more than 1.5 times the amount the solicitor or sponsor paid for the prize.

(2) WRITTEN PRIZE NOTICE REQUIRED. If a solicitor represents to an individual that the individual has been selected or may be eligible to receive a prize, the solicitor may not request, and the solicitor or sponsor may not accept, a payment from the individual in any form before the individual receives a written prize notice that

contains all of the information required under sub. (3) (a) presented in the manner required under sub. (3) (b) to (f).

(3) DELIVERY AND CONTENTS OF WRITTEN PRIZE NOTICES. (a) A written prize notice shall contain all of the following information presented in the manner required under pars. (b) to (f):

1. The name and address of the solicitor and sponsor.

2. The verifiable retail value of each prize the individual has been selected or may be eligible to receive.

3. If the notice lists more than one prize that the individual has been selected or may be eligible to receive, a statement of the odds the individual has of receiving each prize.

4. Any requirement or invitation for the individual to view, hear or attend a sales presentation in order to claim a prize, the approximate length of the sales presentation and a description of the property or service that is the subject of the sales presentation.

5. Any requirement that the individual pay shipping or handling fees or any other charges to obtain or use a prize.

6. If receipt of the prize is subject to a restriction, a statement that a restriction applies, a description of the restriction and a statement containing the location in the notice where the restriction is described.

7. Any limitations on eligibility.

(b) 1. The verifiable retail value and the statement of odds required in a written prize notice under par. (a) 2. and 3. shall be stated in immediate proximity to each listing of the prize in each place the prize appears on the written prize notice and shall be in the same size and boldness of type as the prize.

2. The statement of odds shall include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be delivered. The number of prizes and written prize notices shall be stated in Arabic numerals. The statement of odds shall be in the following form: “... (number of prizes) out of... written prize notices”.

3. The verifiable retail value shall be in the following form: “verifiable retail value: \$...”.

(c) If an individual is required to pay shipping or handling fees or any other charges to obtain or use a prize, the following statement shall appear in immediate proximity to each listing of the prize in each place the prize appears in the written prize notice and shall be in not less than 10–point boldface type: “YOU MUST PAY \$... IN ORDER TO RECEIVE OR USE THIS ITEM.”

(d) The information required in a written prize notice under par. (a) 4. shall be on the first page of the written prize notice in not less than 10–point boldface type. The information required under par. (a) 6. and 7. shall be in not less than 10–point boldface type.

(e) If a written prize notice is given by a solicitor on behalf of a sponsor, the name of the sponsor shall be more prominently and conspicuously displayed than the name of the promoter.

(f) A solicitor or sponsor may not do any of the following:

1. Place on an envelope containing a written prize notice any representation that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize.

2. Deliver a written prize notice that contains language, or is designed in a manner, that would lead a reasonable person to believe that it originates from a government agency, public utility, insurance company, consumer reporting agency, debt collector or law firm unless the written prize notice originates from that source.

3. Represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has been selected to receive a particular prize unless the representation is true.

(4) SALES PRESENTATIONS. If a prize notice requires or invites an individual to view, hear or attend a sales presentation in order to claim a prize, the sales presentation may not begin until the solicitor does all of the following:

(a) Informs the individual of the prize, if any, that has been awarded to the individual.

(b) If the individual has been awarded a prize, delivers to the individual the prize or the item selected by the individual under sub. (5) if the prize is not available.

(5) PRIZE AWARD REQUIRED; OPTIONS IF PRIZE NOT AVAILABLE.

(a) A solicitor who represents to an individual in a written prize notice that the individual has been awarded a prize shall provide the prize to the individual unless the prize is not available. If the prize is not available, the solicitor shall provide the individual with any one of the following items selected by the individual:

1. Any other prize listed in the written prize notice that is available and that is of equal or greater value.

2. The verifiable retail value of the prize in the form of cash, a money order or a certified check.

3. A voucher, certificate or other evidence of obligation stating that the prize will be shipped to the individual within 30 days at no cost to the individual.

(b) If a voucher, certificate or other evidence of obligation delivered under par. (a) 3. is not honored within 30 days, the solicitor shall deliver to the individual the verifiable retail value of the prize in the form of cash, a money order or a certified check. The sponsor shall make the payment to the individual if the solicitor fails to do so.

(6) COMPLIANCE WITH OTHER LAWS. Nothing in this section shall be construed to permit an activity prohibited by s. 945.02 (3).

(7) PENALTIES. (a) Whoever violates this section may be required to forfeit not less than \$100 nor more than \$5,000 for each violation.

(b) Whoever intentionally violates this section is guilty of a Class I felony. A person intentionally violates this section if the violation occurs after the department or a district attorney has notified the person by certified mail that the person is in violation of this section.

(8) ENFORCEMENT. The department shall investigate violations of this section. The department or any district attorney may on behalf of the state:

(a) Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of this section if proof of such loss is submitted to the satisfaction of the court.

(b) Bring an action in any court of competent jurisdiction for the penalties authorized under sub. (7).

(9) PRIVATE ACTION. In addition to any other remedies, a person suffering pecuniary loss because of a violation by another person of this section may bring an action in any court of competent jurisdiction and shall recover all of the following:

(a) The greater of \$500 or twice the amount of the pecuniary loss.

(b) Costs and reasonable attorney fees, notwithstanding s. 814.04.

History: 1991 a. 269, 315; 1995 a. 27; 1997 a. 111 s. 28; Stats. 1997 s. 100.171; 1997 a. 283; 2001 a. 109.

100.173 Ticket refunds. (1) In this section:

(a) “Originally scheduled date” means the date on which an entertainment or sporting event is scheduled to be held when a ticket for the event is purchased from the promoter of the event or the promoter’s agent.

(b) “Promoter” means a person who arranges, publicly promotes and causes the public offering for sale of tickets to an entertainment or sporting event. “Promoter” does not include a person whose only financial interest in an entertainment or sporting event is as a ticket seller or as the recipient of rental income for the site of the event.

(c) “Sporting event” does not include a competitive sports activity between school teams or between teams that belong to an established sports league.

(2) (a) Except as provided in pars. (b), (c) and (d), every promoter of an entertainment or sporting event that is not held on the originally scheduled date shall refund to any person who purchased a ticket for the event from the promoter or the promoter’s agent for that date the amount paid for the ticket, minus handling and service charges not exceeding \$5 or 20% of the amount paid for the ticket, whichever is less, if any of the following applies:

1. The purchaser presents the ticket for an event that is canceled to the promoter or the promoter’s agent no later than 90 days after the event is canceled.

2. The purchaser presents the ticket for an event that is rescheduled, or that the promoter represents to the public is being rescheduled, to the promoter or the promoter’s agent no later than 30 days after the originally scheduled date.

(b) Notwithstanding par. (a), and except as provided in par. (c), if the promoter of an entertainment or sporting event that is not held on the originally scheduled date is an organization described in section 501 (c) (3) of the internal revenue code that is exempt from federal income tax under section 501 (a) of the internal revenue code, the promoter shall be required to refund only that portion of the ticket price that the promoter attributes to the admission price of the event, minus handling and service charges not exceeding \$5 or 20% of that portion of the ticket price, whichever is less, if all of the following apply:

1. The ticket states the portion of the ticket price that the promoter attributes to the admission price of the event and the portion of the ticket price that the promoter attributes to a donation.

2. The ticket states that the law applicable to ticket refunds applies only to the portion of the ticket price that the promoter attributes to the admission price of the event.

(c) No promoter of an entertainment or sporting event who is required to give a ticket refund under this section may deduct service and handling charges from the amount paid for that ticket unless the ticket states, or the promoter informs the purchaser at the time of the ticket sale of, the amount that the promoter may deduct under par. (a) or (b) for handling and service charges.

(cm) Nothing in this subsection requires a promoter or promoter’s agent to refund any amount paid by a purchaser for a service provided by the promoter or promoter’s agent that is not included in the price of a ticket for an entertainment or sporting event, if the promoter or promoter’s agent informs the purchaser when the service is purchased that the amount paid for the service is nonrefundable.

(d) This subsection does not apply to any promoter of an entertainment or sporting event that is not held on the originally scheduled date because of inclement weather.

(3) Every promoter who is required to furnish a refund under sub. (2) shall furnish the refund to the purchaser no later than 60 days after presentation of the ticket by the purchaser to the promoter.

(4) The department shall investigate violations of this section. The department, or any district attorney upon informing the department, may, on behalf of the state, do any of the following:

(a) Bring an action for temporary or permanent injunctive relief in any court of competent jurisdiction for any violation of this section. The relief sought by the department or district attorney may include the payment by a promoter into an escrow account of an amount estimated to be sufficient to pay for ticket refunds. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

(b) Bring an action in any court of competent jurisdiction for the recovery of a civil forfeiture against any person who violates

this section in an amount not less than \$50 nor more than \$200 for each violation.

History: 1991 a. 121; 1995 a. 27; 1997 a. 111 s. 8; Stats. 1997 s. 100.173.

100.174 Mail–order sales regulated. (1) In this section:

- (a) “Buyer” means an individual who:
1. Is a resident of this state; and
 2. While located in this state, receives a solicitation and orders goods from a seller for personal, family or household purposes.
- (b) “Delivery period” means the time period clearly disclosed to the buyer in the solicitation for a mail order within which the ordered goods are to be shipped or, if there is no such disclosure, 30 days after the date of payment for the ordered goods.
- (c) “Extended delivery period” means the extended period authorized under sub. (3).
- (d) “Mail order” means an order of goods by a buyer which the seller solicits and receives payment for without any face–to–face contact between the buyer and the seller.
- (e) “Payment” means:
1. Receipt by the seller of full or partial payment in the form of cash, check, money order or the like for a mail order; or
 2. In a credit sale, the receipt by the seller of the information and authorization necessary to process the credit sale.
- (f) “Seller” means a person who engages in mail–order solicitations, and includes representatives, employees or agents of a seller, however designated by the seller.
- (g) “Shipped” and “shipping” mean:
1. Delivery to the buyer or the buyer’s designee;
 2. Delivery to a 3rd–party carrier for delivery to the buyer or the buyer’s designee; or
 3. Delivery to a place clearly disclosed in the solicitation along with notice to the buyer or the buyer’s designee of the arrival of the goods.
- (2) It is unlawful for a mail–order seller who receives payment from a buyer to permit the delivery period or extended delivery period, if any to elapse without complying with one of the following:
- (a) Shipping the ordered goods.
- (b) Mailing a full refund to the buyer and nullifying any financial obligation incurred by the buyer for any ordered goods not shipped during the delivery period or extended delivery period, if any. The refund and nullification shall be made within a reasonable time after the seller becomes aware that the goods cannot be shipped within the delivery period or extended delivery period, if any, but not later than the end of the delivery period or extended delivery period, if any.
- (c) Mailing the buyer notice as provided by subs. (3) and (4) during the delivery period and shipping the goods or making a full refund to and nullifying any obligation of the buyer for goods not shipped within the extended delivery period. The seller shall promptly make a full refund to and nullify any financial obligation of the buyer for goods not shipped if the seller receives a written cancellation request from the buyer during the extended delivery period.
- (3) If the seller mails a notice which complies with sub. (4) to the buyer during the delivery period the delivery period may be extended to:
- (a) The date specified by the seller in the notice but not later than 30 days after the expiration of the delivery period; or
- (b) A later date authorized by the buyer in a written statement received by the seller within 30 days after the expiration of the delivery period and prior to cancellation under sub. (2).
- (4) The notice required by sub. (3) shall clearly and conspicuously inform the buyer:
- (a) Of the specific date by which the goods will be shipped or that the shipping date is unknown.

(b) That if the seller, prior to shipping the goods, receives a written statement from the buyer requesting cancellation of the mail order the mail order will be canceled and the seller will promptly make a full refund to and nullify any financial obligation of the buyer for goods not shipped.

(c) That if the goods are not shipped by the date specified in the notice the mail order will be canceled and the seller will make a full refund to and nullify any financial obligation of the buyer for goods not shipped.

(d) That the delivery period may not be extended beyond 30 days unless, within 30 days after the expiration of the delivery period and prior to the cancellation of the mail order under sub. (2), the seller receives written authorization from the buyer extending the delivery period to a specific later date.

(5) The department or any district attorney may on behalf of the state:

(a) Bring an action for temporary or permanent injunctive or other relief in any circuit court for any violation of this section. The court may, in its discretion, make any order or judgment necessary to restore to any person any pecuniary loss suffered because of a violation of this section, if proof of the loss is submitted to the satisfaction of the court.

(b) Bring an action in any circuit court for the recovery of a civil forfeiture against any person who violates this section in an amount of not less than \$100 nor more than \$1,000 for each violation.

(6) The department shall investigate violations of and enforce this section.

(7) In addition to any other remedies provided by law, any person suffering a pecuniary loss because of a violation of this section may bring a civil action in any circuit court to recover twice the amount of the pecuniary loss, together with costs and disbursements, including reasonable attorney fees, and for equitable relief as determined by the court.

(8) Any waiver by a buyer of the rights provided by this section is void.

History: 1979 c. 62; 1995 a. 27; 1997 a. 111 s. 29; Stats. 1997 s. 100.174; 2005 a. 253.

100.175 Dating service contracts. (1) In this section, “dating service” means a service that purports to assist a person in obtaining friendship or companionship through a program in which a person is provided an opportunity to meet other persons.

(2) The seller of dating services shall give the buyer a copy of the written contract at the time that the buyer signs the contract.

(3) Every contract for a dating service shall contain all of the following:

(a) A caption printed in boldface, uppercase type of not less than 10–point size entitled “CANCELLATION AND REFUNDS”.

(b) A provision under the caption stating: “RIGHT TO CANCEL. You are permitted to cancel this contract until midnight of the 3rd day after the date on which you signed the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying.... (the seller) by any writing mailed or delivered to.... (the seller) at the address shown on the contract, within the previously described time period. If you do so cancel, any payments made by you will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by.... (the seller) and arrangements will be made to relieve you of any further obligation to pay the same.”

(4) Every contract for dating services shall be for a specified length of time not exceeding 2 years and shall clearly disclose the full price of the buyer’s contractual obligation including any interest or other charges.

(5) (a) No person may collect or by contract require a buyer to pay more than \$100 for dating services before the buyer receives or has the opportunity to receive those services unless the

person selling dating services establishes proof of financial responsibility by maintaining any of the following commitments approved by the department in an amount not less than \$25,000:

1. A bond.
2. A certificate of deposit.
3. An established escrow account.
4. An irrevocable letter of credit.

(b) The commitment described in par. (a) shall be established in favor of or made payable to the state, for the benefit of any buyer who does not receive a refund under the contractual provision described in sub. (3). The person selling dating services shall file with the department any agreement, instrument or other document necessary to enforce the commitment against the person selling dating services or any relevant 3rd party, or both.

(6) Any contract for a dating service is unenforceable against the buyer and is a violation of this section if the contract does not comply with the requirements of this section or the seller fails to perform in accordance with the contractual provisions required under this section.

(7) (a) The department or any district attorney may on behalf of the state:

1. Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section. The court may in its discretion, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

2. Bring an action in any court of competent jurisdiction for the recovery of civil forfeitures against any person who violates this section in an amount not less than \$100 nor more than \$10,000 for each violation.

(b) The department may bring an action in circuit court to recover on a financial commitment maintained under sub. (5) against a person selling dating services or relevant 3rd party, or both, on behalf of any buyer who does not receive a refund due under the contractual provision described in sub. (3).

(c) Any person injured by a breach of a contract for dating services may bring a civil action to recover damages together with costs and disbursements, including reasonable attorney fees, and such other equitable relief as may be determined by the court.

History: 1993 a. 390; 1995 a. 27; 1997 a. 111 s. 25; Stats. 1997 s. 100.175.

100.177 Fitness center and weight reduction center contracts. (1) In this section:

(ag) “Center” means a fitness center or a weight reduction center.

(am) “Conspicuous” has the meaning designated under s. 421.301 (8).

(b) “Contract for center services” or “contract” means any of the following:

1. A contract for membership in any center.
2. A contract for instruction, training, assistance or use of facilities primarily for physical exercise, in weight control, or in figure development.
3. A contract for instruction, supervision or counseling for diet or weight loss or maintenance.

(c) “Fitness center” means an establishment that, for profit, provides as its primary purpose services or facilities that are purported to assist patrons in physical exercise, in weight control, or in figure development, including but not limited to a fitness center, studio, salon or club. “Fitness center” does not include an organization solely offering training or facilities in an individual sport or a weight reduction center.

(d) “Operating day” means any calendar day on which the buyer may inspect and use the facilities and services of the center during a period of at least 8 hours.

(e) “Weight reduction center” means an establishment that provides as its primary purpose instruction, supervision or coun-

seling for diet or weight loss or maintenance, if physical exercise services are not provided on the premises.

(2) The seller shall give the buyer a copy of the written contract at the time the buyer signs the contract.

(3) Every contract for center services shall clearly and conspicuously disclose the identity and location of the center facilities available to the buyer. The contract shall disclose the general nature of each major facility and service that will be available including any conditions or restrictions on their use. The disclosures under this subsection may be made on a separate sheet provided to the buyer at the time the buyer signs the contract. If a facility or service is replaced by an equal or superior facility or service, the center is deemed in compliance with this subsection.

(4) Every contract for fitness center services shall provide that performance of all of the agreed upon facilities and services will be available for the buyer’s use on a specified date no later than 6 months after the date the contract is signed by the buyer.

(5) Every contract for fitness center services shall be for a specified length of time not exceeding 2 years and shall clearly disclose the full price of the buyer’s contractual obligation including any interest or other charges.

(5m) Every contract for weight reduction center services shall be for a specified length of time not exceeding 2 years exclusive of any weight maintenance program. If the contract for weight reduction center services includes a weight maintenance program, the contract for weight reduction center services shall be for a specified length of time not exceeding 3 years. The contract for weight reduction center services shall clearly disclose the full price of the buyer’s contractual obligation including any interest or other charges.

(6) Every contract for fitness center service shall contain:

(a) A caption printed in boldface uppercase type of not less than 10–point size entitled “CANCELLATION AND REFUNDS”.

(b) A provision under the caption stating: “*Right to Cancel.* You are permitted to cancel this contract until midnight of the 3rd operating day after the date on which you signed the contract. If the facilities or services that are described in the contract are not available at the time you sign the contract, you have until midnight of the 3rd operating day after the day on which you received notice of their availability, to cancel the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying (the seller) by any writing mailed or delivered to (the seller) at the address shown on the contract, within the previously described time period. If you do so cancel, any payments made by you, less a user fee of no more than \$3 per day of actual use, will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by (the seller) and arrangements will be made to relieve you of any further obligation to pay the same.”

(6m) Every contract for weight reduction center service shall contain:

(a) A caption printed in boldface uppercase type of not less than 10–point size entitled “CANCELLATION AND REFUNDS”.

(b) A provision under the caption stating: “*Right to Cancel.* You are permitted to cancel this contract until midnight of the 3rd operating day after the date on which you signed the contract. If the facilities or services that are described in the contract are not available at the time you sign the contract, you have until midnight of the 3rd operating day after the day on which you received notice of their availability, to cancel the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying.... (the seller) by any writing mailed or delivered to.... (the seller) at the address shown on the contract, within the previously described time period. If you do so cancel, any payments made by you, less the value of services already provided to you, will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you

will be canceled by.... (the seller) and arrangements will be made to relieve you of any further obligation to pay the same.”

(7) If, at the time of execution of the center services contract, the facilities and services described in the contract are available for the buyer’s use, the contract may include the written notice that the facilities and services are available as required by subs. (6) and (6m).

(8) No contract may require the buyer to pay more than \$25 or 10% of the total contract price, whichever is less, prior to the date on which the customer receives written notice that the facilities and services described in the contract are available for full use by the buyer.

(9) No contract for fitness center services may require a buyer who exercises the contractual right to cancel to pay more than a \$3 user fee per day of actual use of facilities and services by the buyer during the cancellation period. No contract for weight reduction center services may require a buyer who exercises the contractual right to cancel to pay more than the value of services provided before cancellation.

(10) Any right of action or defense arising out of a contract for center services that the buyer has against the seller is preserved against any assignee of or successor to the contract.

(11) (a) Every contract for center services shall provide that if any of the facilities or services described in the contract become unavailable or are no longer fully operational, before full receipt of the services and use of facilities for which the buyer contracted, the buyer is liable for only that portion of the total consideration proportional to the elapsed time portion of the contract at the time of the unavailability. The buyer is entitled to a refund of any other funds already paid.

(b) A buyer has the option, in lieu of the proportional refund provided in par. (a), to choose to complete the unused portion of the contract including any renewal periods at the price disclosed in accordance with sub. (5) at another location which is owned, controlled, affiliated with or operated by the seller. Any such modification of the contract must be made in writing and may only modify the terms of the contract required under sub. (3) concerning the unavailable or no longer fully operational facilities or services.

(c) Nothing in this subsection shall restrict a center’s ability to:

1. Perform regular maintenance or make prompt equipment repairs.
2. Make improvements to the facilities or services.
3. Replace a facility or service with a superior facility or service.

(12) Every contract for center services shall provide that if the buyer is unable to make use of or receive the center services contracted for because of death or disability, the buyer is liable for only that portion of the total consideration proportional to the elapsed time portion of the contract at the time of the death or disability.

