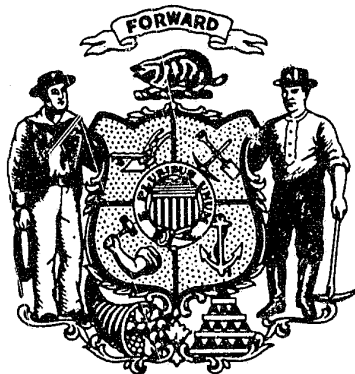


HANDBOOK ON CONSUMER FRAUD
AND UNFAIR BUSINESS PRACTICES

Prepared by Office of Consumer Protection



DEPARTMENT OF JUSTICE
THE STATE OF WISCONSIN
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CHAPTER I

INTRODUCTION TO STATE CONSUMER FRAUD LAWS

1.1 Development Of State Consumer Fraud Laws.

Consumer fraud as a distinct body of law is relatively new. Traditionally, it has been largely limited to protection of the public through the use of criminal fraud statutes. These criminal statutes have proved useful in cases involving aggravated fraud or outright theft but they have constituted an unsatisfactory and inflexible tool in combating the diverse types of deception practiced upon the public today. Moreover, they fail to return to the victimized consumer money taken through such illegal practices.

In recent years numerous states have taken steps to modernize and streamline state enforcement against fraudulent and deceptive sales practices. In 1957 the State of New York established the first active consumer fraud bureau with primary reliance on civil, rather than criminal, sanctions. Since that time approximately 35 other states have established similar programs. As a result, it is now generally recognized that an effective state consumer fraud program cannot rely on criminal sanctions alone, but must also include the authority to a) promptly stop fraudulent and deceptive practices, b) refund money obtained from such practices, and c) impose stiff monetary forfeitures to deter continued use of such practices.

1.2 Impact And Significance Of Consumer Fraud.

The recent modernization of consumer fraud laws is, in part,

a recognition that today's economy has undergone vast and fundamental changes and bears little resemblance to the uncomplicated and personalized marketplace of the Nineteenth Century. At the same time, it has become apparent that the problem of consumer fraud is not unrelated to other serious law enforcement problems confronting contemporary society. For example, studies have indicated that fraudulent business practices have significantly contributed to the increase in crime in urban areas in recent years. There have also been disturbing signs that the profitability of consumer fraud has attracted elements of organized crime.

The full impact of consumer fraud is not readily ascertainable because, unlike most crimes, it does not lend itself to sensory detection and is usually carefully concealed by the perpetrator. However, it has been estimated that several billion dollars are taken from the public each year through consumer fraud--or more than all the auto thefts, burglaries, robberies, embezzlements, larcenies and forgeries combined. Whatever the exact figure, it is clear that consumer fraud is a significant problem area requiring serious attention by all law enforcement officials.

1.3 Selected Reading.

Note, Developments in the Law, Deceptive Advertising, 80 Harv. L. Rev. 1005 (1967).

Gold and Cohan, State Protection of the Consumer: Integration of Civil and Criminal Remedies, 12 New England L. Rev. 849 (1977).

Jeffries, Protection for Consumers Against Unfair and

Deceptive Business Practices in Wisconsin, 57 Marq. L. Rev. 559 (1974).

Sebert, Enforcement of State Deceptive Trade Practice Statutes, 42 Tenn. L. Rev. 689 (1975).

Rothschild, Criminal Consumer Fraud: A Victim Oriented Analysis, 74 Mich. L. Rev. 661 (1976).

Pitofsky, Beyond Nader: Consumer Protection and the Regulation of Advertising, 90 Harv. L. Rev. 661 (1977).

CHAPTER II

UNFAIR OR DECEPTIVE BUSINESS PRACTICES

2.1 False Or Deceptive Selling Representations.

2.11 Sec. 100.18 -- Prohibits Any Untrue, Deceptive Or Misleading Representation.

The first subsection of this statute provides the force of this law, due primarily to its breadth. The remaining subsections both proscribe certain specific consumer frauds and set positive standards for some trades.

Section 100.18(1), Stats., basically provides that:

"... no person [or] corporation ... with intent to sell ... or with intent to induce the public ... to enter into any contract ... relating to the purchase [or] sale ... of any real estate, merchandise, ... shall make, publish ... in a newspaper ... or in the form of a ... notice, ... or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement ... or representation of any kind, ... which contains any assertion ... which is untrue, deceptive, or misleading."

While the statute is labeled "fraudulent advertising," it is much broader than this caption indicates for it prohibits deceptive, misleading, or untrue statements of any kind to the public in a commercial setting, no matter how made. See State v. Automatic Merchandisers of America, Inc., 64 Wis.2d 659, 221 N.W.2d 683 (1974).

At one time verbal representations were not covered by sec. 100.18(1) because the statute was expressly limited to "advertisements." See 14 Op. Att'y Gen. 367 (1925). However, the

statute was expanded in 1945 (ch. 399, Laws of 1945) to cover any "advertisement, announcement, statement or representation."

The word "public" in sec. 100.18(1) is a flexible term that does not preclude application to representations directed at only one person. State v. Automatic Merchandisers, 64 Wis.2d 659, 221 N.W.2d 683 (1974). The word has been construed under comparable statutes to mean that any person who invites the trade of the general populace in a given area or who is engaged in his principal business is dealing with the "public." See Texas State Board of Medical Examiners v. Koepsel, 159 Tex. 479, 322 S.W.2d 609 (1959); State v. Witthaus, 340 Mo. 1004, 102 S.W.2d 99 (1937); People v. Powell, 280 Mich. 699, 274 N.W. 372 (1937); Ford Hydro-Electric Co. v. Town of Aurora, 206 Wis. 489, 296, 240 N.W. 418 (1932); Cawker v. Meyer, 147 Wis. 320, 133 N.W. 157 (1911). In other words, sec. 100.18(1), Stats., does not extend to misrepresentations in connection with a casual or private sale of merchandise not related to the business of the seller.

2.12 What "Untrue, Deceptive & Misleading" Mean In The Context Of Consumer Protection.

Section 100.18(1), Stats., forbids any statement or representation which is untrue, deceptive or misleading. It should be noted that the use of the disjunctive "or" in sec. 100.18(1) means that these words are separate and alternative. Statutes similar to sec. 100.18(1) have been construed to mean that any untrue statement, or any statement which misleads, constitutes a violation of law even though no specific intent to deceive was shown. People v. Wahl, 39 Cal. App. 2d Supp. 771, 100

P.2d 550, 551 (1940); State v. Beacon Publishing Co., 141 Kan. 734, 42 P.2d 960 (1935). And see Goodman v. FTC, 244 F.2d 584, 602 (9th Cir. 1957). A civil injunctive action to prevent untrue, deceptive or misleading statements or representations is therefore decidedly easier than the utilization of criminal remedies where scienter must be shown.

Although the key statutory words (untrue, deceptive or misleading) are somewhat synonymous, some separation of meaning is possible.

2.12 (a) Untrue.

Bouvier's Law Dictionary (1914) at 3377 defines "untrue" as: "Prima facie inaccurate, but not willfully false." Or as the court in Zolintakis v. Equitable Life Assurance Society of the United States, 108 F.2d 902, 905 (10th Cir. 1940), put it: "A statement is 'untrue' which does not express things exactly as they are." Thus, to prove something is untrue, facts must be presented showing the representation to be inaccurate or false.

In most cases, the falsity of a representation will be readily apparent or can be easily shown. Examples are the roof "waterproofing" which washes off the house during the first rain or the store which conducts its third "going out of business" sale in two years. The primary thing to keep in mind is that no intent need be shown; a statement or representation that does not square with the facts at hand constitutes an actionable violation of sec. 100.18(1).

2.12 (b) Deceptive Or Misleading.

Since these two words are virtually synonymous, they will be

treated together. Webster's New International Dictionary, 1938 ed., even defines misleading and deceptive in terms of each other: "Mislead: To lead astray; to cause to err; to deceive." Deceptive: "tending to deceive; having power to mislead." See People v. Wahl, 39 Cal. App. 2d Supp. 771, 100 P.2d 550 (1940), where these definitions were cited with approval in interpreting a consumer protection statute similar to sec. 100.18(1).

Because the Federal Trade Commission has worked with the concept of "deception" for over 30 years, helpful guidelines have been developed in this area. Something that is untrue will be the same to all men because truth is an objective standard (inaccuracy in light of known fact). Deceptive or misleading statements, however, are measured by the subjective effect the statement or representation has on the listener or reader (tending to lead astray or imposing a false impression). To give some certainty to this subjective test, the law has established a standard of "tendency or capacity to deceive," which measures whether the natural and probable result of a given representation will be to deceive the consuming public. See FTC v. Sterling Drug, Inc., 317 F.2d 669 (2nd Cir. 1963); Koch v. FTC, 206 F.2d 311, 317 (6th Cir. 1953); FTC v. Hires Turner Glass Co., 81 F.2d 362, 364 (3rd Cir. 1935); FTC v. R. F. Keppel & Bros., 291 U.S. 304 (1934). Under this standard, it is not necessary that anyone has actually relied on a deceptive statement so long as there exists a likelihood that someone could so rely. See Gelb v. FTC, 144 F.2d 580 (2nd Cir. 1944). And in determining whether there exists a capacity to deceive it is well-settled that:

"The law is not made for experts but to protect the public--that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions." Charles of the Ritz Distributor Corporation v. FTC, 143 F.2d 676 (2nd Cir. 1944), Aronberg, t.g. Positive Products Co. v. FTC, 132 F.2d 165 (7th Cir. 1942).

"In evaluating the tendency of language to deceive, the Commission should not look to the most sophisticated readers but rather to the least." Exposition Press, Inc. v. FTC, 295 F.2d 869 (2nd Cir. 1961).

In addition, even though statements or representations taken individually are true, the sales approach as a whole can still be misleading or deceptive. As was said in Murray Space Shoe Corp. v. FTC (2nd Cir. 1962), 304 F. 2d 270:

"In deciding whether petitioner's advertising was false and misleading, we are not to look to technical interpretation of each phrase, but must look to the overall impression these circulars are likely to make on the buying public."

This concept was also succinctly stated by the United States Supreme Court in Donaldson v. Read Magazine, 333 U.S. 178, 188 (1947), as follows:

"Advertisements as a whole may be completely misleading although every sentence separately considered is literally true."

In the Murray case, supra, a maker of custom-made shoes was circulating advertising which included testimonials of lay users who gave opinions as to the medical and therapeutic value of the shoes. The Federal Court of Appeals held that the effect of the circular was to mislead despite the fact that the testimonials were accurate excerpts from letters.

The court in the Murray case [See also Webster v. Board of

Dental Examiners, 17 Cal.2d 534, 110 P.2d 992 (1941)] further refined the concept of deceptive or misleading statements or representations by stating:

"Statements susceptible of both a misleading and a truthful interpretation will be construed against the advertiser." In accord is Aronberg v. FTC, 132 F.2d 165 (7th Cir. 1942).

In summary, no specific intent to deceive is necessary to show a violation of sec. 100.18(1), Stats.; the definition of "untrue" can be separated from the definition of "deceptive or misleading"; and untrue, deceptive or misleading statements or representations under this section can be determined by relatively clear-cut standards.

2.12 (c) Puffing.

One major limitation to the broad language of sec. 100.18(1) is the judicially recognized doctrine of "puffing." Briefly, puffing can be defined as "expressions of opinion or personal evaluations of the intangible qualities of a product. ..." 64 Colum. L. Rev. 439, 469 (1964). That is, subjective, non-factual evaluations of the product. In Ostermoor & Co. v. FTC, 16 F.2d 962 (2nd Cir. 1927), the court defined "puffing" as statements not likely to deceive.

The line between puffing and promise is sometimes a hard one to draw, but in many instances the distinction is clear. Thus, the door-to-door cookware salesman's claim that the skillet's "plastic coating is fantastic" would probably be considered "puffing," while the statement "that the specially developed plastic coating will never wear off" (and then does in six weeks)

would probably be construed as a misrepresentation of fact.