(13) (a) Subject to sub. (8), no center may collect or by contract require a buyer to pay more than \$100 for center services before the buyer receives or has the opportunity to receive those services unless the center establishes, for each center location, proof of financial responsibility as described in par. (b).

(b) 1. Except as provided in subd. 3., a center may establish proof of financial responsibility required under par. (a) by maintaining an established escrow account approved by the department for all amounts received from buyers in advance of the receipt of services or by maintaining any of the following commitments approved by the department in an amount not less than \$25,000, subject to subd. 2.:

- a. A bond.
- b. A certificate of deposit.
- d. An irrevocable letter of credit.

2. The commitment described in subd. 1. shall be established in favor of or made payable to the state, for the benefit of any buyer

who does not receive a refund under sub. (11) (a). The center shall file with the department any agreement, instrument or other document necessary to enforce the commitment against the center or any relevant 3rd party, or both.

3. For 6 or more weight reduction centers owned or operated under the same trade name, the amount of the financial commitment under pars. (a) and (b) for those weight reduction centers is not required to exceed a total of \$150,000. For a weight reduction center that submits to the department evidence satisfactory to the department that the weight reduction center collected a total of \$50,000 or more but less than \$100,000 from buyers of its center services in the previous calendar year, the amount of the financial commitment under pars. (a) and (b) is not required to exceed \$10,000. For a weight reduction center that submits to the department evidence satisfactory to the department that the weight reduction center collected less than a total of \$50,000 from buyers of its center services in the previous calendar year, the amount of the financial commitment under pars. (a) and (b) is not required to exceed \$5,000.

(14) Any contract for center services is unenforceable against the buyer and is a violation of this section if:

- (a) The buyer entered into the contract in reliance upon any false, fraudulent, deceptive or misleading information, representation, notice or advertisement.
- (b) The contract does not comply with the requirements of this section.
- (c) The seller fails to perform in accordance with the contractual provisions under this section.
- (d) The contract contains a provision in which the buyer agrees to waive the requirements of this section.

(15) (a) The department shall investigate violations of this section or s. 100.178 (2) or (4). The department may on behalf of the state:

1. Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section or s. 100.178 (2) or (4). The court may in its discretion, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

2. Bring an action in any court of competent jurisdiction for the recovery of civil forfeitures against any person who violates this section or s. 100.178 (2) or (4) in an amount not less than \$100 nor more than \$10,000 for each violation.

(am) The department may bring an action in circuit court to recover on a financial commitment maintained under sub. (13) against a center or relevant 3rd party, or both, on behalf of any buyer who does not receive a refund due under sub. (11) (a).

(b) In addition to the remedies otherwise provided by law, any person injured by a violation of this section may bring a civil action for damages under s. 100.20 (5). Any person injured by a breach of a contract for center services may bring a civil action to recover damages together with costs and disbursements, including reasonable attorney fees, and such other equitable relief as may be determined by the court.

History: 1977 c. 276; 1987 a. 385; 1991 a. 247; 1993 a. 239; 1995 a. 27; 1997 a. 111 s. 26; Stats. 1997 s. 100.177.

100.178 Fitness center staff requirements. (1) In this section:

- (b) Notwithstanding s. 93.01 (3), “department” means the department of health and family services.
- (c) “Fitness center” has the meaning given under s. 100.177 (1) (c).
- (d) “Institution of higher education” has the meaning given under s. 39.32 (1) (a).

(2) A fitness center shall do any of the following:

(a) At all times during which the fitness center is open and its facilities and services are available for use, have at least one

employee present on the premises of the fitness center who has satisfactorily completed a course or courses in basic first aid and basic cardiopulmonary resuscitation taught by an individual, organization or institution of higher education approved by the department.

(b) Ensure that each of its employees, within 90 days after hire, satisfactorily completes at least one course in basic first aid and basic cardiopulmonary resuscitation taught by an individual, organization or institution of higher education approved by the department.

(4) A fitness center shall post a notice or notices on its premises stating the requirements of sub. (2) and the penalty for a violation of sub. (2) under s. 100.177 (15) (a). The notice shall comply with the rules promulgated by the department under sub. (5) (d).

(5) The department shall promulgate rules establishing all of the following:

(a) The minimum standards for the qualifications and training of an individual, including an individual associated with an organization or institution of higher education, who teaches basic first aid or basic cardiopulmonary resuscitation to fitness center employees under sub. (2).

(b) The minimum hours of instruction and general content of the basic first aid and basic cardiopulmonary resuscitation courses taught to fitness center employees under sub. (2).

(c) Procedures governing the department's approval of individuals, organizations and institutions meeting the standards established under pars. (a) and (b).

(d) Specifications for the notice required under sub. (4) including:

1. Dimensions.
2. Print size or type.
3. The location or locations where the notice must be posted on the fitness center premises.

(7) A violation of sub. (2) or (4) is subject to s. 100.177 (15) (a). This subsection or s. 100.177 (15) (a) does not preclude a person injured as a result of a violation of this section from pursuing any other available equitable or legal relief.

History: 1987 a. 385; 1995 a. 27 s. 9126 (19); 1997 a. 111 s. 27; Stats. 1997 s. 100.178.

Cross Reference: See also ch. HFS 174, Wis. adm. code.

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

(2) (a) In advertising or otherwise representing the sale or furnishing of any property or services combined with or conditioned on the purchase of any other property or services described in such

advertisement or other representation, it is deceptive for a retailer to:

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

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

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

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

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

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

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

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

(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 or her 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 is 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 dispens-

ing equipment shall show only (a) the single gallon unit price including all applicable taxes in one amount or (b) the single gallon product price, the taxes applicable thereto, and the total single gallon unit price including all applicable taxes. In any such advertising, all numerals which represent either price or taxes shall be of the same type and size except that fractions of a cent shall be shown in figures one-half the height, width and prominence of the whole numbers.

(8) Every wholesaler and every other person selling or distributing motor fuel in this state shall keep posted in a conspicuous place, most accessible to the public at his or her 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. Except for sales to drivers of motor vehicles used by physically disabled persons under s. 100.51 (5), all sales shall be made at the posted price. 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 that placard at all of his or her places of business. All prices posted shall remain in effect for at least 24 hours after they are posted. It shall be considered 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 employee thereof to make, publish, disseminate, circulate or place before the public in this state in a newspaper or other publication or in the form of book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label or over any radio or television station or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to the purchase, sale, hire, use or lease of real estate, merchandise, securities, service or employment or to the terms or conditions thereof which advertisement, announcement, statement or representation is part of a plan or scheme the purpose or effect of which is not to sell, purchase, hire, use or lease the real estate, merchandise, securities, service or employment as advertised.

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

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

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

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

(10m) It is deceptive or misleading advertising for a person who sells new motor vehicles to compare new motor vehicle selling prices, including the offered prices or the actual sale prices, to the manufacturer's suggested retail price for that vehicle unless it is clearly and conspicuously disclosed that the latter price is a

manufacturer's suggested retail price and may not represent actual sale prices.

(10r) It is deceptive and misleading for a person who is conducting business in a community or region from a location outside that community or region to use the name of the community or region, or other description of the community or region, in the corporate or trade name of the business or in any other information that is published if the use of the name or description of the location creates the misrepresentation that the business is located in the community or region.

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

(b) 2. Any person suffering pecuniary loss because of a violation of this section by any other person may sue in any court of competent jurisdiction and shall recover such pecuniary loss, together with costs, including reasonable attorney fees, except that no attorney fees may be recovered from a person licensed under ch. 452 while that person is engaged in real estate practice, as defined in s. 452.01 (6). Any person suffering pecuniary loss because of a violation by any other person of any injunction issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including reasonable attorney fees, except that no attorney fees may be recovered from a person licensed under ch. 452 while that person is engaged in real estate practice, as defined in s. 452.01 (6).

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

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

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

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

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

(d) The department or the department of justice, after consulting with the department, or any district attorney, upon informing the department, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may in its discretion, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, provided proof thereof is submitted to the satisfaction of the court. The department and the department of justice may subpoena persons

and require the production of books and other documents, and the department of justice may request the department to exercise its authority under par. (c) to aid in the investigation of alleged violations of this section.

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

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

(b) This section does not apply to a person licensed as a broker or salesperson under s. 452.09 while that person is engaged in real estate practice, as defined in s. 452.01 (6), unless that person has directly made, published, disseminated, circulated or placed before the public an assertion, representation or statement of fact with the knowledge that the assertion, representation or statement of fact is untrue, deceptive or misleading.

History: 1977 c. 29 s. 165.0m (4); 1979 c. 89, 327, 350; 1981 c. 351; 1983 a. 215; 1985 a. 284, 332; 1989 a. 31; 1991 a. 278; 1993 a. 158, 492; 1995 a. 27, 179; 1997 a. 111, 201; 2001 a. 102; 2003 a. 326.

Cross-reference: See s. 136.001 (2) concerning future service plans.

Sub. (1) applies to oral representations made in private conversations to prospective purchasers. *State v. Automatic Merchandisers of America, Inc.* 64 Wis. 2d 659, 221 N.W.2d 683 (1974).

A complaint alleging deceptive advertising contrary to sub. (1) stated a cause of action not only against the corporate defendant but against its officer personally when the complaint's use of the word "continue" indicated reference to both past and future conduct and when use of the word "defendants" referred to both the corporation and its officer. *State v. Advance Marketing Consultants, Inc.* 66 Wis. 2d 706, 225 N.W.2d 887 (1975).

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

The state may join as parties defendant assignees of contracts allegedly obtained by deceptive practices, even though the assignees did not engage in deception. *State v. Excel Management Services*, 111 Wis. 2d 479, 331 N.W.2d 312 (1983).

A consumer is protected from untrue, deceptive, or misleading representations made to promote the sale of a product. Advertising need not be involved. *Bonn v. Haubrich*, 123 Wis. 2d 168, 366 N.W.2d 503 (Ct. App. 1985).

Subs. (1) and (9) (a) require that a complaint do more than merely state that there were incentives to sell a more expensive product: it must allege instances of prohibited conduct to withstand a motion to dismiss. *State v. American TV*, 146 Wis. 2d 292, 430 N.W.2d 709 (1988). See also *Meyer v. The Laser Vision Institute, LLC*, 2006 WI App 70, 290 Wis. 2d 764, 714 N.W.2d 223, 05–1233.

A party prevailing on appeal is entitled to reasonable appellate attorney fees. *Radford v. J.J.B. Enterprises, Ltd.* 163 Wis. 2d 534, 472 N.W.2d 790 (Ct. App. 1991).

The statute of limitations under sub. (11) (b) 3. commences at the time of the act or transaction, not on the date of discovery. *Skrukpy v. Elbert*, 189 Wis. 2d 31, 526 N.W.2d 264 (Ct. App. 1994).

When a claim of negligent representation was fully tried, it was not necessary that a claim under this section should have been pleaded in order for the plaintiff to assert a post-verdict claim for attorney fees under sub (11) (b) 2. *Gorton v. American Cyanamid Co.* 194 Wis. 2d 203, 533 N.W.2d 746 (1995).

An award of reasonable attorney fees under this section belongs to the person suffering the pecuniary loss, not the attorney. However, the ultimate ownership of the award may be controlled by the parties' fee agreement. *Gorton v. Hostak, Henzl & Bichler, S.C.* 217 Wis. 2d 493, 577 N.W.2d 617 (1998), 96–2776.

Sub. (11) (b) 3. is a statute of repose. A cause of action must be commenced within 3 years of the false representation regardless of when the resulting injury is discovered. *Kain v. Bluemound East Industrial Park, Inc.* 2001 WI App 230, 248 Wis. 2d 172, 635 N.W.2d 640, 00–2250.

This section provides a cause of action and remedies separate from common law claims of intentional misrepresentation, strict liability misrepresentation, and negligent misrepresentation. *Kailin v. Armstrong*, 2002 WI App 70, 252 Wis. 2d 676, 643 N.W.2d 132, 01–1152.

A statement made to one person may constitute a statement made to "the public" under this section. Once a contract was made, buyers are no longer "the public." The section is aimed at untrue, deceptive, or misleading statements made to induce certain actions. Statements made by the seller after a person entered into a contract to purchase do not cause the person to make the purchase or enter into the contract. *Kailin v. Armstrong*, 2002 WI App 70, 252 Wis. 2d 676, 643 N.W.2d 132, 01–1152.

The elements of a viable claim under this section are: 1) the defendant advertised the product; 2) the advertising was misleading; 3) the plaintiff suffered pecuniary loss as a result of the misleading advertising. *Tietsworth v. Harley–Davidson, Inc.* 2003 WI App 75, 261 Wis. 2d 755, 661 N.W.2d 450, 02–1034.

That the sellers themselves did not make any representations to the buyers with respect to the property sold and that the buyers cannot hold real estate agents liable under this section for misrepresentations the agents do not know are untrue does not require that the sellers cannot be held statutorily liable for the representations. *Ricco v. Riva*, 2003 WI App 182, 266 Wis. 2d 696, 669 N.W.2d 193, 02–2621.

A general statement that one's products are best is not actionable as a misrepresentation of fact and cannot support a claim under this section. *Tietsworth v. Harley–Davidson, Inc.* 2004 WI 32, 270 Wis. 2d 146, 677 N.W.2d 233, 02–1034.

When the statutory background of ss. 100.18 and 100.183 is considered, it becomes clear that the legislature does not intend "merchandise" in s. 100.18 to include articles of food. The only sanction for violating s. 100.183 is the criminal penalty specified in s. 100.26 (1) while s. 100.18 (1) is amenable to only civil remedies and cannot be enforced via a criminal prosecution. *Gallego v. Wal–Mart Stores, Inc.* 2005 WI App 244, 288 Wis. 2d 229, 707 N.W.2d 539, 04–2533.

A purchaser of a particular product does not lose the protection to "the public" under this section solely because the purchaser had previously made inquiries about products and purchased products from the seller. A buyer who initiated the contact with the seller is not precluded from being part of "the public." *K&S Tool & Die Corp. v. Perfection Machinery Sales, Inc.* 2006 WI App 148, 05–2148.

This section does not require reasonable reliance on the misrepresentation. It requires actual reliance. *K&S Tool & Die Corp. v. Perfection Machinery Sales, Inc.* 2006 WI App 148, 05–2148.

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

One person can constitute "the public" under sub. (1). *Jersild v. Aker*, 775 F. Supp. 1198 (1991).

Actual interest payments incurred as a result of misrepresentations may be recovered by the defrauded party. *Jersild v. Aker*, 775 F. Supp. 1198 (1991).

The protections under this section are not restricted to Wisconsin residents. A cause of action under this section requires actual pecuniary loss, not a mere showing of deception. *Demitropoulos v. Bank One Milwaukee*, 915 F. Supp. 1399 (1996).

There is no indication that the application of this section is restricted to use by consumers. *Stoughton Trailers, Inc. v. Henkel Corp.* 965 F. Supp. 1227 (1997).

Sub. (11) (b) 3. is a statute of repose to which the discovery rule does not apply. *Staudt v. Artifex*, 16 F. Supp. 2d 1023 (1998).

Under Wisconsin law the economic loss doctrine does not bar recovery under s. 100.18, and it does bar recovery under s. 895.80, at least under the facts of this case. *Dow v. Poltzer*, 364 F. Supp. 2d 931 (2005).

The Resurgence of Caveat Emptor: Puffery Undermines the Pro–Consumer Trend in Wisconsin's Misrepresentation Doctrine. *Goretzke*. 2003 WLR 171.

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

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

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

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

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

(4) No person may advertise a drug that the person knows is intentionally manufactured substantially to resemble a controlled substance or that the person represents to be of a nature, appearance or effect that will allow the recipient to display, sell, deliver, distribute or use the drug as a controlled substance, unless the drug is controlled under ch. 961.

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

(b) In lieu of instituting or continuing an action under this subsection, the department may accept a written assurance from a violator of this section that the violation has ceased. If the terms of the assurance so provide, its acceptance by the department prevents all district attorneys from prosecuting the violation. An

assurance is not evidence of a violation of this section but violation of an assurance is subject to the penalties and remedies of violating this section.

History: 1981 c. 90; 1985 a. 146 s. 8; 1995 a. 27, 448.

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

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

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

History: 1993 a. 492.

When the statutory background of ss. 100.18 and 100.183 is considered, it becomes clear that the legislature does not intend “merchandise” in s. 100.18 to include articles of food. The only sanction for violating s. 100.183 is the criminal penalty specified in s. 100.26 (1) while s. 100.18 (1) is amenable to only civil remedies and cannot be enforced via a criminal prosecution. *Gallego v. Wal-Mart Stores, Inc.* 2005 WI App 244, 288 Wis. 2d 229, 707 N.W.2d 539, 04–2533.

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

History: 1993 a. 492.

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

(2) Nor shall any person sell any raw or boiled linseed oil except under its true name, and unless each tank car, tank, barrel, keg, can or vessel of such oil has distinctly and durably marked thereon in ordinary bold–faced capital letters, not smaller than

60–point type, the words “Pure Linseed Oil—Raw” or “Linseed Oil—Boiled,” and the name and address of the manufacturer.

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

(4) No person shall sell:

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

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

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

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

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

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

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

(5) No person shall sell:

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

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

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

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

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

tices 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.

100.195 Unfair billing for consumer goods or services.

(1) DEFINITIONS. In this section:

(a) “Bill” means to represent to any consumer, directly or by implication, that the consumer is obligated to pay a stated amount for consumer goods or services. “Bill” includes to refer a payment to a collection agency or to make a statement representing that a payment obligation has been or may be referred to a collection agency or credit reporting agency.

(b) “Consumer” means an individual to whom a seller sells or leases, or offers to sell or lease, consumer goods or services at retail.

(c) “Consumer goods or services” means goods or services that are used or intended for use for personal, family, or household purposes. “Consumer goods or services” does not include any of the following:

1. The treatment of disease, as defined in s. 448.01 (2), by a health care provider, as defined in s. 155.01 (7), or the provision of emergency medical care.
2. Telecommunications services or cable television services.
3. Goods or services whose delivery is required by law even though the consumer has not agreed to purchase or lease those goods or services.
4. The sale or lease of a motor vehicle by a licensed motor vehicle dealer, as defined in s. 218.0101 (23) (a).
5. Services provided pursuant to an attorney–client relationship.

(d) “Delivery” means transferring to a consumer’s custody or making available for use by a consumer.

(e) “Disclosure” means a clear and conspicuous statement that is designed to be readily noticed and understood by the consumer.

(f) “Seller” means a seller or lessor of consumer goods or services, and includes any employee, agent, or representative acting on behalf of the seller.

(g) “Telecommunications service” has the meaning given in s. 196.01 (9m).

(h) “Television service” means all of the following:

1. Cable television service, as defined in s. 196.01 (1p).
2. Services billed to consumers by a multichannel video programming distributor as defined under 47 USC 522 (13).

(2) PROHIBITIONS. No seller may:

(a) Bill a consumer for consumer goods or services that the consumer has not agreed to purchase or lease.

(b) Bill a consumer for consumer goods or services at a price that is higher than a price previously agreed upon between the seller and consumer unless the consumer agrees to the higher price before the seller bills the consumer. This paragraph does not prohibit a seller from increasing the price of goods or services under a sale or lease agreement of indefinite duration if the seller gives the consumer reasonable disclosure of the proposed increase and the opportunity to cancel the agreement without penalty at or before the time of a delivery at the increased price. If a seller proposes an increased price at the time of a delivery of goods or services and the consumer elects to cancel the agreement, the seller shall pay the costs of returning the goods or services.

(c) Bill a consumer for a delivery of consumer goods or services that the seller initiates under an agreement that is no longer in effect when the seller initiates the delivery.

(d) Offer a consumer a prize or prize opportunity or free or reduced–price goods or services, the acceptance of which commits the consumer to receive or pay for other consumer goods or services, unless the seller makes a disclosure of that commitment at or before the time the consumer agrees to purchase the goods or services.

(e) Misrepresent to a consumer, directly or by implication, that the consumer’s failure to reject or return a delivery of consumer goods or services that was not authorized by the consumer constitutes an acceptance that obligates the consumer to pay for those goods or services.

(3) EXCEPTIONS. (a) Subsection (2) does not apply to the conduct of an agent or representative of a seller when providing billing services if the agent or representative did not know or have reason to know that its conduct violates sub. (2).

(b) Subsection (2) (a) and (b) do not apply to any of the following:

1. A negative option plan, as defined in 16 CFR 425.1, if the negative option plan meets the requirements of 16 CFR 425.1.

2. A contractual plan or arrangement under which a seller, on a periodic basis, ships a similar type of goods to a consumer who has consented in advance to receive the goods on a periodic basis, if the plan or arrangement does not impose a binding commitment period or require a minimum purchase amount.

(4) ACCEPTANCE OF FREE GOODS OR SERVICES. For purposes of sub. (2), the acceptance of free goods or services does not, of itself, constitute an agreement to purchase or lease the goods or services.

(5m) PENALTIES AND REMEDIES. (a) The department may exercise its authority under ss. 93.14 and 93.15 to investigate violations of this section.

(b) Any person suffering pecuniary loss because of a violation of this section may commence an action to recover the pecuniary loss. If the person prevails, the person shall recover twice the amount of the pecuniary loss, or \$200 for each violation, whichever is greater, together with costs, including reasonable attorney fees.

(c) The department may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of this section. Before entry of final judgment, the court may make any necessary orders to restore to a person any pecuniary loss suffered by the person because of the violation.

(d) The department or a district attorney may commence an action in the name of the state to recover a forfeiture to the state of not less than \$100 nor more than \$10,000 for each violation of this section.

(e) A person who violates this section is subject to a fine of not less than \$25 nor more than \$5,000 or imprisonment not to exceed one year or both for each violation.

Note: This section is created eff. 4–1–07 by 2005 Wis. Act 458.

History: 2005 a. 458.

100.20 Methods of competition and trade practices.

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

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

“closing–out sale” of seasonal merchandise or any merchandise having a designated model year if the person conducting the sale is continuing in business.

(1n) It is an unfair method of competition or an unfair trade practice for any person to sell cigarettes to consumers in this state in violation of s. 139.345.

(1r) It is an unfair method of competition in business or an unfair trade practice for a person who sells new motor vehicles to compare new motor vehicle selling prices, including the offered prices or the actual sale prices, to the manufacturer’s suggested retail price for that vehicle unless it is clearly and conspicuously disclosed that the latter price is a manufacturer’s suggested retail price and may not represent actual sale prices.

(1t) It is an unfair trade practice for a person to provide any service which the person has the ability to withhold that facilitates or promotes an unfair method of competition in business, an unfair trade practice in business, or any other activity which is a violation of this chapter.

(2) (a) 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.

(b) Notwithstanding par. (a), the department may not issue any order or promulgate any rule that regulates the provision of water or sewer service by a manufactured home community operator, as defined in s. 101.91 (8), or manufactured home community contractor, as defined in s. 101.91 (6m), or enforce any rule to the extent that the rule regulates the provision of such water or sewer service.

(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 or from providing service in violation of sub. (1t). The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of competition in business or trade practice in business which is determined by the department to be fair.

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

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

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

ss. 93.14 and 93.15 to investigate violations of any order issued under this section.

History: 1975 c. 308; 1985 a. 284; 1993 a. 158, 496; 1997 a. 229; 2001 a. 16, 102; 2003 a. 326; 2005 a. 25, 45.

Cross–reference: See s. 136.001 (2) concerning future service plans.

Cross Reference: See also chs. ATCP 102, 104, 109, 111, 113, 114, 117, 121, 122, 123, 124, 125, 127, 128, 131, 132, 134, and 136, Wis. adm. code.

Department of agriculture rules prohibiting a chain distributor scheme are valid. Unfair practices that may be prohibited are not limited to those affecting competitors. *HM Distributors of Milwaukee, Inc. v. Department of Agriculture*, 55 Wis. 2d 261, 198 N.W.2d 598 (1972).

The elements of misappropriation are: 1) the expenditure of time, labor, or money creating the misappropriated thing; 2) competition; and 3) commercial damage to the plaintiff. *Mercury Record Productions, Inc. v. Economic Consultants, Inc.* 64 Wis. 2d 163, 218 N.W.2d 705 (1975).

The trial court properly relied upon an administrative rule promulgated under sub. (2) in instructing the jury. *State v. Clausen*, 105 Wis. 2d 231, 313 N.W.2d 819 (1982).

The state may join as parties defendant assignees of contracts allegedly obtained by deceptive practices even though the assignees did not engage in deception. *State v. Excel Management Services*, 111 Wis. 2d 479, 331 N.W.2d 312 (1983).

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

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

A plaintiff–tenant who prevails in an action for the violation of an order under this section is entitled to attorney fees irrespective of the amount of damages the landlord may recover in a counterclaim. *Paulik v. Coombs*, 120 Wis. 2d 431, 355 N.W.2d 357 (Ct. App. 1984).

In cases when a landlord complies with the notification requirements and provides an accounting of amounts withheld from a security deposit, an award of double damages under sub. (5) is subject to offset for actual damages to the landlord. A damage award in the amount of double the security deposit, regardless of the landlord’s damages, applies when the landlord fails to provide the accounting. *Pierce v. Norwick*, 202 Wis. 2d 587, 550 N.W.2d 451 (Ct. App. 1996), 96–0067.

Illegal chain distribution schemes are discussed. *State v. Fortune in Motion, Inc.* 214 Wis. 2d 148, 570 N.W.2d 875 (Ct. App. 1997), 96–2002.

The lender liability limits under s. 422.208 (4) do not limit the liability of lenders subject to the Home Improvement Trade Practices Code promulgated under this section. A homeowner may proceed under sub. (5) when there is a violation of the Code. If a home improvement was financed by an interlocking consumer loan, full payment before discovering the violations of the Code does not eliminate the consumer’s cause of action against an assignee of the loan for the total amount that the consumer was obligated for at the time of entering into the contract. *Jackson v. DeWitt*, 224 Wis. 2d 877, 592 N.W.2d 262 (Ct. App. 1999), 98–0493.

The ordinary civil burden of proof applies to actions for damages occasioned by a violation of an administrative rule adopted under sub. (2). *Benkoski v. Flood*, 2001 WI App 84, 242 Wis. 2d 652, 626 N.W.2d 851, 00–1250.

When the plaintiff lost a sale of property as the result of a violation of an administrative rule adopted under sub. (2), it was proper to double the lost sale price of property prior to deducting the market price of the property in setting damages under sub. (5). *Benkoski v. Flood*, 2001 WI App 84, 242 Wis. 2d 652, 626 N.W.2d 851, 00–1250.

A contract in violation of an administrative rule adopted under this section does not result in *per se* unenforceability of the contract. A lease provision requiring a tenant to pay all landlord attorney fees, in violation of a rule, was unenforceable because severing the clause from the remainder of the lease would undermine the goals of eliminating such clauses and preventing the intimidation of tenants that the clauses may cause. *Baierl v. McTaggart*, 2001 WI 107, 245 Wis. 2d 632, 629 N.W.2d 277, 98–3329.

Under *Baierl*, a lease containing a provision violating an administrative rule is not necessarily void, but rather, may be unenforceable by one or both parties under certain circumstances. While a landlord cannot seek damages for abandonment of a lease that contains a code violation, a tenant who seeks to prospectively enforce the lease waives his or her rights pursuant to *Baierl* in the event of a breach on the part of the tenant. By seeking to enforce a lease, a tenant reaffirms the terms of the lease and the landlord’s reciprocal right to enforce those provisions. *Dawson v. Goldammer*, 2003 WI App 3, 259 Wis. 2d 664, 657 N.W.2d 432, 01–3075.

To sue for double damages, costs, and attorney’s fees under sub. (5), a party must establish a pecuniary loss because of a violation. Failure to allege any pecuniary loss for an alleged administrative code violation barred recovery under sub. (5). *Snyder v. Badgerland Mobile Homes*, 2003 WI App 49, 260 Wis. 2d 770, 659 N.W.2d 887, 02–0714.

Holding individual wrongdoers accountable is necessary in order to adequately effectuate the purpose behind this section, protecting consumers from unfair dealings. When the corporate veil frustrates the purpose of a statute, it must be assumed that the legislature intended to pierce it. *Rayner v. Reeves Custom Builders, Inc.* 2004 WI App 231, 277 Wis. 2d 535, 691 N.W.2d 705, 03–3235.

Nothing in this section or ch. 97 evinces a legislative intent to preclude DATCP from declaring, by rule, that a violation of department rules governing food labeling is an unfair trade practice amenable to private enforcement action under sub. (5). *Gallego v. Wal–Mart Stores, Inc.* 2005 WI App 244, 288 Wis. 2d 229, 707 N.W.2d 539, 04–2533.

Wisconsin Administrative Code ch. ATCP 110, entitled Home Improvement Practices, was adopted under authority of this section. Violations of sub. (5) and ATCP 110 constitute a basis for the imposition of civil liability separate and apart from any breach of contract. As such, the discovery rule covering tort claims applies in this

case. *Stuart v. Weisflog's Showroom Gallery, Inc.* 2006 WI App 109, ___ Wis. 2d ___, ___ N.W.2d ___, 05–0886.

Apportionment of damages between a misrepresentation subject to the penalties under this section and negligence was improper. There is no place within the statutory and regulatory framework for apportioning damages when the damages flowed from the initial misrepresentation. *Stuart v. Weisflog's Showroom Gallery, Inc.* 2006 WI App 109, ___ Wis. 2d ___, ___ N.W.2d ___, 05–0886.

Disparity between the amount of damages and requested attorney fees alone does not mean the fees are unreasonable under sub. (5). An award of attorney fees may well exceed the amount of double damages to encourage attorneys to undertake such cases. *Stuart v. Weisflog's Showroom Gallery, Inc.* 2006 WI App 109, ___ Wis. 2d ___, ___ N.W.2d ___, 05–0886.

A tenant who opts to enforce a lease containing a prohibited attorney's fees provision pursuant to our holding in *Dawson I* may sever the provision and enforce the remaining legally valid lease terms. *Dawson v. Goldammer*, 2006 WI App 158, ___ Wis. 2d ___, ___ N.W.2d ___, 04–2507.

Allegations that a department rule prohibiting chain distributor schemes as an unfair trade practice abridged the 1st amendment protection of commercial speech were not so obviously without merit so as to be insubstantial for purposes of the statute requiring hearing and determination by 3–judge court. *Holiday Magic, Inc. v. Warren*, 497 F.2d 687 (1974).

Federal law did not preclude the enforcement of this section. *Time Warner Cable v. Doyle*, 847 F. Supp 635 (1994).

No private cause of action exists under s. 100.20 except for violations of a department order. *Emergency One, Inc. v. Watrous Co., Inc.* 23 F. Supp. 2d 959 (1998).

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

State Deceptive Trade Practices and Consumer Protection Acts: Should Wisconsin Lawyers be Susceptible to Liability Under Section 100.20? *Anderson*. 83 MLR 497.

100.201 Unfair trade practices in the dairy industry.

(1) DEFINITIONS. Unless context requires otherwise:

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

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

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

(c) 1. “Selected dairy products” means:

a. 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

b. Ice cream, ice milk, sherbet, custard, water ices, quiescently frozen ices and frozen dessert novelties manufactured from any such products.

2. 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.

3. In no event shall there be designated as selected dairy products any of the following:

a. Powdered dry milk or powdered dry cream.

b. Condensed, concentrated or evaporated milk in hermetically sealed containers.

c. Butter or cheese, other than cottage cheese.

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

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

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

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

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

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

(a) 1. Give or extend discounts or rebates, directly or indirectly, to retailers or other wholesalers on selected dairy products or give or extend to such purchasers any services connected with the delivery, handling or stocking of such products except in accordance with published price lists. A wholesaler may sell selected dairy products at a price different from or with services less than or additional to those in said published price list in order to meet a bona fide offer by a competitor to a particular retailer or wholesaler, but such discount, rebate or service shall not be given until the wholesaler first makes a written record of the date of such competitive offer, the terms thereof, the name of the retailer or wholesaler to whom made and the name of the competitor by whom made. Such record shall be available within this state for inspection and copying by any retailer or wholesaler upon the retailer's or wholesaler's 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 the wholesaler 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 the wholesaler 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 the retailer's or wholesaler's written request therefor.

2. Every wholesaler shall file with the department the address of the wholesaler's 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 the retailer's or wholesaler's written request therefor. The failure or refusal of any wholesaler to make available for inspection and copying any record or price list required to be made available under this subsection within 24 hours after a request has been received or to file with the department current records or price lists as required shall be prima facie evidence of a violation of this subsection.

3. In case of the failure or refusal of any wholesaler to make available or file any record or price list as required by this paragraph, any court of record of competent jurisdiction shall, upon a showing of such failure or refusal, and upon notice, order said wholesaler to give to the retailer or wholesaler so requesting, within a specified time, an inspection thereof, with permission to make a copy therefrom, or to file such information with the department.

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

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

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

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

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

(d) Make or underwrite loans to a retailer or become bound in any manner for the financial obligation of any retailer except that a wholesaler may lend money to a retailer for the purchase of equipment for the storage, transportation, and display of selected dairy products, provided the loan is for not more than 90% of the purchase price, bears at least a 5% annual interest rate, is payable in equal monthly installments 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 subch. V of ch. 409 regarding debtors who are located in this state.

(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 the wholesaler under subch. V of ch. 409 within

10 days after delivery of the equipment described therein, may sell equipment for the storage, transportation, and display of selected dairy products to the retailer but the selling price shall be not less than the cost to the wholesaler, less 10% per year depreciation, plus transportation and installation costs, plus at least 6%, but in no event shall it be less than \$100 per unit. In filing bills of sale under this section, the filing officer shall follow the procedure under subch. V of ch. 409 regarding debtors who are located in this state insofar as applicable. If the wholesaler makes the sale under a security agreement, the terms of sale shall be no more favorable to the retailer than those under sub. (2) (d). Failure by any wholesaler to enforce the wholesaler's security interest under this paragraph or sub. (2) (d) if a retailer is in default for more than 90 days shall constitute prima facie evidence of a violation of this section. No wholesaler shall renegotiate a security agreement which is in default.

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

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

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

5. A wholesaler may sell or rent portable freezer cabinets, each with a storage capacity not exceeding 12 cubic feet, to retailers for the purpose of displaying frozen dessert novelties to retail customers.

(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 3rd persons rendering such service in the community where the retailer is located but in no event shall the charges be less than the cost thereof to the wholesaler plus a reasonable margin of profit.

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

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

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

other fixed and incidental operating expenses and costs of doing business.

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

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

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

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

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

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

2. Nothing in subd. 1. prevents:

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

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

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

(3) OPERATION OF RETAIL OUTLET BY WHOLESALER. Nothing in this section shall be interpreted to prohibit the operation of a retail outlet by a wholesaler for retail sales or to prohibit the use by the wholesaler in such retail outlet of any equipment or advertising or miscellaneous matter owned by the wholesaler 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, employee 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 the retailer, officer, director, employee or agent 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) 1. Except as provided in subd. 2., a manufacturer or processor of selected dairy products shall pay a fee under par. (c) on its sales of those selected dairy products to which all of the following apply:

a. The sales are at wholesale or retail.

b. The sales are made to persons in this state.

c. The selected dairy products are packaged for sale to consumers.

2. Subdivision 1. does not apply to the operator of a retail food establishment licensed under s. 97.30 who manufactures or processes selected dairy products at that establishment solely for retail sale at that establishment.

(b) The first person in this state to receive selected dairy products that are manufactured or processed outside of this state and that are packaged for sale to consumers shall pay a fee under par. (c) on sales of those selected dairy products to persons in this state.

(c) The fee under this subsection is 5.49 cents per hundred pounds of ice cream products and 0.44 cent per hundred pounds of other dairy products or such other amount as specified by the department by rule. The fee shall be paid to the department by the 25th day of each month for sales made during the preceding month.

(d) The failure to pay fees under this subsection within the time provided under par. (c) is a violation of this section. The department may also commence an action to recover the amount of any overdue fees plus interest at the rate of 2% per month for each month that the fees are delinquent.

(e) The department shall keep confidential information obtained under this subsection concerning the amount of dairy products sold by specific manufacturers and processors.

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

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

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

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

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

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

(b) The department, after public hearing held under s. 93.18, may issue a special order against any person requiring such person to cease and desist from acts, practices or omissions determined by the department to violate this section. Such orders shall be subject to judicial review under ch. 227. Any violation of a special order issued hereunder shall be punishable as a contempt under ch.

785 in the manner provided for disobedience of a lawful order of a court, upon the filing of an affidavit by the department of the commission of such violation in any court of record in the county where the violation occurred.

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

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

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

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

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

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

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

History: 1971 c. 238; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 39, 199, 401; 1979 c. 32 s. 92 (13); 1979 c. 209 s. 4; 1983 a. 62; 1983 a. 189 ss. 133 to 135, 329 (20), (31); 1987 a. 399; 1993 a. 112, 492; 1995 a. 27, 225; 2001 a. 10, 72; 2005 a. 253, 441.

Cross Reference: See also ch. ATCP 103, Wis. adm. code.

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

100.203 Vehicle protection product warranties.
(1) DEFINITIONS. In this section:

(a) "Administrator" means a party other than the warrantor whom the warrantor designates to be responsible for the administration of warranties.

(b) "Commissioner" means the commissioner of insurance.

(c) "Incidental costs" means expenses incurred by the warranty holder that are specified in the warranty and that are related to the failure of the vehicle protection product to perform as the warranty provides. "Incidental costs" include insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

(d) "Office" means the office of the commissioner.

(e) "Vehicle protection product" means a device, system, or service installed on or applied to a vehicle that is designed to prevent loss or damage to the vehicle. "Vehicle protection product" includes alarm systems, body-part marking products, steering locks, window-etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

(f) "Warrantor" means a person who is obligated to the warranty holder under the terms of the warranty.

(g) "Warranty" means a written representation, made to a warranty holder, that applies to a vehicle protection product and that asserts that the vehicle protection product will prevent specified loss or damage to a vehicle or the warrantor will pay the warranty holder specified incidental costs.

(h) "Warranty holder" means the person who purchases a vehicle protection product that includes a warranty or who is a permitted transferee under the terms of the warranty.

(i) "Warranty reimbursement insurance policy" means an insurance policy that is issued to a warrantor to provide reimbursement to the warrantor for, or to pay on behalf of the warrantor, all obligations incurred by the warrantor under the terms and conditions of the insured warranties sold by the warrantor.

(2) REGISTRATION AND FILING REQUIREMENTS OF WARRANTORS.

(a) A person shall register with the office by filing a form prescribed by the commissioner before operating as a warrantor or representing to the public that the person is a warrantor.

(b) 1. Warrantor registration records shall be filed with the office annually and shall be updated within 30 days of any change.

2. The registration records shall contain the following information, which shall be available to the public:

a. The warrantor's name, any names under which the warrantor does business in this state, the warrantor's principal office address, and the warrantor's telephone number.

b. The name and address of the warrantor's agent for service of process in this state if other than the warrantor.

3. The registration records shall contain the following information, which is confidential and not available for inspection or copying under s. 19.35 (1):

a. The name of the warrantor's executive officer directly responsible for the warrantor's vehicle protection product business.

b. The name, address, and telephone number of any administrator that the warrantor designates to be responsible for the administration of warranties in this state.

c. A copy of the warranty reimbursement insurance policy or other financial information required under sub. (3).

d. A copy of each warranty that the warrantor plans to use in this state.

e. A statement indicating that the warrantor qualifies to do business in this state under sub. (3) (a) or that the warrantor qualifies to do business in this state under sub. (3) (b).

(c) 1. If a registrant fails to register by the renewal deadline, the commissioner shall give the registrant written notice of the failure. The registrant shall have 30 days to complete the renewal before his or her registration is suspended.

2. If a registrant's registration is suspended under subd. 1., the suspension shall last until the registrant registers and pays any late

payment, except that the registration shall be terminated one year after the renewal deadline if the registrant has not registered or paid any late payment.

(d) A person who sells or solicits a sale of a vehicle protection product that includes a warranty but who is not a warrantor is not required to register as a warrantor to sell the vehicle protection product.

(3) FINANCIAL RESPONSIBILITY. No person may sell, or offer to sell, a vehicle protection product that includes a warranty unless the warrantor meets one of the following conditions:

(a) The warrantor is insured under a warranty reimbursement insurance policy that meets the conditions specified in s. 632.185 (2) and has filed with the commissioner a copy of the warranty reimbursement insurance policy.

(b) The warrantor's net worth, or the total of all outstanding ownership interests in the warrantor, is at least \$50,000,000, or, if the warrantor is a subsidiary, the parent entity's net worth is at least \$50,000,000. If the warrantor files with the U.S. Securities and Exchange Commission, the warrantor provides the commissioner with a copy of the warrantor's, or the parent entity's, most recent U.S. Securities and Exchange Commission form 10-K or form 20-f, filed within the preceding year pursuant to 15 USC 78L(b) or (g), 78m, or 78o(d). If the warrantor does not file with the U.S. Securities and Exchange Commission, the warrantor provides the commissioner a copy of the warrantor's, or the parent entity's, audited financial statements. If the warrantor's parent entity's forms or audited financial statements are filed to meet the condition specified under this subsection, then the parent entity shall agree to guarantee the obligations of the warrantor relating to warranties issued by the warrantor in this state.

(4) DISCLOSURE TO WARRANTY HOLDER. (a) Every warranty shall be written in clear language that is understandable to lay persons and shall be printed or typed in easy-to-read size and style of type. No warranty may be included with a vehicle protection product unless it meets all of the following conditions:

1. If the warrantor chooses to meet its financial responsibility obligations under sub. (3) (a):

a. The warranty states that the obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy and states the name and address of the insurer.

b. The warranty states that if a warranty holder makes a claim against a party other than the issuer of the warranty reimbursement insurance policy, the warranty holder may make a direct claim against the insurer if the warrantor fails to pay any claim or to meet any obligation under the terms of the warranty within 60 days after proof of loss has been filed with the warrantor.

2. The warrantor identifies the warrantor, the seller, and the warranty holder.

3. The warranty sets forth the total purchase price and the payment terms. The purchase price of the vehicle protection product does not have to be preprinted on the warranty or sales agreement. The purchase price may be negotiated with the purchaser at the time of sale.