2.13 Some Common Consumer Frauds That Can Be Attacked Under Sec. 100.18(1).

Fraudulent sales schemes constantly undergo mutations reflecting changing technology and economic patterns. The fraudulent sales scheme has as its basis some area of legitimate economic activity which is perverted to serve as a vehicle for the illegal promoter. Because fraudulent schemes are as limitless as man's ingenuity, a complete listing is impossible. There are, however, a number of recurring practices that can be classified under individual categories. The following list illustrates some of the most common fraudulent sales schemes.

2.13 (a) Bait And Switch Advertising.

This usually takes the form of an attractive bargain such as a brand name item offered at a low price. When the customer arrives to avail himself of the advertised item the salesman disparages or criticizes the qualities of the advertised item or states that it has just been "sold out." The salesman then attempts to sell the customer a substitute item at a much higher price. The customer has thus been induced to purchase a more expensive item than he intended to buy. Bait and switch sales have been found in home improvement items [See Pati Port, Inc. v. FTC, 313 F.2d 103 (4th Cir. 1963)], television repairs, auto painting and in the sale of appliances such as sewing machines and vacuum cleaners. See Atlas Sewing Centers, Inc., D.7696, 57 FTC 974 (1960); Clean-Rite Vacuum Stores, Inc., D.6181, 51 FTC 886 (1955).

To establish a case of bait and switch advertising it is, of course, essential that the "bait" be clearly shown. However, there need be no direct evidence of a "switch" through disparaging or discouraging remarks directed against the advertised product so long as there exists evidence of minimal sales of the advertised product. Tashof v. FTC, 437 F.2d 708 (D.C. Cir. 1970). In the Tashof case, the fact that of 1,400 pairs of glasses sold each year by the company less than ten were sold at the advertised price was held to be sufficient evidence to infer a "switch." (Also see sec. 2.14(e) for discussion of the prohibition against bait and switch advertising under sec. 100.18(9).)

2.13 (b) Lowball Advertising.

This practice consists of the merchant advertising or representing a low price or estimate for a product or service and then adding charges or presenting a higher bill after the customer has agreed to buy the product or service. The idea, as in bait and switch advertising, is to draw the customer into the store with an attractive offer. However, rather than switching the customer to a more expensive product, the seller attempts to raise the price charged for the product or service.

2.13 (c) Free Gift Come-On.

This often is found in advertisements or mailings of materials offering "free gifts" for coming to the business establishment or for permitting a sales presentation at the buyer's home. According to Federal Trade Commission guidelines, the use of the word "free" is deceptive:

- 1) When all the conditions, obligations, or other

prerequisites to the receipt and retention of the "free" article of merchandise are not clearly and conspicuously explained or set forth at the outset so as to leave no reasonable probability that the terms of the advertisement or offer might be understood; or

2) When, with respect to an article of merchandise required to be purchased in order to obtain the "free" article, the merchant either 1) increases the ordinary and usual price; or 2) reduces the quality; or 3) reduces the quantity or size of such article of merchandise. See FTC v. Mary Carter Paint Co., et al., 382 U.S. 46 (1965).

A similar deceptive representation occurs in contests or "special" advertising promotions which offer free or drastically reduced merchandise to the winner. Often such promotions also involve hidden handling charges or service policies which enable the seller to recoup his entire cost for the "free" item. These additional conditions and obligations should be conspicuous or they may be in violation of sec. 100.18(1). (Also see sec. 2.14 (a) regarding the regulation of combination sales.)

2.13 (d) Deceptive Pricing.

Deceptive pricing occurs, for example, when an item marked "regular price \$60.00, now only \$30.00," regularly sells for \$30.00 or less. The regular price has been inflated to promote the sale by making it seem like a bargain. The use of the word "regular" or "ordinary" would be deceptive if the item in question has not been offered at such price on a continuing basis in the recent past. The Federal Trade Commission has issued guides against deceptive pricing which attempt to deal with many of the

deceptive pricing problems that commonly arise. (Also see sec. 2.21 (h)--Ag 124, Price Comparison Advertising.)

2.13 (e) Worthless Guarantees.

The typical high pressure salesman will try to talk a prospective purchaser into making the purchase by making all kinds of glowing statements and verbal guarantees about the merchandise. However, when the contract is examined, it is found that few, if any, of the guarantees are in writing and that there is a provision saying that no oral statements, representations or guarantees are valid. If there is a written guarantee, there are often limiting words in small print and some distance from the words of the guarantee. Such a practice is deceptive according to Parker Pen Co. v. FTC, 159 F.2d 509 (7th Cir. 1946), and Coro Inc. v. FTC, 380 U.S. 954 (1965). A so-called "lifetime guarantee" may also be misleading or deceptive under sec. 100.18(1) if it does not clearly state the "lifetime" to which it is referring (e.g. the lifetime of the car or the owner).

2.13 (f) Business Opportunity Schemes.

The usual approach taken by this kind of operation is through an advertisement promising excellent and even spectacular profits for easy spare time work. Usually the victim must make a substantial investment or product purchase before he can reap any of these unsubstantiated profits. Many such business opportunities fail because of inadequate sales outlets, an unsalable product, or simple absconding with the investment by the promoter of the scheme. There are certainly many legitimate business opportunities advertised, but these can all stand up

under investigation. The investor should be wary of those purported opportunities that require him to invest his capital before he has seen any merchandise. (Also see sec. 2.21 (e)--Ag 116, Deceptive Offers of Employment, and sec. 5.27 regarding the regulation of franchise investments by the Commissioner of Securities).

2.13 (g) Correspondence Schools.

While there are a great many correspondence schools that give their students their money's worth in education and training, there are those that do not. Some of these so-called schools are primarily concerned with collecting their fees. They give little regard to giving the student the proper training for the proposed occupation. The interested student should be especially wary of offers of golden opportunities for high salaried jobs with only the correspondence course as a background. Quite often the opportunities are greatly exaggerated, if not completely false. This same problem is encountered with some so-called trade schools where the student is trained in person. (Also see sec. 5.28 regarding the regulation of correspondence schools by the Educational Approval Board, and sec. 4.7 regarding fraudulent contracts relating to courses of study.)

2.14 Fraudulent Sales Schemes Specifically Prohibited
Under Subsecs. (2) - (10) of Sec. 100.18.

2.14 (a) Sec. 100.18(2) -- Combination Sales.

It is deceptive to fail to state (clearly and conspicuously) the price which must be paid for any property, or mention any requirement which is a condition to its receipt, if the sale or

furnishing of such property is combined with or conditional upon the purchase of any other property or service.

Thus, it would be a violation of this section to advertise something as "free," when in fact the "free gift" is contingent upon the purchase of another product, unless the total price to be paid is clearly stated. Indeed, until 1959 this subsection was phrased in those terms. At that time it was repealed, and replaced by the broader language that presently exists.

2.14 (b) Sec. 100.18(3) And (5) -- Identity Of Seller Or Buyer.

It is deceptive for any person engaged in buying or selling any form of property or services to advertise such items in a manner indicating that the sale or purchase is being made by a private party not engaged in such business. The fact that one is running a business must be affirmatively indicated in any advertising. [Subsection (3)].

In line with this, subsection (5) provides that business establishments must keep conspicuous signs posted both inside the salesroom and outside the building (unless the merchant has no control over the outside of the premises) indicating the name of the association, corporation or individual who owns the merchandise.

2.14 (c) Sec. 100.18(4) -- Charitable Solicitations.

It is deceptive advertising for any person or corporation to take donations, sell merchandise, sell tickets of admission, etc., when part of the proceeds will be donated to any organization or fund, unless the advertising contains a correct statement of the

amount to be donated. The manner in which this amount must be set out is prescribed by this subsection. In addition, if the amount to be donated is to be based on net income, the donor shall file with the treasurer of the fund receiving the donations an itemized statement setting forth the maximum amounts to be deducted from gross income in determining net income prior to commencing such advertising. (Also see sec. 5.26 regarding regulation of charitable organization by the Department of Regulation and Licensing.)

2.14 (d) Sec. 100.18(6) And (8) -- Motor Fuel.

Subsection (6) concerns price advertising for motor fuel and requires that any advertising must show either the single gallon unit price, with taxes included, or the single gallon unit price, the applicable taxes, and the total price.

Subsection (8) requires the net selling price per gallon to be posted both in a conspicuous place (accessible to the public) and on every pump. In addition it provides that all prices posted must remain in effect for at least 24 hours. It will be deemed deceptive advertising to represent that the price for motor fuel is less than the price posted on the pump. (Also see sec. 2.21 (c) regarding regulation of gasoline trade practices by the Department of Agriculture.)

2.14 (e) Sec. 100.18(9) -- Bait-And-Switch Advertising.

9 (a) "It is deemed deceptive advertising ... for any person to make [or], publish ... in a newspaper ... or in the form of book [or] notice ... or over any radio or T.V. station or in any other way similar or dissimilar to the foregoing an advertisement

... or representation of any kind ... relating to the purchase, sale ... use of real estate, merchandise which (advertisement or statement) is part of a plan or scheme the purpose or effect of which is not to sell, purchase, ... use the real estate, merchandise as advertised."

This subsection is aimed directly at "bait-and-switch" sales tactics. This technique is discussed in sec. 2.13 (a). Subsection (9) (b) states that the prohibition does not apply to newspaper publishers, etc., who in good faith and without knowledge of the deception publish the advertisement.

2.14 (f) Sec. 100.18(10) -- Misrepresentation Of Seller's Position In Distribution Chain And Of The Price Of The Goods.

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

(b) "It is deceptive to represent the price of any merchandise as a manufacturer's or wholesaler's price, or a price equal thereto, unless such price is not more than the price which retailer's regularly pay for such merchandise."

2.15 Remedies Available Under Sec. 100.18.

2.15 (a) The Basic Remedy Available For Violations Of Sec. 100.18 Is An Injunction, With A Concomitant Remedy Of Restitution For Injured Consumers.

Injunction. Section 100.18(11) (d) confers upon the Department of Agriculture, Trade and Consumer Protection, the Department of Justice, of any district attorney (upon informing the Department of Justice) the power to restrain by temporary and

permanent injunction any violation of sec. 100.18.

Restitution. Of more importance to the individual consumer is the remedy of restitution. Once the injunctive action has been commenced and "prior to 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 ..." Sec. 100.18(11)(d).

See chs. VI, VII and VIII for discussion of considerations involved in obtaining injunctions or restitution.

2.15 (b) Private Remedies.

Section 100.18(11)(b)2 provides a private remedy of twice the pecuniary loss, together with costs and reasonable attorneys' fees, for violations of injunctions under sec. 100.18. Thus, a consumer is entitled to the double damage remedy if he can show that:

- a) an injunction was issued under sec. 100.18,
 - b) that the merchant violated the injunction,
- and
- c) that because of such violation the consumer has suffered pecuniary loss.

2.15 (c) Voluntary Assurance Of Discontinuance.

Section 100.18(11)(e) provides for the acceptance by the Department of Agriculture, Trade and Consumer Protection or the Department of Justice of written assurances of discontinuance of acts or practices alleged to be violations of sec. 100.18. Such assurances are binding on district attorneys only if the terms of the assurance so provide. An assurance cannot be considered a

violation of sec. 100.18. However, a violation of an assurance shall be treated as a violation of sec. 100.18 and shall be subject to all penalties and remedies provided therefor.

2.16 Restriction On The Use Of Remedies.

a) Statute of Limitation. No action may be commenced under sec. 100.18 more than three years after the occurrence of the unlawful act or practice which is the subject of the action. Sec. 100.18(11)(b)3.

b) Conflict With Orders Or Statutes. No injunction may be issued under sec. 100.18 which would conflict with general or special orders issued by the Department of Agriculture, Trade and Consumer Protection under sec. 100.20 or with any statute, rule or regulation of the United States or Wisconsin. Sec. 100.18(11)(b)3.

2.2 Unfair Business Practices Under Sec. 100.20.

Section 100.20 prohibits unfair methods of competition in business and unfair trade practices. The Department of Agriculture, Trade and Consumer Protection is given the authority to determine which methods and practices are unfair.