4. The warranty sets forth the procedure for making a claim, including a telephone number.

5. The warranty states the existence of any deductible amount.

6. The warranty specifies the payments or performance to be provided under the warranty, including payments for incidental costs, how the payments or performance will be calculated or determined, and any limitations, exceptions, or exclusions.

7. The warranty sets forth the conditions under which substitution will be allowed.

8. The warranty states all of the obligations and duties of the warranty holder.

9. The warranty sets forth any terms governing transferability of the warranty.

10. The warranty contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance."

11. The warranty clearly states any terms and conditions governing the cancellation of the sale and warranty.

(b) The seller of the warranty or the warrantor shall provide one of the following to the purchaser:

1. At the time of sale, a copy of the warranty.

2. At the time of sale, a receipt or other written evidence of the purchase of the vehicle protection product and, within 30 days after the purchase, a copy of the warranty.

(5) WARRANTY CANCELLATION. (a) A warrantor may cancel the warranty only if the warranty holder does one of the following:

1. Fails to pay for the vehicle protection product to which the warranty applies.

2. Makes a material misrepresentation to the seller of the vehicle protection product to which the warranty applies or to the warrantor.

3. Commits fraud.

4. Substantially breaches the warranty holder's duties under the warranty.

(b) A warrantor canceling a warranty shall mail written notice of cancellation to the warranty holder at the last address of the warranty holder in the warrantor's records at least 30 days prior to the effective date of the cancellation. The notice shall state the effective date of the cancellation and the reason for the cancellation.

(6) PROHIBITED ACTS. (a) A warrantor that is not an insurer, as defined in s. 600.03 (27), may not use in its name, contracts, or literature any of the terms, "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business. A warrantor may not use any name or description that is deceptively similar to the name or description of any insurance or surety corporation or to any other warrantor.

(b) No warrantor may make any warranty claim that is untrue, deceptive, or misleading as provided in s. 100.18.

(c) No person may require as a condition of sale or financing of a motor vehicle that a retail purchaser of a motor vehicle purchase a vehicle protection product that is not installed on the vehicle at the time of sale.

(7) RECORD KEEPING. (a) Warrantors shall keep accurate records of transactions regulated under this section.

(b) A warrantor's records shall include all of the following:

1. Copies of all warranties under which the warrantor is obligated.

2. The name and address of each warranty holder to whom the warrantor is obligated.

3. The dates, amounts, and descriptions of all receipts, claims, and expenditures related to the warrantor's warranties.

(c) A warrantor shall retain all required records pertaining to each warranty holder to whom the warrantor is obligated for at least 2 years after the specified period of coverage has expired. A warrantor discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to warranty holders in this state.

(d) Warrantors shall make all records concerning transactions regulated under this section available to the commissioner.

(8) SANCTIONS; ADMINISTRATIVE PENALTY. (a) The commissioner may take necessary and appropriate action to enforce this section and the commissioner's rules and orders and to protect warranty holders. If a warrantor violates this section and the commissioner reasonably believes the violation threatens to render the warrantor insolvent or cause irreparable loss or injury to the property or business of any person located in this state, the commissioner may issue an order that does any of the following:

1. Prohibits the warrantor from engaging in the act that violates this section.

2. Prohibits the warrantor from providing any warranty that violates this section.

3. Imposes a forfeiture on the warrantor.

(b) 1. Prior to the effective date of any order issued under par. (a), the commissioner must provide written notice of the order to the warrantor and the opportunity for a hearing to be held within 10 business days after receipt of the notice.

2. Notwithstanding subd. 1., if the commissioner reasonably believes that the warrantor is or is about to become insolvent, prior notice and a hearing are not required.

(c) A person aggrieved by an order issued under par. (a) may request a hearing before the commissioner. Section 601.62 applies to a hearing commenced under this paragraph.

(d) At the hearing, the commissioner bears the burden of proving that the order issued under par. (a) is justified. Chapter 227 applies to a hearing request under this subsection.

(e) The commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin a threatened or existing violation of this section or of a rule or order of the commissioner promulgated or issued under this section. An action filed under this paragraph may seek restitution on behalf of persons injured by a violation of this section or a violation of a rule or order of the commissioner promulgated or issued under this section.

(f) A person who violates this section or a rule or order of the commissioner promulgated or issued under this section may be ordered to forfeit to the state an amount determined by the commissioner, but not more than \$500 per violation and not more than \$10,000 for all violations of a similar nature. Violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct, action, or practice that violated this section or a rule or order promulgated or issued under this section occurred.

History: 2003 a. 302.

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

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

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

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

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

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

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

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

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

(a) The duration of the warranty.

(b) Clear identification of all warrantors and their addresses, the name and address of the person to whom warranty claims are

to be made and the place where inspection of the warranted motor vehicle is to be made.

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

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

(3) No rustproofing warranty may contain:

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

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

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

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

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

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

(4) Nothing in this section prevents a warrantor from designating a representative to perform duties under the warranty or relieves a warrantor of his or her responsibilities to a warranted party. A representative designated to perform duties under a warranty is not a warrantor unless he or she gives or offers to give a warranty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1983 a. 428; 1985 a. 29; 1995 a. 27.

Wisconsin law authorizes, but does not require, the commissioner of insurance to demand periodic reports from an insurer relating to rustproofing warranties it insures. The commissioner has authority to require an insurer to increase the amount of insurance backing a rustproofing's warranties in Wisconsin. This section was not intended to negate the application of general insurance law to rustproofing warranties. 78 Atty. Gen. 113.

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

100.206 Music royalty collections; fair practices.

(1) DEFINITIONS. In this section:

(a) "Copyright owner" means the owner of a copyright that is of a musical work and that is recognized and enforceable under 17 USC 101, et seq. "Copyright owner" does not include the owner of a copyright that is of a motion picture or audiovisual work or that is of part of a motion picture or audiovisual work.

(c) "Musical work" means a nondramatic musical work or a work of a similar nature.

(d) "Performing rights society" means an association or corporation that licenses the public performance of musical works on behalf of one or more copyright owners.

(e) "Proprietor" means the owner of a retail establishment or a restaurant.

(f) "Restaurant" includes an inn, bar, tavern or sports or entertainment facility in which the public may assemble and in which musical works may be performed or otherwise transmitted for the enjoyment of the public.

(g) "Royalties" means the fees payable to a copyright owner or performing rights society for the public performance of a musical work.

(2) DUTIES. A performing rights society shall do all of the following:

(a) File annually for public inspection with the department all of the following:

1. A certified copy of each document that is used at the time of filing by the performing rights society to enter into a contract with a proprietor who operates a retail establishment or restaurant in this state.

2. A list, that is the most current list available at the time of the filing, of the copyright owners who are represented by the per-

forming rights society and of the musical works licensed by the performing rights society.

(b) Make available, upon request of a proprietor, information as to whether a specific musical work is licensed under a contract entered into by the performing rights society and a copyright owner. A proprietor may request this information by telephone or other electronic means.

(c) Make available, upon written request of a proprietor and at the sole expense of a proprietor, any of the information required to be on file under par. (a).

(3) DISCLOSURE REQUIREMENTS. (a) No performing rights society may enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless the performing rights society, at the time of the offer or between the time of the offer and 72 hours before the execution of the contract, provides to the proprietor a written notice of all of the obligations of the performing rights society as specified under sub. (2). The written notice shall also contain a statement as to whether the performing rights society is in compliance with any applicable federal law or court order that relates to the rates and terms of royalties to be paid by the proprietor or that relates to the circumstances or methods under which contracts subject to this section are offered to the proprietor.

(b) No performing rights society may make an incomplete or false disclosure in the written notice required under par. (a).

(4) CONTRACT REQUIREMENTS. (a) A contract entered into or renewed in this state by a proprietor and a performing rights society for the payment of royalties shall be in writing and signed by the parties.

(b) The information in the contract shall include all of the following:

1. The proprietor's name and commercial address and the name and location of each retail establishment and restaurant to which the contract applies.

2. The name of the performing rights society.

3. The length of the contract.

4. The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of the rates during the term of the contract.

(5) PROHIBITED PRACTICES. No employee or agent of a performing rights society may do any of the following:

(a) Enter the commercial premises of a proprietor to discuss a contract under this section with the proprietor or his or her employees, without identifying himself or herself and making known the purpose of the visit before commencing any further communication with the proprietor or the proprietor's employees.

(b) Engage in any coercive conduct, act or practice that disrupts the commercial premises of a proprietor in a substantial manner.

(c) Use or attempt to use any deceptive act or practice in negotiating a contract with a proprietor or in collecting royalties from a proprietor.

(d) Fail to comply with the requirements imposed under subs. (2), (3) and (4).

(6) CIVIL REMEDY. Any person damaged as a result of a violation of this section may bring a civil action to recover damages, court costs and, notwithstanding s. 814.04 (1), reasonable attorney fees. The person may also request in the action any other legal or equitable relief.

(7) OTHER RIGHTS AND REMEDIES. This section does not limit any other right or remedy provided by law.

History: 1995 a. 284; 1997 a. 35; 1997 a. 111 ss. 9, 11 to 16; Stats. 1997 s. 100.206.

100.207 Telecommunications services. (1) DEFINITION. In this section, "telecommunications service" has the meaning given in s. 196.01 (9m).

(2) ADVERTISING AND SALES REPRESENTATIONS. A person may not make in any manner any statement or representation with

regard to the provision of telecommunications service, including the rates, terms or conditions for telecommunications service, which is false, misleading or deceptive, or which omits to state material information with respect to the provision of telecommunications service that is necessary to make the statement not false, misleading or deceptive.

(3) SALES PRACTICES. (a) A person may not engage in negative option billing or negative enrollment of telecommunications services, including unbundled telecommunications services. A person may not bill a customer for any telecommunications service that the customer did not affirmatively order unless that service is required to be provided by law, the federal communications commission or the public service commission. A customer's failure to refuse a person's proposal to provide a telecommunications service is not an affirmative request for that telecommunications service.

(b) A person may not charge a customer for telecommunications service provided after the customer has canceled that telecommunications service.

(c) A person shall provide a customer who has ordered a telecommunications service through an oral solicitation with independent confirmation of the order within a reasonable time.

(4) COLLECTION PRACTICES. (a) A person may not misrepresent that local exchange service may be disconnected for nonpayment of other telecommunications service.

(b) A person may not unreasonably refuse to provide a detailed listing of charges for telecommunications service upon the request of a customer.

(5) TERRITORIAL APPLICATION. Subsections (2) to (4) apply to any practice directed to any person in this state.

(6) REMEDIES AND PENALTIES. (a) 1. If a person fails to comply with this section, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief, including damages, injunctive or declaratory relief, specific performance and rescission.

2. A person or class of persons entitled to relief under subd. 1. is also entitled to recover costs and disbursements.

(b) 1. The department of justice, after consulting with the department of agriculture, trade and consumer protection, or any district attorney upon informing the department of agriculture, trade and consumer protection, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. Injunctive relief may include an order directing telecommunications providers, as defined in s. 196.01 (8p), to discontinue telecommunications service provided to a person violating this section or ch. 196. Before entry of final judgment, the court may make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action if proof of these acts or practices is submitted to the satisfaction of the court.

2. The department may exercise its authority under ss. 93.14 to 93.16 and 100.18 (11) (c) to administer this section. The department and the department of justice may subpoena persons and require the production of books and other documents, and the department of justice may request the department of agriculture, trade and consumer protection to exercise its authority to aid in the investigation of alleged violations of this section.

(c) Any person who violates subs. (2) to (4) shall be required to forfeit not less than \$25 nor more than \$5,000 for each offense. Forfeitures under this paragraph shall be enforced by the department of justice, after consulting with the department of agriculture, trade and consumer protection, or, upon informing the department, by the district attorney of the county where the violation occurs.

(e) Subject to par. (em), the department shall promulgate rules under this section.

(em) 1. Before preparing any proposed rule under this section, the department shall form an advisory group to suggest recom-

mendations regarding the content and scope of the proposed rule. The advisory group shall consist of one or more persons who may be affected by the proposed rule, a representative from the department of justice and a representative from the public service commission.

2. The department shall submit the recommendations under subd. 1., if any, to the legislature as part of the report required under s. 227.19 (2) and to the board of agriculture, trade and consumer protection.

(f) This section does not preempt the administration or enforcement of this chapter or ch. 133 or 196. Practices in violation of this section may also constitute unfair methods of competition or unfair trade practices under s. 100.20 (1) or (1t) or fraudulent representations under s. 100.18 (1) or violate ch. 133 or 196.

History: 1993 a. 496; 1995 a. 27.

Cross Reference: See also ch. ATCP 123, Wis. adm. code.

100.208 Unfair trade practices in telecommunications.

(1) In this section, "telecommunications provider" has the meaning given in s. 196.01 (8p).

(2) The department shall notify the public service commission if any of the following conditions exists:

(a) A telecommunications provider has been found by a court to have violated any provision of this chapter or of a rule promulgated under s. 100.20 (2) (a).

(b) The department has issued an order under s. 100.20 (3) prohibiting a telecommunications provider from engaging in an unfair trade practice or method of competition.

History: 1993 a. 496; 1997 a. 229.

100.209 Cable television subscriber rights. (1) DEFINITIONS. In this section:

(a) "Cable operator" has the meaning given in s. 66.0419 (2) (b).

(b) "Cable service" has the meaning given in s. 66.0419 (2) (c).

(2) RIGHTS. (a) A cable operator shall repair cable service within 72 hours after a subscriber reports a service interruption or requests the repair if the service interruption is not the result of a natural disaster.

(b) Upon notification by a subscriber of a service interruption, a cable operator shall give the subscriber a credit for one day of cable service if cable service is interrupted for more than 4 hours in one day and the interruption is caused by the cable operator.

(bm) Upon notification by a subscriber of a service interruption, a cable operator shall give the subscriber a credit for each hour that cable service is interrupted if cable service is interrupted for more than 4 hours in one day and the interruption is not caused by the cable operator.

(c) A cable operator shall give a subscriber at least 30 days' advance written notice before deleting a program service from its cable service. A cable operator is not required to give the notice under this paragraph if the cable operator makes a channel change because of circumstances beyond the control of the cable operator.

(d) A cable operator shall give a subscriber at least 30 days' advance written notice before instituting a rate increase.

(e) 1. A cable operator may not disconnect a subscriber's cable service, or a portion of that service, for failure to pay a bill until the unpaid bill is at least 45 days past due.

2. If a cable operator intends to disconnect a subscriber's cable service, or a portion of that service, the cable operator shall give the subscriber at least 10 days' advance written notice of the disconnection. A cable operator is not required to give the notice under this subdivision if the disconnection is requested by the subscriber, is necessary to prevent theft of cable service or is necessary to reduce or prevent signal leakage, as described in 47 CFR 76.611.

(3) RULES AND LOCAL ORDINANCES ALLOWED. This section does not prohibit the department from promulgating a rule or from issuing an order consistent with its authority under this chapter

that gives a subscriber greater rights than the rights under sub. (2) or prohibit a city, village or town from enacting an ordinance that gives a subscriber greater rights than the rights under sub. (2).

(4) PENALTY; ENFORCEMENT. (a) A person who violates sub. (2) may be required to forfeit not more than \$1,000 for each offense and not more than \$10,000 for each occurrence. Failure to give a notice required under sub. (2) (c) or (d) to more than one subscriber shall be considered to be one offense.

(b) The department and the district attorneys of this state have concurrent authority to institute civil proceedings under this section.

History: 1991 a. 296; 1995 a. 27; 1997 a. 111 s. 17; Stats. 1997 s. 100.209; 1999 a. 150 s. 672.

100.2095 Labeling of bedding. (1) In this section, “bedding” means any mattress, upholstered spring, comforter, pad, cushion or pillow designed and manufactured for the purpose of sleeping or reclining.

(2) (a) All bedding shall be labeled to include a description of the material that is used in the manufacture of the bedding and the name and address of the manufacturer of the bedding and the person selling, offering for sale or consigning for sale the bedding. If any of the material used in the bedding has not previously been used in any other bedding, the phrase “manufactured of new material” shall appear on the label. If any of the material used in the bedding has previously been used in other bedding, the phrase “manufactured of secondhand material” shall appear on the label.

(b) For the purpose of labeling bedding under par. (a), the label shall be not less than 3 inches by 4.5 inches in size and shall be sewed to the bedding and the print appearing on the label shall be not less than one-eighth of an inch in height.

(3) No person in the business of manufacturing, distributing or selling bedding may manufacture, distribute, sell, offer for sale, consign for sale or possess with intent to distribute, sell, offer for sale or consign for sale any article of bedding unless the bedding is labeled as provided in sub. (2).

(4) No person in the business of selling bedding may sell, offer for sale, consign for sale or possess with intent to sell, offer for sale or consign for sale any article of bedding if the article of bedding contains any material that has been used in any hospital or has been used by or about any person having an infectious or contagious disease.

(5) No person in the business of distributing or selling bedding, with intent to distribute, sell, offer for sale or consign for sale any article of bedding, may represent that any article of bedding, which contains material that has been previously used in other bedding, is manufactured of material that has not been previously used in other bedding.

(6) (a) Any person suffering pecuniary loss because of a violation of sub. (3), (4) or (5) may commence an action for the pecuniary loss and if the person prevails, the person shall recover twice the amount of the pecuniary loss or \$200 for each violation, whichever is greater, together with costs, including reasonable attorney fees.

(b) The department may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of sub. (3), (4) or (5). Before entry of final judgment, the court may make any necessary orders to restore to any person any pecuniary loss suffered by the person because of the violation.

(c) The department or any district attorney may commence an action in the name of the state to recover a forfeiture to the state of not less than \$100 nor more than \$10,000 for each violation of sub. (3), (4) or (5).

(d) A person who violates sub. (3), (4) or (5) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both. Each day of violation constitutes a separate offense.

History: 1997 a. 260; 1999 a. 32 s. 169; 2001 a. 109.

100.21 Substantiation of energy savings or safety claims. (1) DEFINITIONS. In this section:

(a) “Dwelling unit” means a dwelling, as defined under s. 101.61, a manufactured building, as defined under s. 101.71, a manufactured home, as defined under s. 101.91 (2), or a multifamily dwelling, as defined under s. 101.971 (2).

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

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

2. A product or a consumer product, as defined in s. 100.42

(1) (c):

a. Increases fuel or electrical efficiency;

b. Reduces heat loss;

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

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

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

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

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

(f) “Product” means:

1. Insulation.

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

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

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

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

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

(b) An energy savings or safety claim made by a person other than a manufacturer does not violate par. (a) if the person relies in good faith on written materials distributed by the manufacturer and if the claim is limited to the representations in the materials. Any energy savings or safety claim made by a person other than a manufacturer, after the person is notified that no reasonable and currently accepted scientific basis for the claim has been submitted, is a violation of par. (a).

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

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

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

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

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

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

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

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

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

History: 1979 c. 221; 1983 a. 27 s. 2200 (25); 1991 a. 269; 1995 a. 27; 1999 a. 53.

100.22 Discrimination in purchase of milk prohibited.

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

(1m) MILK PRICING. A person engaged in the business of buying milk from producers for the purpose of manufacture, processing or resale may pay producers different prices for the purchase of milk based on differences in milk quality, if all of the following apply:

(a) Before making any payments to producers, the person engaged in the business of buying milk from producers establishes a payment method based on differences in milk quality determined by an actual measured difference in bacteria count, somatic cell count, enzyme level or drug residue findings in the milk.

(b) Before making any payments to producers, the person engaged in the business of buying milk from producers announces, and offers to make payments in accordance with, the payment method established under par. (a) to all producers from whom the person buys milk.

(c) The person engaged in the business of buying milk from producers makes payments to all milk producers from whom the person purchases milk in accordance with the payment method established under par. (a).

(d) The payment method established under par. (a) is not part of any other method used to discriminate between producers in the price paid for milk or in services furnished in connection with the purchase of milk.

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

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

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

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

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

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

History: 1981 c. 124; 1991 a. 269.

Application of volume premium rules to sales and delivery of milk from Wisconsin cows occurring at out-of-state processing plants would violate the commerce clause of the U.S. constitution. *Dean Foods Co. v. Brancel*, 187 F.3d 609 (1999).

100.23 Contract to market agricultural products; interference prohibited. (1) DEFINITION.

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

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

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

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

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

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

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

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

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

2. A decree of specific performance.

3. Damages.

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

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

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

(a) Is governed by the following procedures:

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

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

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

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

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

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

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

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

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

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

(b) Has a current annual report on file with the department of financial institutions which satisfies all of the following requirements:

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

2. Is on a form furnished to the association by the department of financial institutions using information given as of the date of the execution of the report.

3. Sets forth:

a. The association's name and complete address.

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

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

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

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

(6) DEPARTMENT OF FINANCIAL INSTITUTIONS DUTIES. The department of financial institutions shall:

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

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

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

History: 1987 a. 89; 1995 a. 27.

100.235 Unfair trade practices in procurement of vegetable crops. (1) DEFINITIONS. In this section:

(a) "Affiliate" means any of the following persons or business entities:

1. An officer, director, partner, member, manager, major stockholder, employee or agent of a contractor.

2. A corporation or business entity that is owned, controlled or operated by any of the persons under subd. 1.

(b) "Contractor" has the meaning given for "vegetable contractor" under s. 126.55 (14).