Section 100.20 also gives the Agriculture Department the power to issue general and special orders in any area of commerce not otherwise specifically regulated. These orders, which carry the force and effect of statutory law, can both forbid methods of competition and trade practices which are unfair and prescribe methods and practices which are fair. This authority to enjoin and forbid unfair trade practices and methods of competition through the issuance of special or general orders has been upheld

by the Wisconsin Supreme Court as a valid delegation of legislative power. See State v. Lambert, 68 Wis.2d 523, 229 N.W.2d 622 (1975); H. M. Distributors of Milwaukee Inc. v. Department of Agriculture, 55 Wis.2d 261, 198 N.W.2d 598 (1972); State v. Texaco, Inc., 14 Wis.2d 625, 111 N.W.2d 918 (1961); Ritholz v. Ammon, 240 Wis. 578, 4 N.W.2d 173 (1942).

General orders are industry-wide regulations (home improvements, food freezer plans, etc.) while special orders are aimed at specific individuals. General orders are printed in the Wisconsin Administrative Code under Agriculture.

It is only after the promulgation of general or special orders that district attorneys have any enforcement responsibilities for violations of sec. 100.20. The remedies include civil forfeitures and criminal penalties under sec. 100.26.

2.21 General Orders.

A brief summary of important consumer protection general orders follows. These orders are printed in their entirety in Appendix B.

2.21 (a) Ag 109 -- Freezer Meat And Food Service Plan Trade Practices.

This order in general terms prohibits all unfair methods of competition or unfair trade practices in the "wholesale cut" and "food service plan" industries. It specifically prohibits: bait-and-switch selling; misrepresenting that special price concessions are being made to the buyer; misrepresenting the amount of money the buyer will save under a food service plan;

giving unclear guarantees and not giving the consumer a copy of the guarantee; misrepresenting the cut, grade, brand or trade name of any food product; and failing to disclose all price or financing information.

An important provision of this order is the three-day right to cancel or "cooling-off period." The consumer can cancel the contract within this period by mailing written notice to the seller. This section further requires a notice of the cooling-off period to be clearly printed on the sales contract.

Another important provision requires all promissory notes executed in connection with an initial sales transaction to bear a statement to the effect that the note is subject to a separate sales contract and is governed by Ag 109. This makes any subsequent holder of the note subject to the claims and defenses of the buyer.

2.21 (b) Ag 110 -- Home Improvement Trade Practices.

The Home Improvement Code is no doubt the most comprehensive, and perhaps the most significant, general order that has been promulgated under sec. 100.20. Although the code dates back more than 30 years, it has been amended twice in recent years to keep it abreast of new abuses and industry practices. On July 1, 1974, the scope of the code was substantially expanded from improvements "attached" to an existing home or building to such new matters as the construction, installation or repair of driveways, terraces, patios, and fences as well as other improvements to the "residential or non-commercial premises."

The code deals with a virtual laundry list of unfair or

deceptive home improvement practices that have resulted in substantial financial losses to home owners over the years. Practices such as model home representations, bait-and-switch advertising, phony gift offers and gaining entry to the buyer's home under the guise of a governmental inspector are either prohibited outright or severely curtailed by the code. In addition, a long list of specific product misrepresentations are proscribed. The code also regulates price and financing representations, contract terms and performance in home improvement transactions. Finally, the code prohibits the taking of negotiable instruments in home improvement sales and provides that every assignee of a home improvement contract takes subject to all claims and defenses of the buyer.

2.21 (c) Ag 112 and 113 -- Gasoline And Gasoline Advertising.

Ag 112 covers the relationship between gasoline wholesalers and retailers in such matters as rebates, rentals, discrimination and competition. It also requires the disclosure of certain pertinent information to the consuming public.

Ag 113 regulates the advertising practices of retailers by primarily covering trade practices regarding octane ratings.

2.21 (d) Ag 114 -- Real Estate Advertising, Advance Fees.

Ag 114 prohibits the following representations, if contrary to fact:

- 1) that advance fees or any part thereof will be refunded if the property is not sold within a specified time, or that refunds are freely and

customarily made if property is not sold.

2) that the seller or salesman will furnish a list of qualified prospects who are interested in buying the type of property involved.

3) that the salesman is affiliated or has connections with any real estate or business opportunity brokers.

4) that the salesman is an experienced or qualified appraiser of property.

5) that the property will sell at a named price or at a price in excess of that named or asked by the owner.

In addition, the salesman must furnish the buyer (or "client") with a complete contract.

2.21 (e) Ag 116 -- Deceptive Offers Of Employment.

This order requires that any offer (whether written or oral) of employment (including dealerships, etc.) in which a purchase or investment is required to obtain such employment must fully disclose this fact. In addition, no such advertisement or representation shall contain any false or misleading claims as to the nature of the employment or the amount of the earnings.

2.21 (f) Ag 121 -- Referral Selling Plans.

Referral selling plans are devices used primarily by door-to-door sales companies to obtain sales leads. Although individual referral plans differ in many respects, they all contain as a common ingredient the offer of some type of compensation to the buyer in return for the submission of names of

potential customers to the seller.

In recent years referral plans in which the earning of compensation is contingent upon future sales have been prohibited in a number of jurisdictions. The U.S. Postal Service has taken the position that the use of the mail to further such referral schemes violates the postal fraud statute (18 U.S.C. sec. 1341) and at least two court of appeals decisions have sustained this position. Blachly v. U.S., 380 F.2d 665 (5th Cir. 1967); Fabian v. U.S., 358 F.2d 187 (8th Cir. 1966). Numerous state court decisions have also struck down such referral plans as lotteries or fraudulent or unconscionable sales schemes. See State of New York v. ITM, Inc., 52 Misc.2d 39, 275 N.Y.S.2d 303 (1966); Sherwood & Roberts-Yakima, Inc. v. Leach, 67 Wash.2d 630, 409 P.2d 160 (1965).

Ag 121 deals with the lottery aspects of referral selling by prohibiting referral selling plans unless the compensation for referral customers is paid prior to the initial sale. Thus, any contingencies with respect to payment are eliminated.

The legislature has recently reaffirmed the policies underlying the code by prohibiting contingent referral transactions as part of the Wisconsin Consumer Act (sec. 422.416, Stats.).

2.21 (g) Ag 122 -- Chain Distributor Schemes.

Ag 122 was promulgated in 1970 in response to a marketing phenomenon commonly known as multi-level or pyramid sales plans. The plans are typically presented to the public at so-called "opportunity meetings" where professional spielers or pitchmen

artfully and emotionally appeal to the prospect's desire to be a "success," both financially and socially.

The principal financial attraction of the plans stems from the profits that can be made by recruiting unlimited numbers of other distributors into the program who, in turn, possess similar recruiting rights. In addition, misleading income representations have not been uncommon in the presentation of the plans.

Ag 122 prohibits chain distributorship schemes, which are defined as a "... sales device whereby a person, upon a condition that he make an investment, is granted a license or right to recruit for profit one or more additional persons who also are granted such license or right upon condition of making an investment ..."

The constitutionality of the chain distributor code was upheld in State v. Lambert, 68 Wis.2d 523, 229 N.W.2d 622 (1975); and H. M. Distributors of Milwaukee, Inc. v. Department of Agriculture, 55 Wis.2d 261, 198 N.W.2d 598 (1972).

2.21 (h) Ag 124 -- Price Comparison Advertising.

Ag 124 is one of the most complex and far-reaching administrative codes since virtually every seller engages in some form of price comparison advertising.

Basically, the code regulates three types of direct price comparisons: 1) Comparisons between a seller's price and a price at which the seller offered or sold merchandise in the past (Ag 124.04 and 124.05); 2) Comparisons between a seller's price and a price at which the merchandise will be offered in the future (Ag

124.06); and 3) Comparisons between a seller's price and that of a competitor (Ag 124.07). Where the comparison relates to a former price of the seller (e.g. "Formerly priced at \$10.00, now \$8.00"), the item compared must either have been sold at that price within the last 90 days immediately preceding the date of the advertisement or it must have been offered for sale for at least four weeks during such 90 day period and, on at least one occasion during such period, it must have been offered at the price stated in the advertisement. If the comparison does not relate to an item sold or offered for sale during the 90-day period, the date, time or seasonal period of such sale or offer must be disclosed in the advertisement. In any case, the code provides that no price comparison may be made based upon "... a price which exceeds ... [the seller's] ... cost plus normal markup regularly used by him in the sale of such property or services ..."

Where the comparison relates to a seller's future price (e.g. "Now \$5.00, next month \$7.00"), the future price must take effect on the date disclosed in the advertisement or within 90 days after the price comparison is stated in the advertisement. The stated future price must then be maintained by the seller "for a period of at least four weeks after its effective date, except where compliance becomes impossible because of circumstances beyond his control."

Where the comparison relates to a competitor's price (e.g. "Valued at \$20.00, our price \$15.00"), the code requires that the competitor's price relate to property or services that were advertised or sold in the preceding 90-day period. In addition,

the price must be representative of prices at which such consumer property are sold or advertised in the trade area in which the price comparison is made. The code also requires that the seller disclose that the price used as a basis for the comparison was not the seller's own price. Finally, the code requires that the seller conspicuously disclose the general nature of the material differences in the property or services.

One of the knottiest problem areas in the code relates to the coverage of catalog sales because they are often printed well in advance of their distribution date. The code specifically deals with the publication problem by defining the advertising "date" as either "... the date of publication or distribution or the date on which the completed advertising copy is submitted to the printer for final printing and publication, provided such submission date does not exceed 30 days from date of actual publication or distribution."

2.21 (i) Ag 125 -- Mobile Home Parks.

Local zoning restrictions on the development and use of land for the parking of mobile homes have resulted in a severe shortage of rental sites for such homes. This situation has restricted competition in the sale of mobile homes and the rental of sites and has placed many operators and dealers in a dominant or monopoly position. As a result, many unconscionable dealings in the sale of homes and rental of sites have resulted. Ag 125 declares the use by mobile home park operators of unfair or deceptive acts or practices and imposition of unconscionable terms and conditions in the rental of space or lots to tenants to be an

unfair trade practice.

Specific sections of the order relate to: rental agreement requirements and limitations, changes in rental terms or park rules, and prohibited practices.

2.21 (j) Ag 127 -- Home Solicitation Selling.

Ag 127 regulates consumer sales or leases which are personally solicited or consummated at the buyer's residence or place of business, at the seller's transient quarters, or away from a seller's regular place of business. The code applies to any person or organization "advertising, offering or dealing in goods or services for the purpose of home solicitation selling or providing or exercising supervision, direction or control over sales practices used in the home solicitation sale."

The home solicitation selling code is principally directed at the underlying unfair and deceptive practices used by direct sellers. As a result, the code takes on a number of time-worn door-to-door sales gimmicks and misrepresentations. For example, misrepresentations that the buyer has been specially selected, that the seller is conducting a survey, test or research project or that the seller is conducting a special sales promotion campaign or making a special offer to a few persons only or for a limited period of time are prohibited. The code further prohibits representations that the seller will give any product or service free or as a gift if the furnishing of such product or service is contingent on the making of any payment or the purchase of any other product or service. The code also prohibits misrepresenting the identity of the seller, the length of sales presentation, the

delivery or performance date, or the nature of any document the customer is requested to execute.

In addition to the prohibitions against specific misrepresentations, a general catch-all provision (Ag 127.03(3)) prohibits any false, misleading or deceptive representations to induce a sale or any "... plan, scheme or ruse which misrepresents the true status or mission of the person making the sale ..." The code also requires all material warranty representations to be furnished to the buyer in writing and prohibits any statements or representations inconsistent with or contradictory to any document evidencing the transactions.

A further safeguard against surreptitious entry into a prospective customer's home by a door-to-door salesman is the so-called "door opener" provision of the code (Ag 127.02(1)). Under this provision, the seller is required to initially disclose "the seller's individual name, the name of the business firm or organization he represents, and the identity or kind of goods or services he offers to sell ... before asking any questions or making any statements other than an initial greeting." This one positive disclosure provision was added rather than attempting to specifically catalog each and every deceptive "foot in the door" tactic used by ingenious door-to-door salesmen over the years.

2.21 (k) Ag 132 -- Motor Vehicle Repair.

This rule, effective September 1, 1975, regulates the trade practices of all auto repair shops in Wisconsin, except those which only repair vehicles of a single commercial, industrial or governmental establishment or of two or more such establishments

which are related by common ownership or corporate affiliation.

This rule provides that where the vehicle to be repaired has a gross weight under 16,000 pounds, where the cost of repairs may exceed \$25, and where a face-to-face contact is made between the customer and a repair shop representative, prior to the initiation of work, the shop must provide the customer with a written repair order describing the repairs to be performed. The shop must also provide the customer with either a "price quotation" or a "choice of estimate alternatives." If a price quotation is given, it must be in writing and is effective for 5 days. If a choice of estimate alternatives is given, the customer must receive the following alternatives in writing:

- 1) the right to an estimate before the repair work begins, which cannot be exceeded without further authorization by the customer;

- 2) a maximum dollar cost for the repair work, which may not be exceeded without further authorization by the customer; or

- 3) a signed waiver by the customer of his right to an estimate.

Blanket waivers of the right to a price quotation or estimate alternatives may be made only if they cover four or more vehicles owned by the customer. A shop may charge a customer for a price quotation or estimate only if the charge is not clearly excessive and is previously disclosed to the customer. If additional repairs are found to be necessary after the original price quotation or estimate has been given, the shop may not perform

them until it gives the customer an estimate of the additional cost and receives the customer's authorization to perform the additional repairs.

This rule also provides that the replaced parts must be returned to the customer if he so requests, except that if the parts must be returned to the manufacturer under a warranty or exchange agreement, then they must only be made available for the customer's inspection.

When the vehicle is returned to the customer, he must be given an invoice which gives a detailed description of all parts and labor used, and which states the price of repairs and the identity of all persons and subcontractors performing repairs. Also, if flat rate average time is stated, the actual time required to do the repair works must also be stated on this invoice.

Ag 132 prohibits a shop from misrepresenting the cost of repairs authorized, the terms of any warranty, that repairs have been made, or that it is dangerous or hazardous to operate the vehicle. A shop is also prohibited from attempting to collect for unauthorized repairs or for repairs that have not been made, and a shop may not fail to return a customer's vehicle because he refused to pay for unauthorized repairs or for repair charges in excess of the price authorized.

Shops are also required to keep records of all repair transactions for two years. These records must be made available to all law enforcement agencies.

2.21 (1) Ag 133 -- Basement Waterproofing Unfair Trade Practices.

This rule is designed to protect homeowners against certain unfair and deceptive trade practices in the sale of basement waterproofing services. The rule prohibits, inter alia,

- 1) using the so-called "pressure pumping" method without furnishing an engineer's analysis establishing the need or effectiveness of the procedure for the specific situation to the buyer prior to the sale;

- 2) giving a guarantee which the seller knows or ought to know cannot be performed;

- 3) undertaking to perform basement waterproofing services which the seller knows or ought to know are unnecessary or ineffective in correcting the buyer's basement water problem, unless such additional services are explicitly requested by the buyer in writing; and

- 4) making deceptive advertising claims regarding guarantees or the effectiveness of the basement waterproofing services offered by the seller.

The rule also contains substantive and form requirements concerning basement waterproofing guarantees. All guarantees are to be considered part of the contract, and the rule sets down time limits within which remedial work under a guarantee must be done. The rule also requires that the seller give the buyer a written analysis of the causes and conditions responsible for the basement

water problem and the specific processes and materials to be used in correcting the problem.

2.22 Special Orders.

There are too many special orders to list, so it is suggested that persons check with the Departments of Agriculture or Justice to determine if a special order has been issued against a company. If there is an outstanding special order, the prosecutor's job becomes much easier since all that has to be shown is a violation of the provisions of the order. See State v. Keehn, 74 Wis.2d 218, 246 N.W.2d 547 (1976), which upheld the imposition of a one-year jail term under sec. 100.26(3) for violation of a stipulated special order. The prosecutor can pursue the same remedies that are available for the violation of general orders.

2.23 Remedies Available Under Sec. 100.20.

2.23 (a) Unfair Trade Practices Or Unfair Methods Of Competition Complaint.

Under sec. 100.20(4) the Department of Justice may file a written complaint with the Department of Agriculture, Trade and Consumer Protection that unfair trade practices or unfair methods of competition have been employed by certain named persons. The Agriculture Department is required to hold an administrative hearing to adjudicate the matters alleged in the complaint and to determine whether a special or general order should be issued.

2.23 (b) Private Remedies.

Section 100.20(5) provides a private remedy of twice the pecuniary loss, together with costs and reasonable attorneys' fees, for violations of special or general orders.

2.23 (c) Injunction For Violation Of Department Of Agriculture Orders.

Under sec. 100.20(6) the Department of Agriculture, Trade and Consumer Protection may request the circuit court to restrain by temporary or permanent injunction the violation of any special or general order. The court may also restore pecuniary losses to injured consumers prior to entry of final judgment. However, the individual consumer may prefer to exercise his private double damage remedy under sec. 100.20(5).

2.23 (d) Revocation Of Corporate Authority For Violation Of Department Of Agriculture Orders.

Under sec. 100.24, the Department of Justice may bring an action to enjoin any corporation, foreign or domestic, from doing business in the state or to revoke the corporate authority of such corporation for substantial and wilful violations of any special or general orders issued under sec. 100.20.

2.3 Statutory Remedies Under Sec. 100.26.

2.31 Civil Forfeiture.

Under sec. 100.26(6) any district attorney or the Department of Justice may commence an action in the name of the state to recover a civil forfeiture of not less than \$100 nor more than \$10,000 for the violation of an order issued under sec. 100.20 or an injunction under sec. 100.18.

2.32 Criminal Penalties.

Under sec. 100.26(3) any person who intentionally violates a general or special order shall be punished by a fine of not less than \$25 nor more than \$5,000 or imprisoned for not more than one year, or both. The validity of criminal sanctions for violations

of general or special orders was upheld in State v. Lambert, 68 Wis.2d 523, 229 N.W.2d 622 (June 3, 1975).

Under sec. 100.26(5) any person violating sec. 100.18(9) (bait and switch advertising) shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than one year, or both.

Section 100.26(1) provides for a fine not to exceed \$200 or imprisonment for not more than six months, or both, for violations of ch. 100 for which no specific penalty is prescribed.

CHAPTER III

CONSUMER CREDIT LAWS

3.1 Introduction.

The Wisconsin Consumer Act, chs. 421-427, Stats., is a comprehensive revision of Wisconsin's laws governing consumer credit transactions. In addition to streamlining many previously existing provisions, the Wisconsin Consumer Act (hereafter referred to as the WCA) provides substantially increased protection to consumers when they borrow money or purchase merchandise on credit. Interest rates and penalty charges not within the purview of the Act are still regulated by ch. 138 of the Wisconsin Statutes.

The statements which follow regarding the WCA are generalizations. The Act should be consulted for specific provisions.

3.2 Scope.

The WCA applies to consumer credit transactions made in the State of Wisconsin. If the merchant receives the contract from the customer within the State of Wisconsin or if the customer is induced to deal with an out-of-state merchant by face-to-face solicitation or direct mail or phone solicitation, then the transaction is considered to be made in the State of Wisconsin for purposes of the WCA. (sec. 421.201)

The WCA does not apply to transactions where the amount financed exceeds \$25,000 nor to loans secured by a first mortgage

on real estate if the Annual Percentage Rate does not exceed 12 percent. (sec. 421.202) Also excluded are transactions where the customer is a corporation, partnership, association or cooperative. (sec. 421.202)

The WCA defines a consumer credit transaction as one in which a customer acquires real or personal property, services or money for personal, family, household or agricultural purposes and agrees to pay in more than four installments or agrees that a finance charge may be imposed. (sec. 421.301(10))

Some of the provisions of the WCA do not apply to transactions which are made, insured, or guaranteed by the federal government or an agency thereof, or by the Wisconsin Department of Veteran's Affairs. (sec. 421.204)

3.3 Contract Requirements.

Numerous disclosures regarding the credit terms of the transaction must be made to the customer, in writing, at the time of signing the contract. In addition, a written copy of the contract must be furnished to the customer before the first payment becomes due. (sec. 422.301 - 422.307) The WCA requires that blank spaces relating to price, charges, or terms of payment must be filled in at the time the customer signs the contract or they must be indicated as being inapplicable. (sec. 422.304)

Under the WCA, a co-signer, other than the spouse of the customer, is entitled to a notice in the form specified by sec. 422.305 advising him or her of his or her obligations. In the event that payments are made in cash, the customer is entitled to receive a receipt without request. (sec. 422.306)

Section 422.306 permits the customer to obtain a statement showing the charges and payments on his or her account. The first such statement in any 12-month period is free in some cases and is \$1 in other cases.

3.4 Credit Insurance.

The WCA regulates the sale of credit life and credit accident and sickness insurance by merchants and requires that the cost of such insurance be disclosed to the customer prior to entering into the transaction. (sec. 422.202) It also requires that the merchant furnish to the customer a policy, group certificate, copy of the application, or notice of insurance at the time of the transaction. (sec. 424.203) A customer has the right under the WCA to cancel any credit life or credit accident and sickness insurance within ten days of the time the transaction was entered into and to receive a full refund or credit of all premiums charged. Such right must be disclosed to the customer in the policy, group certificate, copy of the application, or notice of insurance. (sec. 424.203)

3.5 Finance Charges.

The WCA limits the rate of the finance charge which may be charged for consumer credit transactions. The maximum rate which applies to most transactions is 18 percent on the first \$500 and 12 percent on any amount over \$500. This rate will apply to bank loans, savings and loan association loans, credit union loans, revolving charge accounts and installment sales. (sec. 422.201) Licensed loans companies may charge rates up to 23.3 percent Annual Percentage Rate depending on the size of the loan and the

term. (sec. 138.09(7)) The maximum rates for motor vehicle financing under sec. 218.01 vary from 12.7 percent to 23.2 percent Annual Percentage Rate, depending on the age of the vehicle.

For loans and forbearances which do not fall within the Wisconsin Consumer Act, ch. 138 of the Wisconsin Statutes applies, and the maximum interest rate which may be charged is 12 percent per year. (sec. 138.05) The legal rate absent an agreement is 5 percent under sec. 138.04. Penalties for violating the usury law are set forth in sec. 138.06.

3.6 Three-Day Cooling-Off Period.

The WCA provides for a three-day right to cancel any consumer transaction which is both initiated and consummated away from the merchant's regular place of business if the transaction is on credit or if the transaction is for more than \$25 cash. (secs. 423.101 - 423.205) In addition, the Federal Trade Commission has issued rules concerning a three-day right to cancel in similar transactions. The provisions of the FTC rule differ with the WCA in certain respects. Persons should contact the Department of Justice or the Commissioner of Banking for information regarding the precise differences between the federal and state regulations.

3.7 Preservation Of Claims And Defenses.

Section 422.406 prohibits a seller from taking a negotiable instrument, other than a check, in a consumer sale transaction or in a transaction that constitutes an interlocking loan under sec. 422.408. Clauses limiting the customer's right to assert claims and defenses against an assignee are not effective until 12 months after the customer has been given a notice of assignment which

must advise him of his right to assert such claims or defenses for a 12-month period. (sec. 422.407) In the case of a lender loaning money to be used to pay a seller in a consumer sale, the lender is subject to the claims and defenses of the customer against the seller if the relationships specified in sec. 422.408 exist. The Federal Trade Commission has also issued a rule which preserves claims and defenses in certain situations.