(c) "Contractor's cost to grow" means the average cost, per unit weight of vegetable, incurred by the contractor and the contractor's subsidiaries and affiliates to grow a species of vegetable in a growing region, either during 3 of the preceding 5 years excluding the highest and lowest years, or, if the contractor has grown a vegetable species less than 5 consecutive years, during the most recent years available.

(d) "Growing region" means one or more geographic areas in which the department determines that the cost to grow a particular species of vegetable tends to be reasonably similar.

(dm) "License year" has the meaning given under s. 126.55 (10m).

(e) "Producer" means any person who produces and sells vegetables, or who grows vegetables under contract.

(f) "Subsidiary" means a corporation or business entity that is owned, controlled or operated by a contractor.

(g) "Vegetable" means a vegetable grown or sold for use in food processing, whether or not it is actually processed as food. "Vegetable" includes sweet corn but does not include grain.

(h) "Vegetable procurement contract" means an agreement between a contractor and a producer, under which the contractor buys vegetables grown in this state from the producer or contracts with the producer to grow vegetables in this state.

(2) CONTRACTOR MAY NOT PAY PRODUCER LESS THAN CONTRACTOR'S COST TO GROW. If a contractor and the contractor's affiliates and subsidiaries collectively grow more than 10% of the acreage of any vegetable species grown and procured by the contractor in any license year, the contractor shall pay a producer, for vegetables of that species tendered or delivered under a vegetable procurement contract, a price not less than the contractor's cost to grow that vegetable species in the same growing region. For vegetables contracted on a tonnage basis and for open–market tonnage purchased, acreage under this subsection shall be determined using the state average yield per acre during the preceding license year.

(4) COST TO GROW; REPORT TO DEPARTMENT UPON REQUEST. If the department determines that a contractor and the contractor's affiliates and subsidiaries will collectively grow more than 10% of the acreage of any vegetable species grown and procured by the contractor during a license year, the department may require the contractor to file a statement of the contractor's cost to grow that vegetable species. The contractor shall file the report with the

department within 30 days after the department makes its request, unless the department grants an extension of time. The department may permit the contractor to report different costs to grow for different growing regions if the contractor can define the growing regions to the department's satisfaction, and can show to the department's satisfaction that the contractor's costs to grow are substantially different between the growing regions.

(5) DEPARTMENT INVESTIGATIONS; RESPONSE TO PRODUCER COMPLAINTS. The department may, on its own initiative, investigate to determine whether any contractor has violated this section. If a producer or producer association files a written complaint with the department alleging a violation of sub. (2), the department shall investigate the complaint. The department is not required to investigate any complaint filed more than 180 days after the producer tendered or delivered the vegetables to the contractor.

(6) ADDITIONAL REPORTS; INSPECTION AND AUDIT. For purposes of an investigation under sub. (5), the department may require a contractor to submit reports of acreage, tonnages, costs to grow, and amounts paid to producers. The department may require that the reports be certified by a certified public accountant, or the department may inspect and audit the contractor's records to verify that the reports are accurate.

(7) REPORTS ARE CONFIDENTIAL. Reports submitted to the department under subs. (4) and (6) are confidential and not open to public inspection.

(8) DEPARTMENT FINDINGS AND ORDER. If the department completes an investigation in response to a complaint under sub. (5), the department shall issue written findings to the contractor and complainant, indicating whether the department has found a violation of sub. (2) by the contractor. If the department finds that the contractor has violated sub. (2), the department shall specify what it finds to be the contractor's cost to grow. Either the contractor or the complainant may demand a public hearing on the department's finding, under ch. 227.

(9) UNIFORM SYSTEM OF COST ACCOUNTING; DEPARTMENT RULES. The department may promulgate rules prescribing a uniform system of cost accounting to be used by contractors in determining and reporting a contractor's cost to grow. The accounting system shall take into account cost differences attributable to factors affecting prices for vegetable species under vegetable procurement contracts.

(10) PRIVATE REMEDY. A producer who sustains a monetary loss as a result of a violation of this section by a contractor may recover the amount of the loss, together with costs, including all reasonable attorney fees, notwithstanding s. 814.04 (1).

(11) PENALTIES. (a) *Forfeiture.* Any person who violates this section or any rule promulgated or order issued under this section may be required to forfeit not less than \$100 nor more than \$10,000. Notwithstanding s. 165.25 (1), the department may commence an action to recover a forfeiture under this paragraph.

(b) *Fine or imprisonment.* Any person who intentionally violates this section shall be fined not less than \$100 nor more than \$10,000 or imprisoned for not more than one year in the county jail or both for each violation.

History: 1975 c. 67, 199; 1989 a. 31, 359; 1993 a. 112; 2001 a. 16.

100.24 Revocation of corporate authority. Any corporation, or limited liability company, foreign or domestic, which violates any order issued under s. 100.20 may be enjoined from doing business in this state and its certificate of authority, incorporation or organization 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 willful violation.

History: 1981 c. 124; 1993 a. 112.

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

100.26 Penalties. (1) Any person who violates any provision of this chapter, except s. 100.18, 100.20, 100.206 or 100.51, for which no specific penalty is prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more than 6 months or both.

(2) Any person violating s. 100.02 is guilty of a Class I felony.

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

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

(4m) Any person who violates s. 100.18 (10r) is subject to a civil forfeiture of not less than \$100 nor more than \$10,000 for each violation.

(5) Any person violating s. 100.18 (9) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both. Each day of violation constitutes a separate offense.

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

(7) Any person violating s. 100.182 may be fined not more than \$10,000 or imprisoned for not more than 9 months or both for each offense. Each unlawful advertisement published, printed or mailed on separate days or in separate publications, hand bills or direct mailings is a separate violation of this section.

(8) Any person who violates s. 100.46 may be required to forfeit not more than \$100.

(9) Any person who violates s. 100.30 (7) (a) is subject to a forfeiture of not less than \$50 nor more than \$200 for each violation.

History: 1975 c. 39; 1979 c. 327; 1981 c. 90; 1981 c. 124 s. 9; 1983 a. 500; 1985 a. 288; 1989 a. 31; 1993 a. 414; 1995 a. 27; 1997 a. 55, 111, 201, 253, 283; 1999 a. 32; 2001 a. 16, 109.

It was constitutionally proper for the legislature to authorize in sub. (3) the imposition of criminal penalties for the violation of department rules adopted pursuant to s. 100.20. *State v. Lambert*, 68 Wis. 2d 523, 229 N.W.2d 622 (1975).

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

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

100.261 Consumer protection surcharge. (1) If a court imposes a fine or forfeiture for a violation of this chapter, ch. 98, a rule promulgated under this chapter or ch. 98, or an ordinance enacted under this chapter or ch. 98, the court shall also impose a consumer protection surcharge under ch. 814 in an amount equal to 25% of the fine or forfeiture imposed. If multiple violations are involved, the court shall base the consumer protection surcharge upon the total of the fine or forfeiture amounts for all violations. If a fine or forfeiture is suspended in whole or in part, the court shall reduce the surcharge in proportion to the suspension.

(2) If any deposit is made for a violation to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the consumer protection surcharge under

this section. If the deposit is forfeited, the amount of the consumer protection surcharge shall be transmitted to the secretary of administration under sub. (3). If the deposit is returned, the consumer protection surcharge shall also be returned.

(3) (a) The clerk of court shall collect and transmit the consumer protection surcharges imposed under ch. 814 to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(b) The secretary of administration shall deposit the consumer protection surcharges imposed under ch. 814 in the general fund and shall credit them to the appropriation account under s. 20.115 (1) (jb), subject to the limit under par. (c).

(c) The amount credited to the appropriation account under s. 20.115 (1) (jb) may not exceed \$185,000 in each fiscal year.

History: 1999 a. 9; 2001 a. 16; 2003 a. 33, 139, 326.

100.263 Recovery. In addition to other remedies available under this chapter, the court may award the department the reasonable and necessary costs of investigation and an amount reasonably necessary to remedy the harmful effects of the violation and the court may award the department of justice the reasonable and necessary expenses of prosecution, including attorney fees, from any person who violates this chapter. The department and the department of justice shall deposit in the state treasury for deposit in the general fund all moneys that the court awards to the department, the department of justice or the state under this section. Ten percent of the money deposited in the general fund that was awarded under this section for the costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

Note: 2001 Wis. Act 109 repealed s. 20.455 (1) (gh).

History: 1995 a. 27; 1997 a. 36.

100.264 Violations against elderly or disabled persons. (1) DEFINITIONS. In this section:

(a) “Disabled person” means a person who has an impairment of a physical, mental or emotional nature that substantially limits at least one major life activity.

(b) “Elderly person” means a person who is at least 62 years of age.

(c) “Major life activity” means self-care, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks or being able to be gainfully employed.

(2) **SUPPLEMENTAL FORFEITURE.** If a fine or a forfeiture is imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183, 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or 100.46 or a rule promulgated under one of those sections, the person shall be subject to a supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the defendant, for which the violation was imposed, was perpetrated against an elderly person or disabled person and if the court finds that any of the following factors is present:

(a) The defendant knew or should have known that the defendant’s conduct was perpetrated against an elderly person or disabled person.

(b) The defendant’s conduct caused an elderly person or disabled person to suffer any of the following:

1. Loss or encumbrance of his or her primary residence.

2. Loss of principal employment or principal source of income.

3. Loss of more than 25% of the property that the elderly person or disabled person has set aside for retirement or for personal or family care or maintenance.

4. Loss of more than 25% of the total of payments to be received under a pension or retirement plan.

5. Loss of assets essential to the health or welfare of the elderly person or disabled person.

(c) The defendant’s conduct caused physical or emotional damage or economic loss, other than the losses specified in par. (b) 1. to 5., and elderly persons or disabled persons are more likely to suffer the loss than other persons due to their age, poor health, impaired understanding or restricted mobility.

(3) **PRIORITY FOR RESTITUTION.** If the court orders restitution under s. 100.18 (11) (d), 100.182 (5) (a), 100.20 (6), 100.205 (7), 100.207 (6) (b) 1. or 100.44 (5) for a pecuniary or monetary loss suffered by a person, the court shall require that the restitution be paid by the defendant before the defendant pays any forfeiture imposed under this section.

History: 1995 a. 382

100.265 List of gasohol and alternative fuel refueling facilities. No later than December 31 annually, and at such other times as the department determines to be necessary, the department shall publish and transmit to the department of administration a list of all refueling facilities in the state at which gasohol, as defined in s. 16.045 (1) (d), or any alternative fuel, as defined in s. 16.045 (1) (b), is available. The list shall be organized by location and shall indicate which facilities are open to the public, which types of fuel are available at the facilities and which facilities are limited to use by certain employees or types of vehicles, and shall identify the employees or types of vehicles to which such use is limited.

History: 1993 a. 351.

100.27 Dry cell batteries containing mercury. (1) DEFINITIONS. In this section:

(a) “Alkaline manganese battery” means a battery with a manganese dioxide electrode and an alkaline electrolyte.

(b) “Alkaline manganese button cell battery” means an alkaline manganese battery that resembles a button in size and shape.

(c) “Mercuric oxide battery” means a battery with a mercuric oxide electrode.

(d) “Mercuric oxide button cell battery” means a mercuric oxide battery that resembles a button in size and shape.

(e) “Zinc carbon battery” means a battery with a manganese dioxide electrode, a zinc electrode and an electrolyte that is not alkaline.

(2) **ALKALINE MANGANESE BATTERIES.** (a) No person may sell or offer for sale an alkaline manganese battery that is manufactured after January 1, 1996, except for an alkaline manganese button cell battery, unless the manufacturer has certified to the department that the alkaline manganese battery contains no mercury that was intentionally introduced.

(b) No person may sell or offer for sale an alkaline manganese button cell battery that is manufactured after January 1, 1996, unless the manufacturer has certified to the department that the alkaline manganese button cell battery contains no more than 25 milligrams of mercury.

(3) **ZINC CARBON BATTERIES.** No person may sell or offer for sale a zinc carbon battery that is manufactured after July 1, 1994, unless the manufacturer has certified to the department that the zinc carbon battery contains no mercury that was intentionally introduced.

(5) **MERCURIC OXIDE BATTERIES.** Beginning on July 1, 1994, no person may sell or offer for sale a mercuric oxide battery that is not a mercuric oxide button cell battery unless the manufacturer does all of the following:

(a) Identifies a collection site, that has all required governmental approvals, to which persons may send used mercuric oxide batteries for recycling or proper disposal.

(b) Informs each purchaser of one of its mercuric oxide batteries of the collection site identified under par. (a) and of the prohibition in s. 287.185 (2).

(c) Informs each purchaser of one of its mercuric oxide batteries of a telephone number that the purchaser may call to get infor-

mation about returning mercuric oxide batteries for recycling or proper disposal.

(d) Informs the department and the department of natural resources of the collection site identified under par. (a) and the telephone number under par. (c).

(6) **LIST OF CERTIFIED BATTERIES.** The department shall compile and make available to the public a list of all batteries for which it has received certification under subs. (2) and (3).

(7) **PENALTIES.** (a) Any person who violates subs. (2) to (5) shall forfeit not less than \$50 nor more than \$200.

(b) Any manufacturer that submits a fraudulent certification under sub. (2) or (3) shall forfeit not less than \$1,000 nor more than \$10,000 for each violation.

History: 1993 a. 74; 1995 a. 227.

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

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

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

(2) **RESTRICTIONS; RETAIL SALES.** Except as provided under sub. (3), no person may sell or offer to sell at retail:

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

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

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

(2m) **RESTRICTIONS; SALE TO RETAILER.** Except as provided under sub. (3), no person may sell or offer to sell to a retailer:

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

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

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

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

(4) **PENALTY; ENFORCEMENT.** (a) A person who violates this section shall forfeit not less than \$25 nor more than \$25,000 for each violation. Each day on which the person sells or offers to sell in violation of this section constitutes a separate violation. Each place at which the person sells or offers to sell in violation of this section constitutes a separate violation.

(am) If a court imposes a forfeiture under par. (a) on the manufacturer of a chemical water conditioner or cleaning agent for a violation of sub. (2m), the court may order the manufacturer to accept the return of the chemical water conditioner or cleaning agent that is the subject of the violation and to refund the purchase

price to the retailer who purchased that chemical water conditioner or cleaning agent.

(b) In lieu of or in addition to forfeitures under par. (a), the department may seek an injunction restraining any person from violating this section.

(c) The department, or any district attorney upon the request of the department, may commence an action in the name of the state under par. (a) or (b).

(d) Any action on a violation of this section may be commenced in the circuit court for the county in which the violation occurred, or in the case of multiple violations by a single defendant, in the circuit court for the county in which any of the violations occurred.

History: 1983 a. 73; 1991 a. 115; 1995 a. 27.

100.285 Reduction of toxics in packaging. (1) DEFINITION. In this section, “packaging component” means any individual assembled part of a package, including any interior or exterior blocking, bracing, cushioning, weatherproofing, coating, closure, ink or label.

(2) **RESTRICTION.** Except as provided in sub. (3), a manufacturer or distributor may not sell a package, packaging material or packaging component with a total concentration of lead, cadmium, mercury plus hexavalent chromium that exceeds:

(a) Beginning on June 1, 1992, 600 parts per million.

(b) Beginning on June 1, 1993, 250 parts per million.

(c) Beginning on June 1, 1994, 100 parts per million.

(3) **EXCEPTIONS.** (a) Before June 1, 1996, sub. (2) does not apply with respect to a package, packaging material or packaging component made from recycled materials.

(b) Subsection (2) does not apply with respect to a package, packaging material or packaging component if a higher total concentration of lead, cadmium, mercury plus hexavalent chromium is necessary to meet federal health or safety requirements.

(c) Subsection (2) does not apply with respect to a package, packaging material or packaging component for which there is no feasible alternative that satisfies the limitations in sub. (2).

(d) Subsection (2) does not apply with respect to lead foil purchased and used on or before December 31, 1992, to wrap the opening of a bottle that contains intoxicating liquor, as defined in s. 125.02 (8), or to any package that contains intoxicating liquor, as defined in s. 125.02 (8), if the package was filled and sealed on or before December 31, 1992.

(5) **NO PENALTY.** A person who violates sub. (2) is not subject to a penalty.

(6) **REPORT.** The department shall review the effectiveness of subs. (1) to (5) and shall report the results of the review, including a recommendation of whether enforcement provisions and penalties should be instituted, on or before June 1, 1993, to the governor and to the chief clerk of each house of the legislature for distribution under s. 13.172 (2).

History: 1989 a. 335; 1991 a. 36.

100.29 Sale of nonrecyclable materials. (1) DEFINITIONS. In this section “new packaging” means packaging, including a container, made from a material or a combination of materials not used in any packaging, exclusive of any closure or label, that is in commerce in this state on or before May 11, 1990.

(3) **NEW PACKAGING.** (a) If the department receives a complaint that there is not an adequate market to make recycling of a type of new packaging economically feasible, the department shall investigate the complaint. If the department determines that the product has been in commerce in this state for at least 3 years and that the complaint is well-founded, it shall inform the manufacturer or distributor of the new packaging and attempt to ensure an adequate market within a reasonable period through negotiations.

(b) The department shall identify by rule a type of new packaging for food or beverages to which all of the following apply:

1. After at least 3 years in commerce in this state, there is not an adequate market to make recycling of the type of new packaging economically feasible.

2. The department received a complaint under par. (a) about the type of new packaging material.

3. Negotiations under par. (a) did not result in an adequate market.

(c) The department shall promulgate rules for determining whether there is an adequate market to make recycling of new packaging economically feasible.

History: 1989 a. 335.

100.295 Labeling of recycled, recyclable or degradable products. (1) LABELING STANDARDS. The department shall establish standards that must be met by products in order for any person to represent that the products are recycled, recyclable or degradable. The department shall establish standards that are consistent, to the greatest extent practicable, with nationwide industry consensus standards. In developing standards, the department shall consult with the department of natural resources and the council on recycling and consider purchasing specifications under s. 16.72 (2) (e) and (f) and any existing federal standards. The department shall give priority to establishing standards for specific products commonly represented as being recycled, recyclable or degradable.

(2) FALSE ADVERTISING PROHIBITED. No person may represent any product as being recycled, recyclable or degradable unless the product meets standards established under sub. (1).

(3) PENALTY. Any person who violates sub. (2) may be required to forfeit not less than \$100 nor more than \$10,000 for each violation.

History: 1989 a. 335.

Cross Reference: See also s. ATCP 137.01, Wis. adm. code.

100.297 Plastic container recycled content. (1) DEFINITION. In this section, “plastic container” means a plastic container, as defined in s. 100.33 (1) (c), that is required to be labeled under s. 100.33 (2).

(2) PROHIBITION. Except as provided in sub. (3), no person may sell or offer for sale at retail any product in a plastic container unless the plastic container consists of at least 10% recycled or remanufactured material, by weight beginning on January 1, 1995.

(3) EXCEPTION. Subsection (2) applies to a person who sells or offers to sell a product that is a food, beverage, drug, cosmetic or medical device and that is regulated under the federal food, drug and cosmetic act, 21 USC 301 to 394, in a plastic container only if the federal food and drug administration has approved the use of the specified recycled or remanufactured content in that plastic container.

History: 1989 a. 335; 1993 a. 245.

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) “Average posted terminal price” means the average posted rack price, as published by a petroleum price reporting service, at which motor vehicle fuel is offered for sale at the close of business on the determination date by all refiners and wholesalers of motor vehicle fuel at a terminal plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale, any cost incurred for transportation and any other charges that are not otherwise included in the average posted rack price. In this paragraph, “average” means the arithmetic mean.

(am) 1. With respect to the sale of cigarettes or other tobacco products, fermented malt beverages or intoxicating liquor or wine, “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.

1m. With respect to the sale of motor vehicle fuel, “cost to retailer” means the following:

a. In the case of the retail sale of motor vehicle fuel by a refiner at a retail station owned or operated either directly or indirectly by the refiner, the refiner’s lowest selling price to other retailers or to wholesalers of motor vehicle fuel on the date of the refiner’s retail sale, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost of the motor vehicle fuel, plus a markup of 9.18% of that amount to cover a proportionate part of the cost of doing business; or the average posted terminal price at the terminal located closest to the retail station plus a markup of 9.18% of the average posted terminal price to cover a proportionate part of the cost of doing business; whichever is greater.

b. In the case of the retail sale of motor vehicle fuel by a wholesaler of motor vehicle fuel, who is not a refiner, at a retail station owned or operated either directly or indirectly by the wholesaler of motor vehicle fuel, the invoice cost of the motor vehicle fuel to the wholesaler of motor vehicle fuel within 10 days prior to the date of sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or replacement cost of the motor vehicle fuel, plus a markup of 9.18% of that amount to cover a proportionate part of the cost of doing business; or the average posted terminal price at the terminal located closest to the retail station plus a markup of 9.18% of the average posted terminal price to cover a proportionate part of the cost of doing business; whichever is greater.

c. In the case of the retail sale of motor vehicle fuel by a person other than a refiner or a wholesaler of motor vehicle fuel at a retail station, the invoice cost of the motor vehicle fuel to the retailer within 10 days prior to the date of sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the motor vehicle fuel, plus a markup of 6% of that amount to cover a proportionate part of the cost of doing business; or the average posted terminal price at the terminal located closest to the retailer plus a markup of 9.18% of the average posted terminal price to cover a

proportionate part of the cost of doing business; whichever is greater.

d. In the case of a retail sale of motor vehicle fuel by a refiner at a place other than a retail station, the refiner's lowest selling price to other retailers or to wholesalers of motor vehicle fuel on the date of the refiner's retail sale, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost of the motor vehicle fuel 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 retailer as set forth in this subd. **1m. d.**

e. In the case of a retail sale of motor vehicle fuel by a person other than a refiner at a place other than a retail station, the invoice cost of the motor vehicle fuel to the retailer within 10 days prior to the date of the sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the motor vehicle fuel 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 retailer as set forth in this subd. **1m. e.**

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

(b) "Cost to retailer" and "cost to wholesaler" as defined in pars. (am) and (c) mean bona fide costs; and purchases made by retailers, wholesalers, wholesalers of motor vehicle fuel and refiners 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 other than motor vehicle fuel 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. Prices at which sales of motor vehicle fuel are made by retailers, wholesalers, wholesalers of motor vehicle fuel and refiners cannot be justified by prevailing market conditions in this state when they are below the applicable cost to retailers and cost to wholesalers specified under pars. (am) and (c).