3.8 Restrictions On Security Interests.

The WCA prohibits a merchant in a consumer credit sale from taking a security interest in property other than the property sold with minor exceptions. (sec. 422.417) In the case of a consumer loan, the merchant may not take a security interest in clothing, dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware belonging to the customer and his dependents unless the loan was obtained to purchase such items (sec. 422.417)

3.9 Additional Provisions.

Contracts which permit a creditor to add attorney's fees to the debt owed by the customer are prohibited. (sec. 422.411) Certain exceptions are made for loans secured by a mortgage on real estate. Subject to some exceptions for real estate loans, the customer has the right to prepay any amount at any time without penalty. (sec. 422.208) If the customer prepays in full the rebate of unearned finance charges must be computed in accordance with sec. 422.209.

After the customer has paid his or her account in full, the

merchant must release any mortgages or security interests which were taken to secure payment of the debt, and must file or record the necessary documents with the Register of Deeds or Secretary of State to clear the customer's name and property on the public records. (sec. 422.306)

The WCA prohibits balloon payments in most transactions. (sec. 422.402) For transactions other than revolving credit, maximum periods of repayment are established by sec. 422.403.

3.10 Limitations Of Creditors' Remedies.

Delinquency charges are limited by the WCA to \$3 or 3 percent of the unpaid amount of the installment, whichever is less, and may not be imposed unless a payment is more than ten days past due. This charge may be made only once for each missed payment. (sec. 422.203) The WCA prohibits a merchant from accelerating the maturity of a consumer credit transaction, commencing a lawsuit, or taking any action against the collateral until a default as defined by sec. 425.103 has occurred and until he or she has given the customer a written notice of the right to cure the default. The customer has 15 days after the merchant has given such notice to cure the default by paying all delinquent payments together with any unpaid delinquency or deferral charges. (sec. 425.105) If the transaction calls for monthly payments, a default is defined to occur when two payments are more than ten days past due. If the transaction is a revolving charge account or bank credit card transaction, a default is defined to occur when two payments are not paid when due in any 12-month period. (sec. 425.103)

3.11 Repossession Procedures.

The WCA increases the exemptions which the customer has so that the customer's necessary property cannot be taken to satisfy a judgment. (sec. 425.106) Section 425.204 permits the customer to voluntarily surrender the collateral in a consumer credit transaction at any time. Collateral may not be repossessed prior to court proceedings unless the customer voluntarily surrenders the collateral. (sec. 425.206) In the event that the merchant does repossess the collateral after judgment, the customer has 15 days to redeem the collateral by paying the amount due together with court costs and a performance deposit equal to three scheduled installments or one-third of the balance due, whichever is less. (sec. 425.208) If the amount due at the time of repossession is \$1,000 or less, and the transaction was other than a consumer loan, the merchant may not recover from the customer any deficiency between the amount due and the value of the property repossessed. (sec. 425.209)

3.12 Garnishment And Assignment Of Wages.

The WCA increases the amount of wages which are exempt from garnishment in sec. 425.106. This exemption will apply only to garnishments arising out of consumer credit transactions. Section 425.110 prohibits an employer from discharging an employee because of a garnishment arising from a consumer credit transaction.

3.13 Prohibited Debt Collection Practices.

The WCA prohibits certain debt collection practices in consumer credit transactions and consumer transactions where there is an agreement to defer payment, including:

- the threat of criminal prosecution;
- communicating with the customer's employer prior to obtaining a court judgment or the customer's employment status or earnings;
- disclosing or threatening to disclose false information about the customer;
- disclosing or threatening to disclose information about the customer to a person without a legitimate business need for the information;
- disclosing or threatening to disclose information about a disputed debt without disclosing that the debt is disputed;
- communicating with the customer with such frequency or at such unusual hours as to harass the customer;
- using obscene or threatening language in communicating with the customer;
- threatening action which the merchant does not intend to take or has no right to take. (sec. 427.104)

3.14 Deceptive Or Unconscionable Conduct.

Section 423.301 prohibits false, deceptive, or misleading statements or representations with regard to a consumer credit transaction. Unconscionable dealings in consumer credit transactions are prohibited and sec. 425.107 permits the court to determine when this is the case. In addition, sec. 426.108 directs the administrator to promulgate rules declaring specific conduct to be unconscionable (see sec. Bkg 80.85, Wis. Adm. Code).

3.15 Private Remedies.

A customer has strong private remedies under the WCA. For most violations the customer may recover a penalty of at least \$100 or actual damages, whichever is greater. (sec. 425.304) In many cases the penalties may go as high as \$1,000 per violation. (sec. 425.304) For certain violations of the WCA the customer may keep the goods, services or money obtained from the merchant, make no further payments, and recover back any payments previously made. (sec. 425.305) In addition a customer may commence class actions for himself or herself and others who have been similarly

damaged by a violation of the WCA. (sec. 426.110) Customers may also seek injunctions to enjoin violations of the WCA. (sec. 426.109) In all cases, the customer has the right to recover actual court costs and attorney fees if he or she wins the case. (sec. 425.308)

3.16 Criminal Penalties.

Section 425.401 provides that any person who willfully and knowingly engages in any conduct or practice in violation of the WCA may be fined not more than \$2,000 in a misdemeanor action brought by a district attorney.

3.17 Remedies By Administrator.

The WCA is administered by the Commissioner of Banking. The Commissioner has the right under the WCA to commence court actions through the Department of Justice to recover civil penalties, to seek injunctions, and to commence or join class actions for violations of the WCA. (secs. 426.104; 426.109; 426.110; 426.301)

3.18 Rules And Regulations.

The Commissioner of Banking has promulgated rules and regulations under the WCA which may be found in the Wisconsin Administrative Code Bkg 80. These rules should be consulted for assistance in interpreting the WCA provisions.

CHAPTER IV

OTHER CONSUMER PROTECTION LAWS

4.1 Sec. 943.20(1)(d) -- Theft By Fraud.

Theft by fraud is much more difficult to prove than a violation of sec. 100.18(1) since it requires establishing "intent to defraud." This remedy is still valuable, however, in the more blatant cases.

The statute prohibits the obtaining of another's property by "intentionally deceiving him with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made." The statement further states that: "'False representation' includes a promise made with intent not to perform it if it is part of a false and fraudulent scheme."

This subsection embodies the common law crime of obtaining money by false pretenses.

There are six elements which must be proved to sustain conviction of theft by fraud. First, that the defendant made a false representation to the owner. This representation must concern a past or existing fact or involve the making of a promise without any intention of carrying the promise out if it is part of a false and fraudulent scheme. The representations need not be express since a false pretense may be made by implication as well as expressly. Words, written or spoken, are not essential to a false representation such as will subject one to punishment. Acts or conduct may constitute a false representation. Accordingly,

under some circumstances a prosecution for obtaining money by false pretenses may be based on silence or concealment. 32 Am. Jur. False Pretenses sec. 17 (1967). Stecher v. State, 168 Wis. 183, 169 N.W. 287 (1918).

Second, that the defendant knew that such representation was false. However if the defendant believed that the representation was false, or had no reason to believe the misrepresented fact existed, that is sufficient to meet the requirement that he knew it to be false. Sec. 939.23(2), Stats.; State v. Hathaway, 168 Wis. 518, 170 N.W. 654 (1919).

Third, that the defendant made such representation with intent to deceive and to defraud the owner. The intent required to sustain a conviction is an intent to induce another by means of false representations to part with his property. 32 Am. Jur. False Pretenses sec. 33 (1967). In State v. Hintz, 200 Wis. 636, 229 N.W. 54 (1930), the court stated:

"While intent to defraud is an essential element of the crime of obtaining property by false pretenses, and must be proved by the state, it need not be proved by direct and positive evidence. It may be inferred from all the circumstances proved. Where all the other elements of the crime are proved, it is generally held that intent to defraud may be inferred from the circumstances proved."

And the court further stated:

"Because intent is something that cannot be physically visualized or even established by direct or positive proof, and must be shown by circumstantial evidence, it is generally held that intent to defraud may be inferred from the circumstances proved."

Fourth, that the defendant obtained title to the property of the owner by such false representation. Although the Criminal

code explicitly refers to the necessity for title to be obtained this should not be taken to mean that one must obtain absolute title, because any title obtained by fraud is voidable and the requirement if applied literally would make it impossible for the crime to be consummated. The statute proscribes the obtaining of unauthorized control. The rule is not founded upon a specific requirement in the statute that title pass but is for the purpose of preserving a distinction between the crime of larceny by a bailee and that of obtaining money by false pretenses. Whitmore v. State, 238 Wis. 79, 298 N.W. 194 (1941).

Fifth, that the owner was deceived by such representation. In Palotta v. State, 184 Wis. 290, 199 N.W. 72 (1924), the court stated:

"... statutes of this character are designed to protect the unwise and the credulous as well as the able and vigilant. Hence it is not the prevailing rule or the rule in this state that where all the other ingredients of the offense have been committed the defendant should be acquitted on the ground that the person defrauded failed to exercise ordinary care and prudence. The real question is not whether the representations are such as might deceive persons of ordinary care, but whether they are such as are adapted to deceive and do deceive the persons to whom they are made."

The misrepresentation need not be the sole inducing factor of the owner's parting with property. In Whitmore, supra, the court said:

"It cannot be the law that merely because the pretenses constituted only one of several matters relied upon that there can be no offense of obtaining money by false pretenses. If the pretense was one of the material matters relied upon, that is sufficient."

Sixth, that the owner was defrauded to his detriment. This

element requires that the owner sustained some pecuniary or property loss as a result of the misrepresentation. The crime of obtaining property by false pretenses is not committed if property bought by a person allegedly defrauded was worth what he paid for it, even though intent to defraud was present. 17 Op. Att'y Gen. 180 (1928) and Clawson v. State, 129 Wis. 650, 109 N.W. 578 (1906). The value of the property stolen is determined pursuant to sec. 943.20(2)(c).

4.2 Sec. 133.17 -- Unfair Discrimination In Trade.

Section 133.17 provides the punishment for unfair discrimination in trade. No one who is engaged in production, manufacture, or distribution of any commodity may intentionally, for purposes of injuring or destroying competition, discriminate between different sections of the state or between persons or corporations in the same section of the state.

This section does not prohibit all discrimination but only such discrimination that is done for the purpose of injuring or destroying competition or to prevent competition. Price discrimination merely for purposes of meeting local competition does not constitute an offense under this section. Also a company operating a group of retail stores does not violate this section by cutting its price at one store to meet competition across the street. 22 Op. Att'y Gen. 348 (1933); 13 Op. Att'y Gen. 133 (1924).

In deciding whether to prosecute under this section, determine whether the discrimination was intentional and whether it was made for the forbidden purpose.

District attorneys may prosecute violations of these provisions as misdemeanors, punishable by a fine of not less than \$200, nor more than \$5,000, or imprisonment up to one year, or both.

4.3 Sec. 133.01 -- Unlawful Restraint Of Trade By Contract Or Conspiracy.

Any combination, conspiracy, trust, agreement, or contract intended to prevent or restrain competition by fixing the prices or controlling the quantity of a product to be manufactured is an illegal restraint of trade. The district attorney upon advice from the attorney general may enforce this subsection and seek fines of up to \$5,000 or imprisonment of not more than five years or both.

In considering whether a contract in restraint of trade is invalid as against public policy, the vital question is whether the restraint imposed is unreasonable with reference to the situation, business, and object of the parties.

When a business purpose can be found for the restraint and the restraint is not for too long a time or too large an area it will normally be upheld. For example, a covenant in a lease for three years that the lessee would buy only beer sold by the lessor, being limited as to time, space and extent of trade was valid. Rose v. Gordon, 158 Wis. 414, 149 N.W. 158 (1914). On the other hand, if the practice tends to destroy the very nature of the transaction such as the bargaining power of one party in a sale it will be held offensive.

4.4 Sec. 100.30 -- Selling Below Cost Statute.

Section 100.30 prohibits the selling of items below cost plus a certain markup in order to attract patronage. In determining whether the merchandise has been sold below cost, the statute sets forth a number of guidelines and standards.