(c) 1. a. With respect to the sale of cigarettes or other tobacco products, fermented malt beverages or intoxicating liquor or wine, "cost to wholesaler" means, except as provided in subd. **1. b.**, the invoice cost of the merchandise to the wholesaler within 30 days prior to the date of sale, or the replacement cost of the merchandise to the wholesaler, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on the sale thereof prior to the sale at retail, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, to which shall be added, except for sales at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be 3% of the cost to the wholesaler as herein set forth.

b. For every person holding a permit as a distributor as defined in s. **139.30 (3)** or as a multiple retailer as defined in s. **139.30 (8)**, with respect to that portion of the person's business which involves the purchase and sale of cigarettes "cost to wholesaler" means the cost charged by the cigarette manufacturer, disregarding any manufacturer's discount or any discount under s. **139.32 (5)**, plus the amount of tax imposed under s. **139.31**. Except for a sale at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business shall be added to the cost to wholesaler. In the absence of proof of a lesser cost, this markup shall be 3% of the cost to wholesaler as set forth in this subd. **1. b.**

1g. With respect to the wholesale sale of motor vehicle fuel by a refiner, "cost to wholesaler" means the refiner's lowest selling price to other retailers or to wholesalers of motor vehicle fuel on the date of the refiner's wholesale sale, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost of the motor vehicle fuel, 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 set forth in this subdivision.

1r. With respect to the wholesale sale of motor vehicle fuel by a person other than a refiner, "cost to wholesaler" means the invoice cost of the motor vehicle fuel to the wholesaler of motor vehicle fuel within 10 days prior to the date of the sale or the replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the motor vehicle fuel 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 set forth in this subdivision.

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

(cg) 1. Except as provided in subd. **2.**, "determination date" is the day preceding the day of the sale at retail of motor vehicle fuel.

2. If a retailer sells motor vehicle fuel on a day other than the day on which the retailer last purchased any motor vehicle fuel and the sale of the motor vehicle fuel by the retailer occurs no later than 10 days after its last purchase by the retailer, "determination date" means any of the following dates selected by the retailer:

a. The day preceding the day of the sale of motor vehicle fuel by the retailer.

b. The day on which motor vehicle fuel was last purchased by the retailer.

(cj) "Existing price of a competitor" means a price being simultaneously offered to a buyer for merchandise of like quality and quantity by a person who is a direct competitor of the retailer, wholesaler, wholesaler of motor vehicle fuel or refiner and from whom the buyer can practicably purchase the merchandise.

(cL) "Petroleum price reporting service" means a wholesale petroleum product price reporting service that is recognized nationwide.

(cm) “Refiner” means a manufacturer, producer or refiner of motor vehicle fuel.

(d) “Replacement cost” means the cost computed as specified in par. (am) or (c) at which the merchandise sold could have been bought by the retailer, wholesaler or wholesaler of motor vehicle fuel at any time if bought in the same quantity as the retailer’s, wholesaler’s or wholesaler of motor vehicle fuel’s last purchase of the said merchandise.

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

(f) With respect to the sale of merchandise other than motor vehicle fuel, “retailer” and “wholesaler” shall both be applied to any merchant who buys merchandise for resale at retail from the manufacturer or producer thereof and to any wholesaler under par. (L) 2. and, as to that merchandise or that wholesaler, the terms “cost to retailer” and “cost to wholesaler” as defined in pars. (am) and (c) shall both be applied, including the markup requirements.

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

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

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

(j) “Terminal” means a motor vehicle fuel storage and distribution facility that is supplied by a pipeline or marine vessel, from which facility motor vehicle fuel may be removed at a rack and from which facility at least 3 refiners or wholesalers of motor vehicle fuel sell motor vehicle fuel.

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

(L) “Wholesaler” includes every person holding a permit as a multiple retailer under s. 139.30 (8) and every person engaged in the business of making sales at wholesale, other than sales of motor vehicle fuel at wholesale, within this state except as follows:

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

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

(m) “Wholesaler of motor vehicle fuel” includes any of the following:

1. A person who stores motor vehicle fuel and sells it through 5 or more retail outlets that the person owns or operates.

2. A person who acquires motor vehicle fuel from a refiner or as a sale at wholesale and stores it in a bulk storage facility other than a retail station for further sale and distribution.

3. A person engaged in the business of making sales at wholesale of motor vehicle fuel within this state.

4. A person engaged in the business of selling diesel fuel if that person’s sales of diesel fuel accounted for at least 60% of that person’s total sales of motor vehicle fuel in the previous year or, if that person did not engage in the business of selling diesel fuel in the previous year, if that person reasonably anticipates that sales of diesel fuel will account for at least 60% of that person’s total sales of motor vehicle fuel in the current year.

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

(b) With respect to the sale of merchandise other than motor vehicle fuel, any retailer who also sells to other retailers shall use the invoice cost to other retailers in computing the selling price at retail under sub. (2) (am); and if that retailer is a manufacturer or producer, both sub. (2) (am) and (c) shall be used in computing the selling price at retail. In the absence of sales to other retailers, the manufacturer’s or producer’s invoice cost to wholesalers shall be used in computing the manufacturer’s or producer’s selling price at retail as provided in sub. (2) (am) and (c).

(c) When 2 or more terminals are included in the same geographic area by a petroleum price reporting service, they shall be considered one terminal for purposes of sub. (2) (am) 1m. a., b. and c.

(3) ILLEGALITY OF LOSS LEADERS. Any sale of any item of merchandise either by a retailer, wholesaler, wholesaler of motor vehicle fuel or refiner, 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, wholesaler, wholesaler of motor vehicle fuel or refiner at less than cost as defined in this section shall be prima facie evidence of intent or effect to induce the purchase of other merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a competitor.

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

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

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

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

(5m) PRIVATE CAUSE OF ACTION. Any person who is injured or threatened with injury as a result of a sale or purchase of motor vehicle fuel in violation of sub. (3) may bring an action against the

person who violated sub. (3) for temporary or permanent injunctive relief or an action against the person for 3 times the amount of any monetary loss sustained or an amount equal to \$2,000, whichever is greater, multiplied by each day of continued violation, together with costs, including accounting fees and reasonable attorney fees, notwithstanding s. 814.04 (1). An action under this subsection may not be brought after 180 days after the date of a violation of sub. (3).

(5r) PRIVATE CAUSE OF ACTION; SALE OF TOBACCO PRODUCTS. Any person who is injured or threatened with injury as a result of a sale or purchase of cigarettes or other tobacco products in violation of this section may bring an action against the person who violated this section for temporary or permanent injunctive relief or an action against the person for 3 times the amount of any monetary loss sustained or an amount equal to \$2,000, whichever is greater, multiplied by each day of continued violation, together with costs, including accounting fees and reasonable attorney fees, notwithstanding s. 814.04 (1).

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

1. Merchandise is sold in bona fide clearance sales.
2. Perishable merchandise must be sold promptly in order to forestall loss.
3. Merchandise is imperfect or damaged or is being discontinued.
4. Merchandise is sold upon the final liquidation of any business.
5. Merchandise is sold for charitable purposes or to relief agencies.
6. Merchandise is sold on contract to departments of the government or governmental institutions.
7. The price of merchandise is made in good faith to meet an existing price of a competitor and is based on evidence in the possession of the retailer, wholesaler, wholesaler of motor vehicle fuel or refiner in the form of an advertisement, proof of sale or receipted purchase, price survey or other business record maintained by the retailer, wholesaler, wholesaler of motor vehicle fuel or refiner in the ordinary course of trade or the usual conduct of business.
8. Merchandise is sold by any officer acting under the order or direction of any court.
9. Motor vehicle fuel is sold by a person to a wholesaler of motor vehicle fuel, who may sell the motor vehicle fuel at either retail or wholesale.

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

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

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

(7) NOTIFICATION REQUIREMENTS. (a) If a retailer, wholesaler, wholesaler of motor vehicle fuel or refiner lowers in good faith the price of motor vehicle fuel below the applicable price specified under sub. (2) (am) 1m. to meet an existing price of a competitor, the person shall submit to the department notification of the lower price before the close of business on the day on which the price was lowered in the form and the manner required by the department.

(b) Failure to comply with par. (a) creates a rebuttable presumption that the retailer, wholesaler, wholesaler of motor vehicle

fuel or refiner did not lower the price to meet the existing price of a competitor.

(c) If a retailer, wholesaler, wholesaler of motor vehicle fuel or refiner complies with par. (a), all of the following apply:

1. The department may not proceed under sub. (5) against the retailer, wholesaler, wholesaler of motor vehicle fuel or refiner.

2. The retailer, wholesaler, wholesaler of motor vehicle fuel or refiner is immune from liability under sub. (5m).

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (200); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

Cross Reference: See also s. ATCP 105.01, Wis. adm. code.

The state constitution protects the right to a trial by jury for a civil suit brought under this section. Village Food & Liquor Mart v. H & S Petroleum, Inc. 2002 WI 92, 254 Wis. 2d 478, 647 N.W.2d 100, 00–2493.

The only reasonable construction of “terminal closest to the retailer” under sub. (2) (am) 1m. c. is the terminal closest to the location where the retail sale occurs, not the corporate headquarters of the seller. Gross v. Woodman’s Food Market, Inc. 2002 WI App 295, 259 Wis. 2d 181, 655 N.W.2d 718, 01–1746.

Sub. (3) prohibits a sale at less than statutory cost if the seller had either an intent proscribed by the statute or the sale had an effect proscribed by the statute. Gross v. Woodman’s Food Market, Inc. 2002 WI App 295, 259 Wis. 2d 181, 655 N.W.2d 718, 01–1746.

This section is not so vague that it constitutes a denial of due process. That a seller may be penalized even if the seller lacks the intent to violate the section does not violate due process. Gross v. Woodman’s Food Market, Inc. 2002 WI App 295, 259 Wis. 2d 181, 655 N.W.2d 718, 01–1746.

There is no requirement in sub. (7) that a retailer must conduct a price survey within any particular time period. DATCP by rule recommends that sellers maintain daily price surveys, but the department does not require or even recommend a survey every 24 hours. 22 Shawano, LLC v. R. C. Samanta Roy Institute of Science and Technology, Inc. 2006 WI App 14, 289 Wis. 2d 196, 709 N.W.2d 98, 05–0427.

“Competitor” in the phrase “existing price of a competitor” in sub. (2) (cj) is not limited to competitors located in Wisconsin. Go America L.L.C. v. Kwik Trip, Inc. 2006 WI App 94, ___ Wis. 2d ___, 715 N.W.2d 746, 05–1512.

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

This section does not violate federal antitrust laws or constitutional due process. 77 Atty. Gen. 163.

This section was not unconstitutional as applied to a cigarette wholesaler licensed under s. 139.30 (3). Eby–Brown v. DOR, 295 F.3d 749 (2002).

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

100.305 Prohibited selling practices during periods of abnormal economic disruption. (1) **DEFINITIONS.** In this section:

(a) “Consumer goods or services” means goods or services that are used primarily for personal, family, or household purposes.

(b) “Emergency” includes any of the following:

1. A tornado, flood, fire, storm, or other destructive act of nature.

2. A disruption of energy supplies to the degree that a serious risk is posed to the economic well–being, health, or welfare of the public.

3. Hostile action.

4. A strike or civil disorder.

(c) “Hostile action” means an act of violence against a person or property in the United States by a foreign power or by a foreign or domestic terrorist.

(d) “Period of abnormal economic disruption” means a period of time during which normal business transactions in the state or a part of the state are disrupted, or are threatened to be disrupted, due to an emergency.

(e) “Seller” means a manufacturer, producer, supplier, wholesaler, distributor, or retailer.

(2) PROHIBITION. No seller may sell, or offer to sell, in this state at wholesale or at retail, consumer goods or services at unreasonably excessive prices if the governor, by executive order, has certified that the state or a part of the state is in a period of abnormal economic disruption.

(3) RULES. The department shall promulgate rules to establish formulas or other standards to be used in determining whether a wholesale or retail price is unreasonably excessive.

(4m) ENFORCEMENT; PENALTY. If a seller violates sub. (2), the department or, after consulting with the department, the department of justice, may do any of the following:

(a) Issue to the seller a warning notice specifying the action that the seller is required to take in order not to be in violation of sub. (2).

(b) Commence an action against the seller in the name of the state to recover a civil forfeiture of not more than \$10,000 or to temporarily or permanently restrain or enjoin the seller from violating sub. (2), or both.

History: 2005 a. 450.

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

(a) “Drug” means any substance subject to 21 USC 353 (b).

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

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

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

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

(4) PENALTIES. For any violation of this section, the department or a district attorney may commence an action on behalf of the state to recover a forfeiture of not less than \$100 nor more than \$10,000 for each offense. Each delivery of a drug sold to a purchaser at a price in violation of this section and each separate day in violation of an injunction issued under this section is a separate offense.

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

History: 1975 c. 168, 421, 422; 1983 a. 188, 189; 1993 a. 352.

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

“Most favored purchaser” under sub. (2) does not refer to purchasers outside Wisconsin. The constitutionality of this statute is upheld. *K–S Pharmacies v. American Home Products*, 962 F.2d 728 (1992).

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

(a) “Beverage” means any alcohol beverage, as defined in s. 125.02 (1), malt beverage, tea, bottled drinking water, as defined under s. 97.34 (1) (a), soda water beverage, as defined under s. 97.34 (1) (b), or fruit or vegetable juice or drink which is intended for human consumption.

(ad) “Blister pack” means a container in which an item has a covering of plastic film or preformed semirigid plastic and the covering is affixed to a rigid backing.

(ag) “Bottle” means a plastic container the neck of which is smaller than its body, with a screw-on or press-on lid.

(ar) “Labeling” means attaching information to or embossing or printing information on a plastic container.

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

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

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

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

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

(g) “Sales at retail” has the meaning given in s. 100.30 (2) (h).

(h) “Sales at wholesale” has the meaning given in s. 100.30 (2) (i).

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

(3) PROHIBITION. (a) *Sale of plastic beverage bottles.* On and after January 1, 1991, no person may sell or offer for sale at wholesale in this state a plastic beverage bottle with a capacity of 8 fluid ounces or more, or a beverage in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2). On and after January 1, 1992, no person may sell or offer for sale at retail in this state a plastic beverage bottle with a capacity of 8 fluid ounces or more, or a beverage in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2).

(b) *Sale of other plastic bottles.* 1. On and after January 1, 1991, no person may sell or offer for sale at wholesale in this state any plastic bottle with a capacity of 16 fluid ounces or more, or a product in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2). On and after January 1, 1992, no person may sell or offer for sale at retail in this state any plastic bottle with a capacity of 16 fluid ounces or more, or a product in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2).

2. On and after January 1, 1993, no person may sell or offer for sale at wholesale in this state any plastic bottle with a capacity of at least 8 fluid ounces but less than 16 fluid ounces, or a product in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2). On and after January 1, 1994, no person may sell or offer for sale at retail in this state any plastic bottle with a capacity of at least 8 fluid ounces but less than 16 fluid ounces, or a product in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2).

3. Subdivisions 1. and 2. do not apply to the sale or offer to sell of plastic beverage bottles or beverages in plastic bottles.

(c) *Sale of other plastic containers.* 1. On and after January 1, 1991, no person may sell or offer for sale at wholesale in this state any plastic container with a capacity of 16 fluid ounces or more, or a product in such a plastic container, unless the container complies with the labeling requirements under sub. (2). On and after January 1, 1992, no person may sell or offer for sale at retail in this state any plastic container with a capacity of 16 fluid ounces or more, or a product in such a plastic container, unless the container complies with the labeling requirements under sub. (2).

2. On and after January 1, 1992, no person may sell or offer for sale at wholesale in this state any plastic container with a capacity of at least 8 fluid ounces but less than 16 fluid ounces, or

a product in such a plastic container, unless the container complies with the labeling requirements under sub. (2). On and after January 1, 1993, no person may sell or offer for sale at retail in this state any plastic container with a capacity of at least 8 fluid ounces but less than 16 fluid ounces, or a product in such a plastic container, unless the container complies with the labeling requirements under sub. (2).

3. Subdivisions 1. and 2. do not apply to the sale or offer to sell of any plastic bottles or any products in plastic bottles.

(3m) VARIANCES. Upon request, the department may grant a variance to a prohibition in sub. (3) for up to one year for a type of plastic container. The department may renew a variance. The department may only grant a variance if it is not technologically possible to label the plastic container.

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

History: 1987 a. 293, 403; 1989 a. 31, 335.

Cross Reference: See also s. ATCP 137.11, Wis. adm. code.

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

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

100.36 Frauds; substitute for butter; advertisement. No person may use the word “butter” in any way in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter. No person may use terms such as “cream”, “creamery” or “dairy”, or the name or representation of any breed of dairy cattle, or any combination of such words and representation, or any other words or symbols or combinations thereof commonly used in the sale of butter unless at least 40% of the substitute is butterfat. If the term “butter” is used in connection with the name of any such product, it shall be qualified so as to distinguish it from butter as defined in s. 97.01 (1). Nothing in this section prohibits a person from using the term “light butter” or “lite butter” in the manner provided in s. 97.03 (3) (b).

History: 1983 a. 189 s. 329 (20); 1991 a. 111.

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

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

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

(c) “Hazardous substance” means:

1. Any substance or mixture of substances, including a toy or other article intended for use by children, which is toxic, is corrosive, is an irritant, is a strong sensitizer, is flammable or combus-

tible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

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

2m. Any substance included under sub. (2) (e) 2.

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

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

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

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

(e) “Immediate container” does not include package liners.

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

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

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

1. Which states conspicuously the name and place of business of the manufacturer, packer, distributor or seller; the common or

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

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

(hm) “Practitioner” has the meaning given in s. 961.01 (19).

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

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

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

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

(b) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness from any of the following:

1. Fracture, fragmentation or disassembly of the article.
2. Propulsion of the article, or any part or accessory of the article.
3. Points or other protrusions, surfaces, edges, openings or closures.
4. Moving parts.
5. Lack or insufficiency of controls to reduce or stop motion.
6. Self-adhering characteristics of the article.
7. Aspiration or ingestion of the article, or any part or accessory of the article.
8. Instability of the article.
9. Any other aspect of the article’s design or manufacture including the capability of producing sounds at a level of 138 decibels or higher.

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

(2) (a) Whenever in the judgment of the department such action will promote the objectives of this section by avoiding or

resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance, for the purposes of this section, any substance or mixture of substances which it finds meets the requirements of sub. (1) (c) 1.

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

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

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

(e) 1. The department may summarily ban the sale or distribution of any hazardous substance or article if it finds that the hazard to public health or safety is so great that such hazard should not be permitted to continue. The department shall follow the procedure specified in s. 93.18 (3).

2. In addition to subd. 1. and except as provided in subd. 3., all of the following are hazardous substances, possess such a degree of hazard that adequate cautionary labeling cannot be written and may not be sold or distributed:

a. Propyl nitrite, isopropyl nitrite and mixtures containing propyl nitrite or isopropyl nitrite.

b. The nitrous acid esters of all alcohols having the formula of 5 carbon atoms, 12 hydrogen atoms and one oxygen atom including 1-pentyl nitrite, 2-pentyl nitrite, 3-pentyl nitrite, 2-methyl-1-butyl nitrite, 3-methyl-1-butyl nitrite (also known as isoamyl nitrite or isopentyl nitrite), 2-methyl-2-butyl nitrite (also known as tertiary pentyl nitrite), 3-methyl-2-butyl nitrite, 2, 2-dimethylpropyl nitrite (also known as neopentyl nitrite) and mixtures containing more than 5% of 1-pentyl nitrite, 2-pentyl nitrite, 3-pentyl nitrite, 2-methyl-1-butyl nitrite, 3-methyl-1-butyl nitrite, 2-methyl-2-butyl nitrite, 3-methyl-2-butyl nitrite or 2, 2-dimethyl nitrite.

c. Ethyl chloride and ethyl nitrite.

d. Any toy containing elemental mercury.

3. Subdivisions 1. and 2. do not apply to the sale or distribution of isoamyl nitrite (3-methyl-1-butyl nitrite) or ethyl chloride as prescription drugs obtained from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of professional practice.

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

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

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

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

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

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

(c) The sale, or offering or exposing for sale of a hazardous substance in a reused food, drug or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification. The reuse of a food, drug or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being in a misbranded package.

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

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

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

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

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

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

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

History: 1975 c. 94 s. 91 (10); 1975 c. 117; 1983 a. 189 ss. 140, 141, 329 (20); 1991 a. 39; 1993 a. 34; 1995 a. 225, 448.

Cross Reference: See also ch. ATCP 139, Wis. adm. code.

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

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

(2) ADULTERATION. An antifreeze is adulterated if:

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

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

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

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

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

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

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

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

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

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

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

Cross Reference: See also ch. ATCP 139, Wis. adm. code.

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

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

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

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

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

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

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

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

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

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

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

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

History: 1975 c. 117.

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

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

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

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

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

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

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

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

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

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

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

(3) **REMOVAL FROM SALE: REPAIR OR REPLACEMENT.** (a) The department may summarily ban the sale of any consumer product manufactured, sold or distributed in violation of this section or any rule adopted under this section, or which presents an unreasonable risk of injury or imminent hazard to the public health, welfare and safety. Any such product may be summarily banned notwithstanding the existence of applicable safety standards or action taken toward the development or adoption of a standard. The department shall follow the procedure specified in s. 93.18 (3).

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

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

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

3. To refund the purchase price of the product.

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

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

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

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

Cross Reference: See also ch. ATCP 139, Wis. adm. code.

100.43 Packaging standards; poison prevention.

(1) **DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

substances to consumers, unless they are the only containers or wrappings used to ship or deliver the household substance to the consumer.

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

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

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

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

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

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

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

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

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

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

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

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

Cross Reference: See also ch. ATCP 139, Wis. adm. code.

100.44 Identification and notice of replacement part manufacturer. (1) DEFINITIONS. In this section:

(a) “Motor vehicle” means any motor–driven vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05 (2), including a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor vehicle dealer. “Motor vehicle” does not mean a moped, semitrailer or trailer designed for use in combination with a truck or truck tractor.

(b) “Replacement part” means a replacement for any of the nonmechanical sheet metal or plastic parts that generally constitute the exterior of a motor vehicle, including inner and outer panels.

(2) **IDENTIFICATION ON REPLACEMENT PART.** A replacement part that is not made by or for a person who manufactures motor vehicles shall have the logo or name of the manufacturer of the replacement part affixed to or inscribed on the replacement part. The logo or name shall be placed on the replacement part so that to the extent practicable it is visible after installation.

(3) **SALE OF UNLABELED REPLACEMENT PARTS.** On or after January 1, 1993, no person may sell in this state or deliver for sale in this state a replacement part that is not made by or for a person who manufactures motor vehicles unless the replacement part identifies its manufacturer as required under sub. (2).

(4) **PENALTY.** Any person who violates sub. (3) may be required to forfeit not more than \$500 for each violation. Each day of violation constitutes a separate offense.

(5) **ENFORCEMENT.** For any violation of sub. (3), the department may, on behalf of the state, bring an action in any court of competent jurisdiction for the recovery of forfeitures authorized under sub. (4), for temporary or permanent injunctive relief and for any other appropriate relief. The court may make any order or judgment that is necessary to restore to any person any pecuniary loss suffered because of a violation of sub. (3) if proof of the loss is shown to the satisfaction of the court.

History: 1991 a. 176.

100.45 Mobile air conditioners. (1) DEFINITIONS. In this section:

(a) “Approved refrigerant recovery equipment” means equipment that the department or an independent standards testing organization approved by the department determines will minimize the release of ozone–depleting refrigerant when the equipment is used to transfer ozone–depleting refrigerant from mobile air conditioners into storage tanks.

(ad) “Approved refrigerant recycling equipment” means equipment that the department or an independent standards testing organization approved by the department determines will treat ozone–depleting refrigerant removed from a mobile air conditioner so that the ozone–depleting refrigerant meets the standard of purity for recycled refrigerant from mobile air conditioners established under sub. (5) (a) 1.

(ag) “Distributor” has the meaning given in s. 218.0101 (6).

(ar) “Manufacturer” has the meaning given in s. 218.0101 (20), except that, if more than one person satisfies the definition in s. 218.0101 (20) with respect to a motor vehicle, “manufacturer” means the person who installs the mobile air conditioner that is in the motor vehicle when the motor vehicle is distributed for sale in this state.

(b) “Mobile air conditioner” means mechanical vapor compression refrigeration equipment used to cool the driver or passenger compartment of a motor vehicle.

(c) “Motor vehicle” has the meaning given in s. 340.01 (35).

(d) “Ozone–depleting refrigerant” means a substance used in refrigeration that is or contains a class I substance, as defined in 42 USC 7671 (3) or a class II substance, as defined in 42 USC 7671 (4).

(dm) “State agency” means any office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including the legislature and the courts, the Wisconsin Housing and Economic Development Authority, the Bradley Center Sports and Entertainment Corporation, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Health and Educational Facilities Authority, the Wisconsin Aerospace Authority, and the Fox River Navigational System Authority.

(e) “Trailer refrigeration equipment” means mechanical vapor compression refrigeration equipment used to cool a trailer designed for carrying property wholly on its own structure and for being drawn by a motor vehicle.

(2) DISTRIBUTION OF MOBILE AIR CONDITIONERS. (a) A manufacturer or distributor may not distribute for sale in this state a mobile air conditioner that contains ozone–depleting refrigerant and that is original equipment in a new motor vehicle.

(b) The department may waive the application of par. (a) to a manufacturer or distributor for a period of one year if any of the following applies:

1. All substitutes for ozone–depleting refrigerant are toxic and their use is not safe for consumers, industry or the environment.

2. Substitutes for ozone–depleting refrigerant are not available in sufficient quantities for the manufacturer or distributor to comply with par. (a).

3. An acceptable mobile air conditioner cannot be manufactured in sufficient quantities for the manufacturer to comply with par. (a) and the progress made by the manufacturer or distributor toward complying with par. (a) is comparable with the progress made by other manufacturers and distributors toward complying with par. (a).

(3) SALE OF REFRIGERANT. (a) After December 31, 1990, no person may sell or offer to sell any ozone–depleting refrigerant in a container holding less than 15 pounds of ozone–depleting refrigerant.

(b) No person may sell or offer to sell new or reclaimed ozone–depleting refrigerant for use in a mobile air conditioner or in trailer refrigeration equipment except to one of the following:

1. A person who intends to resell the ozone–depleting refrigerant.

2. A person who holds an annual registration certificate under sub. (4) (h).

(c) No person may offer to sell, sell or otherwise transfer possession of ozone–depleting refrigerant that was removed from a mobile air conditioner but has not been reclaimed unless all of the following apply:

1. The person or another person uses approved refrigerant recovery equipment to remove the ozone–depleting refrigerant from mobile air conditioners.

2. The person provides to the department upon request the identity of each person to whom it sells or otherwise transfers possession of the recovered ozone–depleting refrigerant.

3. The person informs each person to whom it sells or otherwise transfers possession of the ozone–depleting refrigerant that the ozone–depleting refrigerant has not been reclaimed and, if the ozone–depleting refrigerant has not been recycled, that the ozone–depleting refrigerant has not been recycled.

4. All of the recovered ozone–depleting refrigerant is conveyed in a safe and timely manner to a refrigerant reclamation facility that is recognized by the department or to a person who holds an annual registration certificate under sub. (4) (h) for recycling and reuse or resale.

(4) SERVICING. No person, including a state agency, may perform motor vehicle repair that releases or may release ozone–depleting refrigerant from a mobile air conditioner or trailer refrigeration equipment or may install or service a mobile air conditioner or trailer refrigeration equipment that contains ozone–depleting refrigerant unless all of the following apply:

(a) The person does not use ozone–depleting refrigerant for cleaning purposes including to clean the interior or exterior surfaces of mobile air conditioners or trailer refrigeration equipment.

(b) Whenever the person removes ozone–depleting refrigerant from a mobile air conditioner or trailer refrigeration equipment the person pumps the ozone–depleting refrigerant into storage tanks.

(c) The person or another person does one of the following with any used ozone–depleting refrigerant:

1. Recycles the used ozone–depleting refrigerant using approved refrigerant recycling equipment at the establishment where the ozone–depleting refrigerant is removed or at another location and either reuses the recycled ozone–depleting refrigerant in servicing a mobile air conditioner or trailer refrigeration equipment or sells or otherwise transfers possession of the recycled ozone–depleting refrigerant for conveyance to a refrigerant reclamation facility that is recognized by the department.

2. Removes the used ozone–depleting refrigerant using approved refrigerant recovery equipment and sells or otherwise transfers possession of the recovered ozone–depleting refrigerant in compliance with sub. (3) (c).

(d) The individuals who use the equipment under par. (c) have the qualifications established under sub. (5) (a) 2.

(e) The person does not knowingly or negligently release ozone–depleting refrigerant to the environment, except for minimal releases that occur during efforts to recover or recycle ozone–depleting refrigerant removed from mobile air conditioners or trailer refrigeration equipment.

(f) The person inspects and, if necessary, repairs mobile air conditioners or trailer refrigeration equipment that leaks or is suspected of leaking before putting additional ozone–depleting refrigerant into those mobile air conditioners or trailer refrigeration equipment.

(h) The person holds an annual registration certificate from the department.

(5) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. A standard of purity for recycled refrigerant from mobile air conditioners that is based on recognized national industry standards.

2. Qualifications, which may include training or certification requirements, for individuals who use approved refrigerant recycling equipment or approved refrigerant recovery equipment to ensure that those individuals use procedures for containment of ozone–depleting refrigerant.

3. Fees to cover the costs of administering this section.

(b) Identify approved refrigerant recycling equipment and approved refrigerant recovery equipment or approve independent testing organizations that may identify approved refrigerant recycling equipment and approved refrigerant recovery equipment.

(c) Issue annual registration certificates to persons required to hold those certificates under sub. (4) (h).

(5e) DEPARTMENT POWERS. The department may promulgate rules providing that any portion of sub. (3) or (4) applies with respect to a substance used as a substitute for an ozone–depleting refrigerant.

(5m) SURCHARGE FOR OPERATING WITHOUT REGISTRATION. An applicant for an annual registration certificate under sub. (5) (c) shall pay a registration fee surcharge of \$160 if the department determines that, within one year before submitting the application, the applicant engaged in an activity for which a registration certificate is required under this section without holding a registration certificate. Payment of the registration fee surcharge does not relieve the applicant from any other civil liability that results from violations of this section, but does not constitute evidence of a violation of law.

(6) PENALTIES. (a) Any person who violates sub. (2) shall be required to forfeit \$1,000. Each motor vehicle distributed in violation of sub. (2) constitutes a violation.

(b) Any person who violates sub. (3) shall be required to forfeit not less than \$50 nor more than \$1,000. Each sale in violation of sub. (3) constitutes a violation.

(c) Any person who violates sub. (4) shall be required to forfeit not less than \$50 nor more than \$1,000. Each repair, installation or servicing in violation of sub. (4) constitutes a violation.

History: 1989 a. 284; 1991 a. 97; 1993 a. 243; 1997 a. 27, 165; 1999 a. 31; 2001 a. 16; 2005 a. 335.

Cross Reference: See also ch. [ATCP 136](#), Wis. adm. code.

100.46 Energy consuming products. (1) ENERGY CONSERVATION STANDARDS. The department may by rule adopt energy conservation standards for products that have been established in or promulgated under [42 USC 6291](#) to [6309](#).

(2) PROHIBITED ACTS; ENFORCEMENT. No person may sell at retail, install or cause to be installed any product that is not in compliance with rules promulgated under sub. (1). In addition to other penalties and enforcement procedures, the department may apply to a court for a temporary or permanent injunction restraining any person from violating a rule adopted under sub. (1).

History: 1993 a. 414.

Note: [1993 Wis. Act 414](#), which creates this section, contains extensive explanatory notes.

100.47 Sales of farm equipment. (1) DEFINITION. In this section, “farm equipment” means a tractor or other machinery used in the business of farming.

(2) SAFETY EQUIPMENT REQUIRED. No person in the business of selling farm equipment may sell farm equipment unless, at the time of sale, the farm equipment is equipped with all of the following:

- (a) A power takeoff master shield, if a tractor.
- (b) A power takeoff driveline shield extending to the 2nd universal joint, if farm equipment powered by a tractor.
- (c) Lights and reflectors meeting the applicable requirements under ch. [347](#), if farm equipment that can be operated on a highway.
- (d) A slow moving vehicle emblem meeting standards and specifications established under s. [347.245](#), if farm equipment that can be operated on a highway.

(3) DISCLOSURE. If farm equipment subject to sub. (2) (b) is equipped with a power takeoff shield that is not equivalent to the shield installed at the time of manufacture, the person who sells the farm equipment shall so notify the buyer in writing.

(4) EXCEPTIONS. Subsection (2) does not apply to:

- (a) Sales of farm equipment to another person in the business of selling farm equipment for the purpose of resale.
- (b) Sales of farm equipment for the purpose of salvage.
- (c) Sales by auction, unless the auctioneer holds title to the farm equipment being sold.

(5) PENALTY. Any person who violates this section may be required to forfeit not more than \$500 for each violation.

History: 1993 a. 455; 1993 a. 491 s. 142; Stats. 1993 s. 100.47.

100.48 Hour meter tampering. (1) In this section:

- (ad) “All-terrain vehicle” has the meaning given in s. [340.01 \(2g\)](#).
- (ag) “Boat” has the meaning given in s. [30.50 \(2\)](#).
- (am) “Farm equipment” means a tractor or other machinery used in the business of farming.
- (b) “Hour meter” means an instrument that measures and records the actual hours of operation of the vehicle or device to which the instrument is attached.
- (c) “Snowmobile” has the meaning given in s. [350.01 \(12\)](#).

(2) No person may, either personally or through an agent, remove, replace, disconnect, reset, tamper with, alter, or fail to connect, an hour meter attached to farm equipment, a snowmobile, an all-terrain vehicle, or a boat with the intent to defraud by changing or affecting the number of hours of operation indicated on the hour meter.

(3) (a) Nothing in this section shall prevent the service, repair or replacement of an hour meter if the number of hours of operation indicated on the hour meter remains the same as before the service, repair or replacement. If an hour meter attached to farm equipment, a snowmobile, an all-terrain vehicle, or a boat is incapable of registering the same number of hours of operation as before its service, repair or replacement, the hour meter shall be adjusted to read zero, and a sticker shall be affixed by the owner of the vehicle or device to which the hour meter is attached or an agent, in proximity to the hour meter, specifying the number of hours of operation recorded on the hour meter prior to its service, repair or replacement and the date on which it was serviced, repaired or replaced. No person who services, repairs or replaces an hour meter attached to farm equipment, a snowmobile, an all-terrain vehicle, or a boat that is incapable of registering the same number of hours of operation as before such service, repair or replacement may fail to adjust the hour meter to read zero or fail to affix the sticker required by this paragraph.

(b) No person may, with intent to defraud, remove, replace or alter a sticker affixed to an hour meter as required under par. (a).

(4) (a) Any person who violates sub. (2) or (3) (b) with respect to an hour meter attached to farm equipment may be fined not more than \$5,000 or imprisoned for not more than one year in the county jail, or both, for each violation.

(b) Any person who violates sub. (3) (a) with respect to an hour meter attached to farm equipment may be required to forfeit not more than \$500 for each violation.

(c) Any person who violates sub. (2) or (3) with respect to an hour meter attached to a snowmobile, an all-terrain vehicle, or a boat may be fined not more than \$5,000 or imprisoned for not more than one year in the county jail, or both, for each violation.

History: 1997 a. 278; 2003 a. 166.

100.50 Products containing or made with ozone-depleting substances. (1) DEFINITIONS. In this section:

(a) “Class I substance” has the meaning given in [42 USC 7671 \(3\)](#).

(b) “Class II substance” has the meaning given in [42 USC 7671 \(4\)](#).

(2) PRODUCT LABELING. Beginning on August 1, 1994, no person may represent in advertising or on a label that any product that the person manufactures, packages, distributes or sells is “ozone friendly” or use any similar description that implies that the product does not contribute to the depletion of stratospheric ozone if the product contains or is made with a class I substance or a class II substance.

(3) SALE OF PORTABLE FIRE EXTINGUISHERS. Beginning on August 1, 1994, no person may sell or offer to sell a portable fire extinguisher that contains a class I substance except for use by a commercial user.

(4) FIRE-EXTINGUISHING PRODUCTS. Beginning on January 1, 1995, a person may make, package, sell or offer to sell a fire-extinguishing product that contains a class I substance only if the class I substance has been recycled or reclaimed and, in the case of a sale or offer to sell, if sale of the product is not prohibited under sub. (3).

(5) RETURN TO MANUFACTURER. After the sale of a product is prohibited under sub. (3) or (4), a retailer that purchased the product from the manufacturer for resale before the date on which the prohibition takes effect may return the product to the manufacturer and the manufacturer shall refund the purchase price to the retailer.

(6) PENALTY; ENFORCEMENT. (a) Any person who violates sub. (2), (3) or (4) shall be required to forfeit not less than \$250 nor more than \$1,000. Each day on which a person sells or offers to sell in violation of one of those provisions constitutes a separate offense.

(am) If a court imposes a forfeiture under par. (a) on a person for a violation of sub. (2), (3) or (4), the court may order the person to accept the return of the product that is the subject of the violation and to refund the purchase price to the purchaser of that product.

(b) In lieu of or in addition to the remedy under par. (a), the department may seek an injunction restraining any person from violating this section.

(c) The department, or any district attorney upon the request of the department, may commence an action in the name of the state under par. (a) or (b).

History: 1993 a. 243; 1995 a. 27.

100.51 Motor fuel dealerships. (1) DEFINITIONS. As used in this section:

(a) “Dealer” has the meaning given under s. 135.02 (2).

(b) “Dealership” has the meaning given under s. 135.02 (3).

(c) “Designated family member” means the spouse or child of a motor fuel dealer who has been designated in the most recent motor fuel dealership agreement with the motor fuel grantor as the successor to ownership of the motor fuel dealership and who either inherits ownership of the motor fuel dealership by will or intestate succession or who, in the case of the legal incapacity of the dealer, is appointed by a court as guardian for the motor fuel dealership.

(d) “Grantor” has the meaning given under s. 135.02 (5).

(2) SURVIVORSHIP PROVISIONS REQUIRED. Every motor fuel dealership agreement entered into, renewed or extended on or after December 1, 1987, shall contain all of the following provisions:

(a) Any designated family member may succeed to the ownership of the motor fuel dealership if all of the following conditions are met:

1. The designated family member gives the motor fuel grantor written notice of the intention to succeed to ownership of the motor fuel dealership within 60 days after the motor fuel dealer’s death or legal incapacity.

2. Upon request of the motor fuel grantor, the designated family member provides personal and financial information reasonably necessary to determine under par. (b) whether the succession should be honored.

3. The designated family member agrees to be bound by all terms and conditions of the existing motor fuel dealership agreement.

4. There does not exist good cause under par. (b) for refusing to honor the succession.

(b) Good cause exists for refusing to honor a succession if a designated family member does not meet existing reasonable standards of the motor fuel grantor. The motor fuel grantor’s existing reasonable standards may include requirements directly related to a person’s management and technical skills, training and commercial experience, credit worthiness and other requirements directly related to a person’s ability to operate the motor fuel dealership.

(c) If a motor fuel grantor believes in good faith, after requesting information under par. (a) 2., that good cause exists for refusing to honor succession of the motor fuel dealership by a designated family member, the motor fuel grantor may, within 90 days after receipt of the information, give notice complying with par. (d) to the designated family member.

(d) The notice under par. (c) shall be in writing and shall include all of the following:

1. A statement of the motor fuel grantor’s refusal to honor succession and of the specific grounds constituting good cause for the refusal.

2. A statement of the motor fuel grantor’s intent to terminate the existing motor fuel dealership agreement with the designated

family member on a date not sooner than 90 days after the date the notice is given.

(e) Except as provided in par. (f), if the notice under par. (c) is not given within the time period specified in par. (c), the motor fuel grantor may not terminate the existing motor fuel dealership agreement with the designated family member under this section and may only terminate the existing motor fuel dealership agreement as otherwise permitted by law.

(f) Notwithstanding pars. (b) to (d) and ss. 135.03 and 135.04, the motor fuel grantor may terminate the existing motor fuel dealership agreement with the designated family member if, in the 12 months following receipt of the notice under par. (a) 1., the volume of motor fuel sold by the motor fuel dealership is less than 90% of the average annual volume of motor fuel sold by the motor fuel dealership in the 3 years preceding receipt of the notice under par. (a) 1., and the motor fuel grantor, within 15 months following receipt of the notice under par. (a) 1., gives notice in writing to the designated family member which includes all of the following:

1. A statement of the motor fuel grantor’s intent to terminate the existing motor fuel dealership agreement with the designated family member on a date not sooner than 90 days after the date the notice is given.

2. A statement of the specific reasons for termination.

(3) ENFORCEMENT OF SURVIVORSHIP RIGHTS. (a) The department on behalf of the state or any person who claims injury as a result of a violation of sub. (2) may bring an action for temporary or permanent injunctive relief in any circuit court. It is no defense to an action under this paragraph that an adequate remedy exists at law.