Penalties for each offense under this Act are up to \$500 for the first offense and \$1,000 for the second offense or imprisonment up to six months or both. In addition to these penalties, the district attorneys or the Department of Agriculture may institute proceedings to prevent and restrain violations of this section. (sec. 100.30(5)(a))

4.5 Sec. 100.15 -- Trading Stamps.

Section 100.15 prohibits the giving of trading stamps or other similar devices in connection with the sale of goods unless the stamps are redeemable in cash. Thus, redemptions in merchandise are prohibited. Exceptions include coupons in newspapers or attached to a package or container as packed by the original manufacturer and directly redeemable by such manufacturer.

Any person who violates this provision may be fined up to \$5,000 or imprisoned up to one year or both. (sec. 100.26(3))

4.6 Sec. 945.01 -- Lotteries.

Lotteries are illegal in Wisconsin under sec. 945.02 and Art. IV, sec. 24, of the Wisconsin Constitution. The word "lottery" is a generic term dealing with a variety of activity. As defined by sec. 945.01(2)(a), Stats.: "A lottery is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even

though accompanied by some skill." Thus a lottery, being defined as an "enterprise," includes all the various devices, schemes, games, plans, etc., wherein a participant has an opportunity to win a prize determined by chance and based upon a consideration. Furthermore, those persons who are involved in the promotion or operation of distributing a lottery to the public or who organize the lottery, give away the prize, sell or give away the tickets, or are otherwise involved in the management, control, direction, promotion or setting up of a lottery are guilty of a crime under ch. 945, Stats., if such activity or any constituent element of such activity takes place in the State of Wisconsin.

In order that a contest constitute a lottery, all three elements of "prize," "chance," and "consideration" must be present. The absence of any of them removes the promotion from the lottery category.

"Prize" requires no explanation. It includes anything of value given to the winner as a result of his good fortune.

"Chance" implies that the result of the contest is out of the participants' hands. Anything that a person does not know and cannot find out is chance as to him. Also, the outcome of an event over which the person has little or no control constitutes chance. When skill replaces chance in a contest, promoters must be certain: 1) that participants are apprised as to the exact nature of the skill required of them (e.g., in a writing contest, participants must know objectively what type of writing skill is sought, and not just that the "best entry will win), 2) that the contest is actually judged by competent judges on the basis of

that skill, 3) that each participant is allowed equal opportunity to win based on the basis of that skill, 3) that each participant is allowed equal opportunity to win based on the quality of his performance (e.g., that multiple entries are not allowed), and 4) that duplicate prizes are awarded in case of tying entries (e.g., that the winner among entries of equal quality is not determined by earliest postmark or drawn out of a hat.) It should be remembered, however, that a contest may still be a lottery if the outcome is determined essentially by chance, "even though accompanied by some skill." (sec. 945.01(2)(a))

"Consideration" is broadly defined in sec. 945.01(2)(b)1 as anything which is "a commercial or financial advantage to the promoter or a disadvantage to any participant ...". However, the statute provides certain exceptions to this definition which permit contests in which participants are not required to buy any product, go anywhere or do anything which may be an advantage to the promoter, or a disadvantage to themselves. Thus, none of the following constitutes consideration (sec. 945.01(2)(b)2):

"a. To listen to or watch a television or radio program.

"b. To fill out a coupon or entry blank which is received through the mail or published in a newspaper or magazine, if facsimilies thereof are acceptable.

"c. To furnish proof of purchase if the proof required does not consist of more than the container of any product as packaged by the manufacturer, or a part thereof, or a facsimile of either.

"d. To send the coupon or entry blank and proof of purchase by mail to a designated address.

"e. To fill out a coupon or entry blank obtained and deposited on the premises of a bona fide trade fair

or trade show defined as an exhibition by 5 or more competitors of goods, wares or merchandise at a location other than a retail establishment or shopping center or other place where goods and services are customarily sold; but if an admission fee is charged to such exhibition all facilities for obtaining and depositing coupons or entry blanks shall be outside the area for which an admission fee is required."

However, if participants are required to visit a store or other place of business to obtain or deposit an entry blank, or to learn if they have won, consideration is present. See Kayden Industries, Inc. v. Murphy, 34 Wis.2d 718, 150 N.W.2d 447 (1967). On the other hand, if participants enter a contest merely by filling out and mailing a coupon or entry blank received in the mail or published in a newspaper or magazine, the element of consideration is not present if facsimile entries are acceptable. The "facsimile" provision in the statute is presumably for the purpose of allowing persons to enter the contest without having to purchase a newspaper or magazine, merely by drawing their own entry blank.

Alternative methods for entering a contest, one of which constitutes consideration, injects that element into the contest and makes it a lottery, even though participants are given a choice. See State v. La Crosse Theaters Co., 232 Wis. 153, 286 N.W. 707 (1939). Thus, a contest where participants may "either mail in the entry coupon or bring it with you when you shop" is a lottery if prize and chance are also present.

Wisconsin law prohibits only the conducting of these lotteries and not participating in them. Therefore, a person would not be violating Wisconsin law by entering this kind of

advertising or promotional contest in the state, regardless of whether or not it is, in fact, a lottery under the statutory definition.

If a Wisconsin resident becomes a winner in one of these sweepstakes, he may accept a prize. However, there is a provision that a district attorney or the attorney general may bring an action requiring that a prize won by a Wisconsin resident in an illegal lottery be forfeited to the state. (sec. 945.10) This would require a prior determination of a court of law that the contest was indeed a prohibited lottery.

4.7 Chapter 241 -- Fraudulent Contracts.

Section 241.025 makes it a misdemeanor for any person to represent, as an inducement to the sale of any course of study, that he or the school offering such course will, upon the purchaser's completion of the course, place the purchaser in employment unless there is a written contract between such school and an employer whereby the latter is bound to furnish such employment as represented.

If a person receives goods which are unsolicited, the goods are considered a gift in the State of Wisconsin; and the recipient may use them or dispose of them in any manner without obligation to the sender. (sec. 241.28)

4.8 Odometer Laws

Under the Wisconsin Motor Vehicle Trade Practice Code, Chapter MVD 24, Wis. Adm. Code, a motor vehicle dealer or salesman must conspicuously disclose the odometer reading on a writing or window sticker attached to each used motor vehicle displayed or

offered for sale. This disclosure must state the odometer reading at the time the dealer obtained the vehicle, and must further disclose whether the mileage is actual, inaccurate or unknown.

Before a dealer may sell any motor vehicle, other than new vehicles obtained directly from the manufacturer, the dealer must show the potential buyer the prior owner's statement. This statement must be signed by the prior owner, and must include, in addition to the odometer reading, a description of the vehicle, the date of ownership transfer, and the name and address of the prior owner. MVD 24 further requires that a dealer keep this statement in his records for 3 years. Upon sale, the dealer must furnish a new, current odometer statement to the purchaser, a copy of which must also remain in the dealer's records for 3 years. Like the odometer disclosure on the vehicle itself, the prior owner's statement must be qualified by a statement as to whether the mileage is actual, inaccurate or unknown. The requirements of the odometer disclosure and the prior owner's statement apply only to vehicles with a gross weight rating of 16,000 lbs. or less and vehicles less than 25 years old.

Section 347.415 makes it illegal for any person or his agent to "remove, replace, disconnect, reset, tamper with, alter, or fail to connect" an odometer with the intent to change the number of miles. Similarly, the advertisement or sale of such vehicle is prohibited, as is the operation of the vehicle on any Wisconsin street or highway where the operator has the requisite knowledge and intent of defrauding another. However, a person is not precluded from repairing or replacing an odometer as long as the

mileage remains the same as before the service. The penalty for violations of the odometer tampering statute is the forfeiture of not less than \$100 nor more than \$500.

Much of the federal odometer law, 15 U.S.C. secs. 1981-1990 (1976), directly parallels Wisconsin law, with minor variations. Under federal law, however, violators may be held liable in a private civil action for three times the amount of actual damages or \$1,500, whichever is greater, in addition to reasonable attorney's fees and court costs. The action may be brought in a U.S. District Court or state court without regard to diversity jurisdiction or amount in controversy. The United States Attorney General as well as a state's chief law enforcement officer may seek to enjoin violations of the federal act in a U.S. District Court. Civil penalties may also be obtained by the U.S. Attorney General not to exceed \$1,000 for each violation, or not more than \$100,000 for any related series of violations. The Act further assesses criminal penalties to persons who knowingly and willfully violated the Act, punishable by a fine of not more than \$50,000 or imprisonment of not more than one year.

4.9 Chapter 136 -- Future Service Plans (Buyer's Clubs)

This law, which became effective on July 1, 1976, promotes full disclosure in future service or buyers club contracts and their promotions. The principal feature of the statute is that it prohibits the buyers club from collecting more than one year's membership fee in advance of performance. Under this law, if a new member pays \$400 for a ten-year membership, the club can collect no more than the first year's fee in advance, or \$40. In

addition, the law provides for a lengthy 90-day cooling off period so that a member can cancel the contract after a reasonable period during which he or she may try out the club's services.

The statute also affords the customer some protection against late deliveries and insolvencies.

Section 136.06 requires the following disclosures in all sales representations made to induce a prospective customer to sign a future service contract:

- 1) Whether merchandise named by brand is purchased by the club from a manufacturer, retailer, wholesaler or other supplier;
- 2) Where no brand is stated, the comparative numbers of purchases made by the club from manufacturers, wholesalers, retailers or other suppliers;
- 3) The existence, if any, of purchasing arrangements which the future contract seller has with all suppliers, including the duration of the arrangements;
- 4) The policy regarding retention by the club or refund to the member of trade, prompt payment or other discounts given by suppliers for merchandise purchases, and the maximum amount of such discounts.

In addition, secs. 136.02 and 136.06 require, among other things, that all future service contracts:

- 1) Be in writing and for a stated number of months;
- 2) Disclose which party bears the risk of damage in shipment of goods;
- 3) Disclose the policy regarding return of ordered goods, cancellation of orders and refunds;

4) Disclose the policy regarding warranties or guarantees on goods ordered;

5) Disclose the disposition of discounts the future service contract seller receives from suppliers.

Chapter 136, Stats., further requires every seller of a future service contract to maintain a bond, a copy of which must be filed with the Department of Agriculture. In case of the seller's insolvency or cessation of business, the bond will be used for the benefit of any customer who suffers loss of prepayments.

The Department of Justice possesses investigative and civil prosecutorial responsibilities under the law and the Department of Agriculture possesses rulemaking authority.

4.10 Consumer Protection Regulatory Statutes.

There exist a number of other significant consumer protection statutes which are administered by various state agencies. Each of these statutes contain criminal penalties for intentional or wilful violations. However, before commencing any criminal proceeding under these statutes the prosecutor should consult with the administrative agency in question. Consequently, these regulatory statutes will be discussed in Chapter V, which deals with other agency resources.

CHAPTER V

OTHER AGENCY RESOURCES

5.1 Department of Justice.

Statutory Authority--Sections 100.18, 100.20(4), 100.24, 100.26(6) and 823.02 and ch. 136, Stats.

The Department of Justice possesses independent enforcement authority in the consumer fraud area under ch. 100 (see ch. 2) and acts as legal counsel for various state agencies in other consumer protection areas.

In addition, the Department of Justice has broad injunctive authority under sec. 823.02 (public nuisances) to enjoin any open and continuous violation of state law. This has enabled the Department of Justice to obtain injunctions in numerous areas such as lotteries (State v. La Crosse Theatres, Inc., 232 Wis. 153, 286 N.W. 707 (1939)), unfair trade practices (State v. Texaco, Inc., 14 Wis.2d 625, 111 N.W.2d 918 (1961)), and usurious sales (State v. J. C. Penney Co., 48 Wis.2d 125, 179 N.W.2d 641 (1970)).

Consumer complaints within the Department of Justice's authority should be directed to the Office of Consumer Protection, Department of Justice, State Capitol, Madison, Wisconsin 53702.

5.2 State Regulatory Agencies.

5.21 Department Of Agriculture, Trade And Consumer Protection.

Statutory Authority--Chapters 93 - 100, Stats.