(b) In any proceeding to determine whether good cause exists under sub. (2) (b), a motor fuel grantor has the burden of proving that the designated family member does not meet the motor fuel grantor’s existing, reasonable standards.

(4) HOURS OF BUSINESS. (a) No motor fuel grantor may require a motor fuel dealer, who has a dealership with the motor fuel grantor on May 17, 1988, to keep his or her business open for more than 16 hours per day.

(b) Paragraph (a) applies to a motor fuel dealer after he or she renews or extends a motor fuel dealership agreement with a motor fuel grantor on or after May 17, 1988.

(5) MOTOR VEHICLES USED BY DISABLED; SERVICE. (a) In this subsection:

1. “Motor vehicle” has the meaning given in s. 340.01 (35).

2. “Pump” means a device used to dispense motor fuel for sale at retail.

(b) A motor fuel dealer shall have an employee dispense motor fuel into a motor vehicle from a full-service pump at the same price as the motor fuel dealer charges the general public for the same grade of motor fuel dispensed from a self-service pump, if all of the following apply:

1. The motor vehicle displays special registration plates issued under s. 341.14 (1), (1a), (1m), (1q) or (1r) (a) or a special identification card issued under s. 343.51 or is a motor vehicle registered in another jurisdiction and displays a registration plate, card or emblem issued by the other jurisdiction that designates that the vehicle is used by a physically disabled person.

2. The driver of the motor vehicle asks for the same price as charged for motor fuel dispensed from a self-service pump.

3. The motor fuel dealer sells motor fuel at retail from both full-service and self-service pumps.

(c) An employee of a motor fuel dealer who dispenses motor fuel under par. (b) need not provide any other services that are not provided to a customer who uses a self-service pump.

(d) A motor fuel dealer that violates par. (b) may be required to forfeit not more than \$100 for each violation.

History: 1987 a. 95, 399; 1989 a. 31; 1995 a. 27; 1997 a. 35; 1997 a. 111 s. 30; Stats. 1997 s. 100.51.

100.52 Telephone solicitations. (1) DEFINITIONS. (b) “Basic local exchange service” has the meaning in s. 196.01 (1g).

(d) “Nonresidential customer” means a person, other than a residential customer, who is furnished with telecommunications service by a telecommunications utility.

(e) “Nonsolicitation directory” means the directory established in rules promulgated by the department under sub. (2) (b).

(f) “Residential customer” means an individual who is furnished with basic local exchange service by a telecommunications utility, but does not include an individual who operates a business at his or her residence.

(g) “Telecommunications service” has the meaning given in s. 196.01 (9m).

(h) “Telecommunications utility” has the meaning given in s. 196.01 (10).

(i) “Telephone solicitation” means the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods or services.

(j) “Telephone solicitor” means a person, other than a nonprofit organization or an employee or contractor of a nonprofit organization, that employs or contracts with an individual to make a telephone solicitation.

(2) NONSOLICITATION DIRECTORY LISTING. (a) Upon a request by a residential customer, the department shall include in the nonsolicitation directory a listing indicating that the residential customer does not want to receive any telephone solicitation made on behalf of a telephone solicitor.

(b) The department shall promulgate rules for establishing, maintaining, and semiannually updating a directory that includes listings of residential customers who do not wish to receive telephone solicitations made on behalf of telephone solicitors. The rules promulgated under this paragraph shall establish requirements and procedures for a residential customer to request a listing in the directory. The rules shall also require a residential customer who requests a listing in the directory to notify the department on a biennial basis if the residential customer wishes to continue to be included in the directory. The department shall eliminate a residential customer from the directory if the customer does not make the biennial notification.

(c) Except for copies of the nonsolicitation directory that are provided to registered telephone solicitors under par. (d), the nonsolicitation directory is not subject to inspection, copying, or receipt under s. 19.35 (1) and may not be released by the department.

(d) The department shall, on a semiannual basis, make the nonsolicitation directory available by electronic transmission only to telephone solicitors who are registered under sub. (3). Upon the request of a telephone solicitor registered under sub. (3), the department shall also provide a printed copy of the nonsolicitation directory to the telephone solicitor. A telephone solicitor who receives a copy of the directory, or to whom the directory is made available by electronic transmission, under this paragraph may not solicit or accept from any person, directly or indirectly, anything of value in exchange for providing the person with any information included in the copy.

(3) REGISTRATION OF TELEPHONE SOLICITORS. (a) The department shall promulgate rules that require any telephone solicitor who requires an employee or contractor to make a telephone solicitation to a residential customer in this state to register with the department, obtain a registration number from the department, and pay a registration fee to the department. The amount of the registration fee shall be based on the cost of establishing the nonsolicitation directory, and the amount that an individual telephone solicitor is required to pay shall be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations. The rules shall also require a telephone solicitor that registers with the department to pay an annual registration renewal fee to the department. The amount of the registration

renewal fee shall be based on the cost of maintaining the nonsolicitation directory.

(b) The department shall promulgate rules that require an individual who makes a telephone solicitation on behalf of a telephone solicitor to identify at the beginning of the telephone conversation each of the following:

1. The telephone solicitor.

2. If different than the telephone solicitor, the person selling the property, goods, or services, or receiving the contribution, donation, grant, or pledge of money, credit, property, or other thing of any kind, that is the reason for the telephone solicitation.

(4) TELEPHONE SOLICITOR REQUIREMENTS. (a) A telephone solicitor or an employee or contractor of a telephone solicitor may not do any of the following:

1. Use an electronically prerecorded message in telephone solicitation without the consent of the recipient of the telephone call.

2. Make a telephone solicitation to a residential customer if the nonsolicitation directory that is provided or made available to the telephone solicitor under sub. (2) (d) includes a listing for the residential customer.

3. Make a telephone solicitation to a nonresidential customer if the nonresidential customer has provided notice by mail to the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations.

(b) A telephone solicitor may not do any of the following:

1. Require an employee or contractor to make a telephone solicitation to a person in this state unless the telephone solicitor is registered with the department under the rules promulgated under sub. (3) (a).

2. Require an employee or contractor to make a telephone solicitation that violates par. (a).

(c) A telephone solicitor or employee or contractor of a telephone solicitor that makes a telephone solicitation to a nonresidential customer shall, upon the request of the nonresidential customer, provide the mailing address for notifying the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations.

(6) EXCEPTIONS. Subsections (4) (a) 2. and 3. do not apply to a telephone solicitation that satisfies any of the following:

(a) The telephone solicitation is made to a recipient in response to the recipient’s request for the telephone solicitation.

(b) The telephone solicitation is made to a recipient who is a current client of the person selling the property, goods, or services that is the reason for the telephone solicitation. This paragraph does not apply if the recipient is a current client of an affiliate of such a person, but is not a current client of such a person.

(7) TERRITORIAL APPLICATION. This section applies to any interstate telephone solicitation received by a person in this state and to any intrastate telephone solicitation.

(9) ENFORCEMENT. The department shall investigate violations of this section and may bring an action for temporary or permanent injunctive or other relief for any violation of this section.

(10) PENALTIES. (a) Except as provided in par. (b), a person who violates this section may be required to forfeit \$100 for each violation.

(b) A telephone solicitor that violates sub. (4) may be required to forfeit not more than \$100 for each violation.

History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b.

Cross Reference: See also ch. ATCP 127, Wis. adm. code.

100.525 Telephone records; obtaining, selling, or receiving without consent. (1) In this section:

(a) “Caller identification record” means a record that is delivered electronically to the recipient of a telephone call simultaneously with the reception of the telephone call and that indicates the telephone number from which the telephone call was initiated or similar information regarding the telephone call.

(am) “Customer” means a person who purchases telephone service.

(b) “Telephone record” means a record in written, electronic, or oral form, except a caller identification record, that is created by a telephone service provider and that contains any of the following information with respect to a customer:

1. Telephone numbers that have been dialed by the customer.
2. Telephone numbers pertaining to calls made to the customer.
3. The time when calls were made by the customer or to the customer.
4. The duration of calls made by the customer or to the customer.

(c) “Telephone service” means the conveyance of 2–way voice communication in analog, digital, or other form by any medium, including wire, cable, fiber optics, cellular, broadband personal communications services, or other wireless technologies, satellite, microwave, or at any frequency over any part of the electromagnetic spectrum. “Telephone service” includes the conveyance of voice communication over the Internet and telephone relay service.

(d) “Telephone service provider” means a person who provides telephone service to a customer.

(2) No person may do any of the following:

(a) Obtain, or attempt to obtain, a telephone record that pertains to a customer who is resident of this state, without the customer’s consent, by doing any of the following:

1. Making a false statement to an agent of a telephone service provider.
2. Making a false statement to a customer of a telephone service provider.
3. Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost or stolen, or that has been obtained by fraud.

(b) Ask another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner prohibited under this section.

(c) Sell or offer to sell a telephone record obtained in a manner prohibited under this section.

(3) (a) A person who violates this section is guilty of a Class I felony if the violation involves one telephone record.

(b) A person who violates this section is guilty of a Class G felony if the violation involves 2 or more telephone records.

(c) A person who violates this section is guilty of a Class E felony if the violation involves more than 10 telephone records.

(4) (a) In addition to the penalties authorized under sub. (3), a person who violates this section may be required to forfeit personal property used or intended to be used in the violation.

(b) In an action to enforce this section, the court shall award to a person who is the subject of a telephone record involved in a violation of this section all of the following:

1. The amount of the person’s pecuniary loss suffered because of a violation of this section, if proof of the loss is submitted to the satisfaction of the court, or \$1,000, whichever is greater.
2. The amount of any gain to the violator as a result of the violation.

(5) This section does not apply to any of the following:

(a) Action by a law enforcement agency in connection with the official duties of the law enforcement agency.

(b) A disclosure by a telephone service provider, if any of the following applies:

1. The telephone service provider reasonably believes the disclosure is necessary to do any of the following:
 - a. Provide telephone service to a customer.
 - b. Protect an individual from fraudulent, abusive, or unlawful use of telephone service or a telephone record.

2. The disclosure is made to the National Center for Missing and Exploited Children.

3. The disclosure is authorized by state or federal law or regulation.

(6) A violation of this section may also constitute an unfair method of competition or unfair trade practice under s. 100.20 or a fraudulent representation under s. 100.18.

History: 2005 a. 261.

100.53 Vehicle rentals; title and registration fees.

(1) In this section:

(ag) “Government fee” means any fee charged by a rental company to recover the cost of any fee or charge that is imposed by a government, airport or other transportation authority, or any other government agent that is deemed applicable to the rental of private vehicles in this state.

(am) “Rental company” has the meaning given in s. 344.51 (1g) (c).

(b) “Title or registration fee” means a fee charged by a rental company to recover the cost of registering or obtaining a certificate of title.

(2) No rental company may disseminate or make in this state an advertisement or representation that includes a statement of the rental rate for a private passenger vehicle, as defined in s. 344.57 (4), that is available for rent from a location in this state, unless one of the following applies:

(a) The statement of the rental rate includes the amount of any title or registration fee or government fee charged by the rental company.

(b) The advertisement or representation includes a statement that the customer must pay a title or registration fee or government fee, and the rental company notifies a customer of the amount of the title or registration fee or government fee before the customer enters into an agreement with the rental company.

History: 2005 a. 25, 173, 254.

100.54 Access to credit reports. (1) DEFINITIONS. In this section:

(a) “Business day” means a business day, as defined in s. 421.301 (6), that is not a legal holiday under s. 895.20 [s. 995.20] or a federal legal holiday.

Note: The bracketed language indicates the correct cross–reference. Corrective legislation is pending.

(b) “Consumer report” has the meaning given in 15 USC 1681a (d).

(c) “Consumer reporting agency” has the meaning given in s. 15 USC 1681a (f).

(d) “Reseller” means a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent database of credit information from which new consumer reports are produced.

(e) “Security freeze” means a notice included with an individual’s consumer report that indicates that releases of the consumer report are subject to this section.

(2) SECURITY FREEZES. (a) Except as provided in par. (c), a consumer reporting agency shall include a security freeze with an individual’s consumer report if the individual does all of the following:

1. Sends a request by certified mail to an address designated by the consumer reporting agency, or sends a request directly to the consumer reporting agency by any other means that the consumer reporting agency may provide.

2. Provides the consumer reporting agency with proper identification.

3. If applicable, pays the fee specified in sub. (9).

(b) No later than 5 business days after an individual satisfies the requirements under par. (a) 1. to 3., a consumer reporting

agency shall include a security freeze with the individual's consumer report. No later than 10 business days after including the security freeze with the consumer report, the consumer reporting agency shall send the individual a notice that does all of the following:

1. Confirms that a security freeze is included with the individual's consumer report.
2. Includes a unique personal identification number, password, or other device for the individual to authorize release of the consumer report.
3. Describes the procedure for authorizing release of the consumer report.

(c) Paragraph (a) does not apply to any of the following:

1. A reseller, except that if a reseller obtains from another consumer reporting agency an individual's consumer report that includes a security freeze, the reseller shall include the security freeze with any consumer report regarding the individual that the reseller maintains.

2. A consumer reporting agency that is a check services or fraud prevention services company which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments.

3. A consumer reporting agency that is a deposit account information service company which issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding an individual to inquiring financial institutions for use only in reviewing an individual's request for a deposit account at the inquiring financial institution.

(3) PROHIBITION. Except as provided in sub. (8), if an individual's consumer report includes a security freeze, a consumer reporting agency may not release the consumer report to any person for any purpose related to the extension of credit unless the individual gives prior authorization for the release under sub. (4).

(4) RELEASE AUTHORIZATION. (a) An individual whose consumer report includes a security freeze may authorize a consumer reporting agency to release the report by doing all of the following:

1. Contacting the consumer reporting agency using a point of contact designated by the consumer reporting agency.
2. Providing proper identification and the personal identification number, password, or other device specified in sub. (2) (b) 2.
3. Specifying the time period for which the release is authorized.
4. If applicable, paying the fee specified in sub. (9).

(b) If an individual satisfies the requirements under par. (a) 1. to 4., the consumer reporting agency shall release the individual consumer report during the time period specified by the individual, except that a consumer reporting agency is not required to release a consumer report sooner than 3 business days after the individual contacts the consumer reporting agency under par. (a) 1. A consumer reporting agency may establish procedures for releasing consumer reports sooner than 3 business days for individuals who satisfy the requirements under par. (a) 1. to 4. by telephone, facsimile, or the Internet, or by use of other electronic media.

(5) RELEASE OF REPORTS. A consumer reporting agency may release an individual's consumer report that includes a security freeze if any of the following apply:

- (a) The individual authorizes the release under sub. (4).
- (b) The individual requests removal of the security freeze under sub. (6).
- (c) The consumer reporting agency included a security freeze with the consumer report due to a material misrepresentation of fact by the individual, if the consumer reporting agency notifies the individual in writing about the misrepresentation before the consumer reporting agency releases the consumer report.

(6) REMOVING SECURITY FREEZES. (a) An individual may request removal of a security freeze included with the individual's consumer report by doing all of the following:

1. Contacting the consumer reporting agency using a point of contact designated by the consumer reporting agency.
2. Providing proper identification and the personal identification number, password, or other device specified in sub. (2) (b) 2.
3. If applicable, paying the fee specified in sub. (9).

(b) If an individual requests removal of a security freeze under par. (a), the consumer reporting agency shall remove the security freeze from the individual's consumer report no later than 3 business days after the individual satisfies the requirements under par. (a) 1. to 3. and the consumer reporting agency's release of the report is no longer subject to this section.

(7) THIRD PARTIES. (a) If a 3rd party requests access to an individual's consumer report that includes a security freeze, the request is made in connection with the individual's application for an extension of credit, and the consumer reporting agency is prohibited under this section from releasing the report to the 3rd party, the 3rd party may treat the individual's application as incomplete.

(b) This section does not prohibit a consumer reporting agency from advising a 3rd party that an individual's consumer report includes a security freeze and that the consumer reporting agency must obtain the individual's authorization before releasing the individual's consumer report.

(8) EXCEPTIONS. This section does not apply to an individual's consumer report that a consumer reporting agency releases to, or for, any of the following:

(a) 1. a. A person with whom the individual has, or had prior to assignment, an account or contract, including a demand deposit account; a person to whom the individual issued or is otherwise personally liable on a negotiable instrument; or a person who otherwise has a legitimate business need for the information in connection with a business transaction initiated by the individual; for the purpose of preventing or investigating potential fraud or theft of identity, reviewing the account, collecting the financial obligation owing for the account, contract, or negotiable instrument, or conducting the business transaction.

b. A subsidiary, affiliate, or agent of a person specified in subd. 1. a.

c. An assignee of a financial obligation owing by the individual to a person specified in subd. 1. a.

d. A prospective assignee of a financial obligation owing by the individual to a person specified in subd. 1. a. in conjunction with the proposed purchase of the financial obligation.

2. For purposes of subd. 1. a., "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom the consumer reporting agency has released the consumer report during the time period authorized by the individual under sub. (4).

(c) Any state or local agency, law enforcement agency, court, or private collection agency acting pursuant to a court order, warrant, or subpoena.

(d) A child support agency acting pursuant to 42 USC 651–669b.

(e) The state or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(f) The use of credit information for the purposes of prescreening as provided under 15 USC 1681b (c).

(g) A person administering a credit file monitoring subscription service or similar service to which the individual has subscribed.

(h) A person for the purpose of providing an individual with a copy of his or her consumer report upon the individual's request.

(i) An insurer authorized to do business in this state that uses the consumer report in connection with the underwriting of insurance involving the individual. For purposes of this paragraph, “underwriting” consists of the activities described in the Federal Trade Commission’s interpretation of [15 USC 1681b](#) (a) (3) (C) in [16 CFR Part 600](#), App. A.

(j) A person who intends to use the information for employment purposes.

(9) FEES. (a) Except as provided in par. (b), a consumer reporting agency may charge an individual a fee of no more than \$10 each time that the individual requests a security freeze under sub. (2), authorizes release of a consumer report under sub. (4), or requests removal of a security freeze under sub. (6).

(b) A consumer reporting agency may not charge a fee to an individual who submits evidence satisfactory to the consumer reporting agency that the individual made a report to a law enforcement agency under s. [943.201](#) (4) regarding the individual’s personal identifying information or a personal identifying document. A copy of a law enforcement agency’s report under s. [943.201](#) (4) is considered satisfactory evidence for purposes of this paragraph.

(10) INFORMATION CHANGES. (a) Except as provided in par. (b), if a consumer reporting agency includes a security freeze in an individual’s consumer report, the consumer reporting agency may not change the individual’s name, date of birth, social security number, or address in the report unless, within 30 business days of changing the information, the consumer reporting agency sends written notice of the change to the individual. If the notice concerns a change of address, the consumer reporting agency shall send the notice to both the new and former address.

(b) Notice is not required under par. (a) for changing abbreviations for names or streets, correcting spelling, transposing numbers, or making other technical changes.

(11) NOTICES. Whenever a consumer reporting agency is required to provide an individual with a notice under [15 USC 1681g](#) regarding consumer rights under the federal credit reporting law, the consumer reporting agency shall also provide the individual with the following notice:

“Wisconsin Consumers Have the Right to Obtain a Security Freeze.

You have a right to include a “security freeze” with your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report in connection with a credit transaction without your express authorization. A security freeze must be requested in writing by certified mail or by any other means provided by a consumer reporting agency. The security freeze is designed to prevent an extension of credit, such as a loan, from being approved in your name without your consent. However, you should be aware that using a security freeze to take

control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a loan, credit, mortgage, or Internet credit card transaction, including an extension of credit at point of sale.

When you request a security freeze for your credit report, you will be provided a personal identification number or password to use if you choose to remove the security freeze from your credit report or authorize the release of your credit report for a period of time after the security freeze is in place. To provide that authorization you must contact the consumer reporting agency and provide all of the following:

- (1) The personal identification number or password.
- (2) Proper identification to verify your identity.
- (3) The period of time for which the report shall be made available.
- (4) Payment of the appropriate fee.

A security freeze does not apply to a person or its affiliates, or collection agencies acting on behalf of a person, with which you have an existing account, that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

Unless you are a victim of identity theft with a police report to verify the crime, a consumer reporting agency has the right to charge you no more than \$10 to include a security freeze with your credit report, no more than \$10 to authorize release of a report that includes a security freeze, and no more than \$10 to remove a security freeze from your credit report.”

(12) RULES. The department shall promulgate rules specifying what constitutes proper identification for purposes of subs. (2) (a) 2., (4) (a) 2., and (6) (a) 2. The rules shall be consistent with any requirements under federal credit reporting law pertaining to proper identification.

(13) DAMAGES. (a) Any person who obtains a consumer report from a consumer reporting agency, requests a consumer reporting agency to include or remove a security freeze in a consumer report, or authorizes a consumer reporting agency to release a consumer report that includes a security freeze, under false pretenses or in knowing violation of, or in an attempt to knowingly violate, this section or federal law, shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.

(b) A person who fails to comply with this section is liable for any actual damages sustained by an individual as a result of the failure and, notwithstanding s. [814.04](#) (1), the costs of the action, including reasonable attorney fees.

History: 2005 a. 140.