The Department of Agriculture, Trade and Consumer Protection possesses broad authority over the marketing of all consumer

products and services in Wisconsin. A listing of the primary divisions of the Department of Agriculture indicates the broad scope of its statutory authority: Animal Health Division, Food Division, Marketing Division, Meat Inspection Division, Plant Industry Division and Consumer Protection Division. Thus, the Agriculture Department's activities range from protection against unwholesome and impure food to the prevention of unfair trade practices and the regulation of weights and measures. In each of these areas, the Department possesses extensive investigative, rule-making and administrative authority.

As previously discussed, in the area of fraudulent business practices, the Department of Agriculture, Trade and Consumer Protection shares enforcement responsibility with the Department of Justice and the district attorneys. In addition, the Department possesses broad rule-making powers to define unfair practices (see sec. 2.21). The only limitation on the potential scope of this rule-making power is in the definition of business in sec. 93.01(13), which excludes banks, savings and loan associations, insurance companies and public utilities.

Complaints within the jurisdiction of the Agriculture Department should be sent to the appropriate Division listed above at 801 West Badger Road, Madison, Wisconsin 53713.

5.22 Office Of The Commissioner Of Banking.

Statutory Authority--Chapters 138 and 421 - 428. Sections 218.01, 218.02 and 218.04, Stats.

The Office of the Commissioner of Banking possesses licensing and supervisory power over various lending institutions. This

includes licensing and regulatory authority over loan companies (sec. 138.09), motor vehicle sales finance companies (sec. 218.01), debt adjustment companies (sec. 218.02) and collection agencies (sec. 218.04). In addition, the Commissioner has regulatory authority over state banks (chs. 220 and 221) and sellers of checks (ch. 217).

The Commissioner can issue general or special orders or cause license revocation under each of the above statutes, except that under sec. 138.09 only license revocation is available. Criminal penalties are available for violation of any of the statutes that the Commissioner administers.

The Commissioner of Banking also administers the Wisconsin Consumer Act. See ch. III for a discussion of the Commissioner's authority under this act.

Complaints concerning loan and collection companies and consumer credit transaction can be referred to the Division of Consumer Credit, Office of the Commissioner of Banking, 30 West Mifflin, Madison. Information regarding the standing of a licensee or whether a loan or collection company is licensed can be obtained from the same source.

5.23 Office Of The Commissioner Of Insurance.

Statutory Authority--Chapters 201 - 209 and 600 - 655, Stats.

The Office of the Commissioner of Insurance has virtually complete control over all insurance transactions in the state. Chapter 601 outlines its very extensive powers.

Complaints in the insurance area should be forwarded to the Office of the Commissioner of Insurance, 201 East Washington

Avenue, Madison, Wisconsin.

5.24 Public Service Commission.

Statutory Authority--Chapters 194-196, Stats.

The Public Service Commission is responsible for the regulation of public utilities as defined in sec. 196.01, which includes companies engaged in providing heat, light, water, power or telephone service in the state. The Public Service Commission also regulates municipally owned and operated railroads and motor carriers.

The regulation of public utilities, railroads and common motor carriers is designed to promote reasonably adequate service to the public without undue or unjust discrimination at rates which are reasonable and just.

Complaints regarding the above industries should be directed to the Public Service Commission, 4802 Sheboygan Avenue, Madison, Wisconsin.

5.25 Transportation Department, Motor Vehicle Division.

Statutory Authority-- Sections 218.01 and 218.10, Stats.

The Division of Motor Vehicles regulates by licensing motor vehicle dealers and salesmen, salvage dealers, mobile home dealers (sec. 218.10), auto auction dealers and manufacturers and distributors of motor vehicles. Dealer licenses can be denied, suspended or revoked for practices ranging from willfully defrauding a retail buyer to indulging in unconscionable practices.

The Division has the power to define unfair practices and the power to hold public hearings, subpoena witnesses and make such

rules and regulations as it deems necessary or proper for the effective administration and enforcement of sec. 218.01. The Division has defined certain trade practices of its licensees to be unfair under ch. MVD 24, Wisconsin Administrative Code. This rule deals with advertising and sales representations, disclosure of vehicle condition, contract requirements, warranties, and repairs and services.

Questions and complaints relating to matters within the Motor Vehicle Division jurisdiction should be directed to the Division of Motor Vehicles, 4802 Sheboygan Avenue, Madison.

5.26 Department Of Regulation And Licensing.

Statutory Authority--Chapter 440, Stats.

The Department of Regulation and Licensing performs the clerical and housekeeping functions for 18 different independent examining boards. The various boards attached to the department are charged by statute with the responsibility of certifying, examining, regulating, licensing and establishing rules for certain professional and occupational groups.

The groups licensed through the Department are as follows:

- Accountant
- Architect
- Boxer (all personnel associated with)
- Chiropractor
- Dental Hygienist
- Dentist
- Detective/detective agency
- Designer
- Engineer, professional
- Hearing Aid dealer or fitter
- Land Surveyor
- Licensed Practical Nurse
- Nurse
- Nursing Home Administrator
- Optometrist

Osteopath
Peddler
Pharmacist
Pharmacy
Physical Therapist
Physician/surgeon
Podiatrist
Professional Fund Raiser
Professional Fund Solicitor
Psychologist
Public Showman
Real Estate Broker/Salesman
Transient Merchant
Veterinarian
Watchmaker

Complaints relating to any of these boards should be sent to the Department of Regulation and Licensing, 201 East Washington Avenue, Madison, for transmittal to the proper licensing board.

The Regulation and Licensing Department itself licenses peddlers, hawkers and transient merchants under ch. 440, Stats. Since the Department has no investigative staff, this function is primarily revenue producing and does not necessarily screen out "bad operators." Since the Department has no regulatory power over solicitors, except those engaged in charitable fund raising, most salesmen need not be licensed by the state.

5.27 Office Of The Commissioner Of Securities.

Statutory Authority--Chapters 551 and 553, Stats.

The Wisconsin Uniform Securities Law became effective on January 1, 1970. The law repealed ch. 189 and created a new chapter, 551, relating to state regulation of securities and granting rule-making powers.

The new law substantially broadened the provisions against fraud and misrepresentation in securities transactions. Violations of the anti-fraud provisions, as well as the

registration and licensing provisions, subject the violator to civil, criminal and administrative sanctions.

All dealers, agents and advisors must be licensed by the Commissioner. The Commissioner may also make such rules and regulations as may be necessary or appropriate in the public interest or for the protection of investors or to assure compliance with the chapter. In addition all advertising of securities must be approved or endorsed by the Commissioner before it can be circulated.

Since July 1, 1972, the Securities Commissioner has also administered the Franchise Investment Law (ch. 553, Stats). This law requires all persons, other than those statutorily excepted, who offer a franchise and certain business opportunities to the public, to register with the Office of the Commissioner of Securities. Registration requires the disclosure of substantial background information. This is designed to enable a potential investor to adequately evaluate the franchisor and his prior history.

If regulatory background is desired, reference should also be made to the recently enacted administrative regulations of the Office of the Commissioner of Securities relating to franchises. These are contained in chs. 31-37 of the Securities section of the Wisconsin Administrative Code.

Questions or complaints should be directed to the Office of the Commissioner of Securities, 448 West Washington Avenue, Madison, Wisconsin.

5.28 Department Of Public Instruction, Educational Approval Board.

Statutory Authority--Section 38.51, Stats.

Under sec. 38.51, Stats., the Educational Approval Board is responsible for approving schools and courses of instruction for the training of veterans and war orphans receiving assistance from the federal government, and for protecting the general public by inspecting and approving private trade, correspondence, business and technical schools.

Any solicitor who sells courses of instruction away from the actual business premises of the school must get a permit from the Board. The Board may refuse to issue or renew, or may revoke a solicitor's permit for willfully violating the statute or any order promulgated under it, or for presenting false or misleading information to prospective students.

The Board has established extensive rules regulating the sale of vocational schooling by private organizations. These rules can be found in the Educational Approval Board section of the Wisconsin Administrative Code and are chs. EAB 1-EAB 7. The rules provide, among other things, for the bonding of schools and the establishment of fixed refund schedules in case a student fails to complete his entire course. Specific complaints regarding activities in this area should be directed to the Executive Secretary of the Educational Approval Board, 7th Floor, Hill Farms State Office Building, Madison, Wisconsin.

5.29 Department Of Industry, Labor And Human Relations.

Statutory Authority--Sections 101.90-101.96, 218.10, 218.14-218.17.

Since January 1, 1974, the mobile homes section of DILHR's Industrial Safety and Buildings Division has been charged with regulating the standards for construction and design of mobile homes sold in Wisconsin. The code also regulates warranty standards in mobile home sales.

Questions and complaints should be directed to the Department of Industry, Labor and Human Relations, Industrial Safety and Buildings Division, Mobile Homes Section, 201 East Washington Avenue, Madison, Wisconsin.

5.3 Federal Agencies.

5.31 Federal Trade Commission.

The Federal Trade Commission is responsible for preventing unfair and deceptive business practices affecting interstate commerce. It also has jurisdiction over laws relating to wool, fur and textile labeling, credit disclosure ("truth in lending") warranties and dangerously flammable wearing apparel.

Complaints should be directed to the Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

5.32 Food And Drug Administration.

The Food and Drug Administration has broad powers over the safety and quality of foods and drugs. These powers include the authority to set standards for food and drug products and, in certain cases, to request seizure of products from the marketplace.

Complaints should be directed to the Food and Drug Administration, Department of Health, Education and Welfare, Washington, D.C.

5.33 U.S. Postal Service.

The Postal authorities investigate complaints involving fraudulent promotional materials transmitted through the mail. Criminal penalties are prescribed for engaging in mail fraud.

Complaints should be directed to the Chief Postal Inspector, U.S. Postal Service, Washington, D.C.

5.34 Securities And Exchange Commission.

The Securities and Exchange Commission regulates the sale of stocks and bonds and the operation of investment companies. It has established numerous disclosure requirements and other regulations to protect the investor against unfair and fraudulent practices in the stock market.

Complaints should be directed to the Securities and Exchange Commission, Washington, D.C.

5.35 Consumer Product Safety Commission.

The main purposes of the Consumer Product Safety Commission are: to protect the public against unreasonable risks of injury associated with consumer products; to assist consumers in evaluating comparative safety of consumer products; to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations; and to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

Complaints involving product safety should be directed to the Consumer Product Safety Commission, Washington, D.C.

5.4 Consumer Protection Agencies In Other States.

Complaints of Wisconsin citizens against businesses located

in other states should often be referred to other states for enforcement action. In many such cases, however, a Wisconsin enforcement agency may well have adequate jurisdiction to proceed against the out-of-state firm. Such cases, of course, may also fall within the jurisdiction of a federal agency, but unless the case has substantial interstate impact the federal agencies will probably not actually pursue the matter - and, even then, it is very unlikely that the consumer will recover his financial losses.

Officials in other states are usually more inclined to take action in the small case and are also more interested in obtaining a refund for the aggrieved consumer. However, the citizen should be fully apprised of the meager prospects for obtaining a refund or other satisfaction in cases involving out-of-state firms.

It is recommended that rather than directly referring these complaints to another state that they be first sent to the Office of Consumer Protection, Department of Justice, in Madison, Wisconsin. This will allow further analysis of the complaint and will assure referral to the appropriate state official (usually the attorney general) in the other state.

CHAPTER VI

EVALUATING AND INVESTIGATING CONSUMER COMPLAINTS

6.1 Notifying The Public of Your Agency's Power To Deal With Consumer Frauds.

Although the public may presently be contacting your office regarding consumer fraud matters, it is likely that the volume is relatively low. Serious consideration should be given to utilizing public service announcements to notify the public of your consumer protection authority. Such public announcements can also serve the purpose of regulating the inflow of complaints by designating certain office hours and certain criteria necessary to constitute an actionable complaint.

6.2 Establishing Policy Regarding Consumer Matters.

Consumer complaints raise a number of serious policy considerations. Many of these considerations will be discussed in this chapter. It is important that these considerations be reduced to policy guidelines for the public. The reasons for establishing such guidelines are basically twofold:

- 1) citizens tend to categorize anything they cannot describe otherwise as a consumer complaint. It will be necessary to plainly set forth the types of complaints which will be considered actionable and those which will be dealt with otherwise.

- 2) the treatment of responding merchants should be somewhat uniform and related to a fixed set of criteria. Without this, and because of the varied possibilities for disposition, two consumers or merchants in somewhat the same position could easily receive discriminatory treatment.

6.3 Initial Contact With The Complaining Consumer.

It may be a good idea to urge citizens to complain in the first instance by telephone. The reason for this is that the telephone inquiry can usually be answered by the mailing of a complaint questionnaire to the complaining citizen. This permits the citizen to reflect on the details of his transaction at his own home and eliminates the need for sending a complaining consumer home in cases where he has forgotten vital materials relating to the transaction. This also saves the time of the interviewing attorney.

6.31 Use Of The Complaint Questionnaire.

The Department of Justice furnishes complaint questionnaires to any law enforcement official desiring them. The use of these questionnaires provides for a uniform procedure in dealing with the first contact with the consumer. It also enables this contact to be made by mail or by office secretarial personnel. The use of the questionnaire also serves the function of providing the Department of Justice with a copy of the complaint so that it may be compared and coordinated with complaints received from other sources.

6.32 Screening Prior To Contact With The Interviewing Attorney.

By utilizing the complaint questionnaire and having the first contact either by mail or through secretarial personnel, the interviewing attorney is assured (1) that the complainant will have the necessary materials and transactional details at hand and (2) persons having complaints which either should be handled by

another agency or are without merit will be screened prior to attorney contact. In addition, having the complaint questionnaire in hand prior to the initial interview provides the attorney with an opportunity to secure any background data on the complainant or the respondent before the interview.

6.33 Conference With Complainant.

It is sometimes advisable to have direct attorney contact with persons making consumer complaints. Complaints which may seem spurious or without merit to screening personnel at times can develop into valid complaints after further discussion with the complainant. It is also advisable to explain the office enforcement policy and jurisdictional limitations as soon as possible so that false hopes and possible resentment are not generated. If the complaint is not actionable at this time, for any number of reasons discussed in this chapter, it is best to inform the complainant at the earliest time possible. Whether the complaint appears actionable or not, it is also wise to advise the complainant of the availability of private civil remedies. It is possible that the complainant will forfeit civil contractual rights by default if he is under the impression that the district attorney will be representing all his rights. Although the law permits the court to award restitution in consumer fraud matters, it should be pointed out to the complainant that a number of factors are involved in proceeding with a consumer fraud case and that reliance should not be placed solely on enforcement officials to recover losses. In addition, of course, the complainant may be entitled to certain consequential damages which would not be

awardable under existing restitution remedies available to the district attorney.

6.4 Preliminary Evaluation Of Complaints.

Due to the fact that the gravity of a consumer complaint often depends upon surrounding circumstances and evidence which indicate whether the case at hand is one of simple mistake or fraud, it is usually necessary that the following initial evaluation be conducted.

6.41 Initial Screening Of Nonactionable Or Referable Complaints.

The attorney first makes an initial determination as to whether the complaint, at least at the present time, is actionable. Examples of nonactionable complaints are simple contractual matters such as late delivery, dissatisfaction with product performance, and other matters which, though frustrating to the complainant, have no basis under the consumer fraud laws. This type of complaint should be recorded for future reference, and the complainant so notified, in the event similar complaints arise and a pattern of deception develops. Another type of complaint which terminates enforcement activity is one which is referred to another enforcement agency. This involves not only referrals to the number of agencies and departments having primary jurisdiction over a particular subject but also referrals to the Departments of Justice or Agriculture in cases where statewide investigation or litigation is in process.

6.42 Categorizing Complaints Having Possible Legal Merit.

Once a complaint appears to have a possible basis for legal

action it is then advisable to evaluate it either as one likely to be resolved through mediation or, on the other hand, as one likely to be resolved only through litigation. Such an initial evaluation is important as it determines the manner in which initial contact is made with the person complained against. Complaints which are ordinarily mediated with the offending merchants are ones which involve, for example, failure to deliver. Although this refusal to perform on a contract could be a technical violation of the law it is likely, at least in the case of a local merchant, that the failure is due to some misunderstanding or mechanical difficulty. Ordinarily contact with the offending merchant clears up the matter without further difficulty. On the other hand certain representations made to the complainant, if true, could well indicate a conscious plan to deceive. In such cases mediation would not be advisable and the merchant should be approached with this in mind.

6.5 Contacting The Respondent Regarding The Complaint In Question.

6.5.1 Advisability Of Contacting The Respondent.

In most cases merchants are anxious to hear about complaints made against them. Except in extreme cases where the fraud appears to be patent and any contact would occasion the departure of the offending merchant from the jurisdiction, it is good practice to contact the merchant and give him a chance to explain his side of the story. Most local merchants are more than willing to open lines of communications with local enforcement personnel and this might well include access to information involving

merchants operating beyond the law. The best overall procedure to follow, once a complaint is determined to have possible legal merit, is to write the merchant complained against and ask him for his written response. By so writing, it is possible a) to get the merchant's side of the story in writing, b) to determine whether litigation is likely both from the tone of the response or the absence of one, and c) to obtain a resolution of the complaint satisfactory to both parties and therefore obviate the necessity for further action.

6.52 Examination Of Records For Other Violations By Respondent.

Aside from direct testimony, one of the most effective ways of determining whether the merchant was involved in a fraudulent course of conduct or merely an isolated mistake is to examine existing records for other complaints and inquiries. The first time a merchant claims that he mistakenly sold a 1969 automobile as a 1970 he might be believed, the second and third times tend to indicate a fraudulent course of conduct. In addition to the records kept by the Department of Justice dealing with these complaints, local complaint-receiving agencies such as the Chamber of Commerce, Police and Sheriff's Department and neighboring district attorneys and enforcement personnel are also valuable sources of information. Another possible source of information in this respect is to ask the merchant to provide a list of prior customers so that they might be contacted as to the alleged illegal conduct. Oftentimes what appears to be a simple contractual dispute develops into a conscious fraud when

corroborative evidence is discovered.

6.6 Informal Disposition Of Consumer Complaints.

Once the respondent has been contacted and the complaint is developed to the point where both sides indicate that it can be handled informally, the question then arises of the best method of disposing of the complaint, both from the standpoint of the complainant and protecting the public at large from the same practice recurring in the future.

6.61 Mediation.

In cases where the facts indicate that the complaint was the result of a misunderstanding or a simple nonrecurring mistake on the part of the merchant, mediation is probably the proper remedy. This quite simply involves the resolution of the matter to the satisfaction of both parties without any type of legal proceeding. Since no injunction is involved, mediation should be used where the likelihood of recurrence is minimal.

6.62 Voluntary Assurance.

In cases where it appears the offending merchant has inadvertently violated the law and sincerely intends to correct his business practices, an assurance of voluntary compliance may be appropriate. An assurance is an informal pledge by the merchant that he will obey the law. Its value lies in placing the merchant on record as to certain illegal trade practices so that any future violations can be dealt with more severely; its drawback is that it has no enforcement significance and, therefore, is only as binding as the good faith of the merchant.

6.63 Restitution And The Danger Of The "Buy-Back" Settlement.

The usual resolution of a matter which is concluded by mediation or voluntary assurance involves the return of some or all the money lost by the complaining consumer. In many cases this is a satisfactory way to resolve the matter. However, caution should be exercised not to permit an offending merchant to "buy back" complaints at the expense of losing witnesses or evidence necessary to secure an injunction or consent order, which have considerably more beneficial long range effect for the public in general. Some business concerns will buy back a complaint as soon as it reaches any enforcement official. This is considered a cost of business and well worth the expense if it results in a "good record" and precludes the entry of an injunction which would prevent the same practice from recurring in the future.

6.64 Contacting The Department Of Justice Before Closing Any Case.

As previously noted, one of the critical elements in determining whether a person is guilty of fraud or has merely made a mistake is the one of corroboration and pattern of conduct. The only effective way in which merchants who cross the state, defrauding the public as they go, can be stopped is to provide a central clearing house to enable these patterns of conduct to be discovered and relayed to the appropriate enforcement personnel. If the Department of Justice consumer complaint forms are used, sending a copy thereof to the Department of Justice is sufficient to assure that the information will be recorded and available for other state and local officials.

6.7 Holding For Further Corroborative Complaints.

At times there may be fairly clear evidence of a fraudulent practice but practical trial consideration may dictate that this complaint be held in abeyance pending further corroboration. This procedure is particularly advisable in cases where the merchant becomes aware of your knowledge of his practices and attempts to make a record to counteract your single complaint. Another factor is that the chances of winning an action such as this are materially enhanced with the existence of additional complaints. If the district attorney wishes to obtain an injunction to protect the public at large in the future he may wish to delay in favor of a more solid case at a later time. This of course can be quite difficult to explain to the original complaining witness.

CHAPTER VII

COMMENCING LITIGATION

7.1 Complaints Warranting Legal Action.

Whether or not the merchant is willing to mediate the individual consumer complaint, the district attorney should consider the appropriateness of formal legal action.

7.2 Criteria In Determining Whether To Commence Consumer Protection Litigation.

In deciding whether or not to litigate an issue, the following should be considered. This list, however, is hardly exhaustive:

1. Is the practice local or statewide?

The district attorneys have concurrent jurisdiction with the state over most violations and therefore are in a better position to handle most local matters. Matters of statewide concern should be brought to the attention of the Department of Justice.

2. Does the practice have a substantial impact on the public?

This usually means an examination of how much money and how many people are presently, and potentially, involved. Sometimes, it involves a subjective evaluation of the seriousness of the abuse.

3. Does there exist a discernable pattern of illegal conduct?

This is particularly important where an

injunction is sought for fraudulent or deceptive practices rather than a penalty for violation of a specific law. In this regard, the district attorney should give special attention to whether the practice is a company policy or merely a wayward sales representative.

4. Will the practices continue if action is not commenced?

This factor is extremely important, particularly as it relates to the existence of private actions. If the defendant is continuing to engage in violations of law, a private damage action will normally not deter him and state action is needed. Other examples of the application of this factor are where the defendant has permanently left the state or has discontinued business. In such cases there may be plenty of past violations of law but sometimes the matter is not worth exhausting your limited resources.

5. Does the practice take advantage of uneducated or necessitous persons?

This factor is important under the consumer protection laws which are designed, according to numerous court decisions, to protect the least sophisticated individual. In addition, the impact of fraud on the impoverished is often much greater, both in a personal and social sense.

6. Has the defendant been afforded an opportunity to resolve the dispute and has he failed to bargain in good faith?

If it appears that the defendant has been given a reasonable opportunity to resolve the matter and has not bargained in good faith, this is a factor that should be considered in deciding whether to commence litigation rather than continue to attempt to resolve the matter through negotiation.

7.3 Finalizing Evidence.

Having considered these criteria there are a number of steps the district attorney might take to finalize the evidence for purposes of preparing legal proceedings.

7.31 Recontact With Complainant.

A considerable period of time may have passed since your last contact with the complaining witness due to attempts at negotiation or correspondence with the respondent. Before filing any legal proceeding the complainant should be recontacted to determine 1) whether the matter has been privately settled with the respondent, 2) whether the complainant has retained the necessary documents, 3) whether he is willing to testify at trial, and 4) whether he possesses a clear recollection of the facts of his complaint. As in criminal cases, it is also possible that the complainant's story will change once he realizes that he will have to appear on the stand and testify. It may be wise, therefore, to take a signed statement from the complainant to protect against any surprises at trial.

7.32 Search For Corroborative Witnesses.

One of the more important practical burdens of proof in fraud

cases is the one relating to a defendant's claim that his actions were a mistake or the result of a renegade salesman who has since been fired. The best refutation of this position is to show that the same set of circumstances occurred at different times with several customers being served by different salesmen. In addition to obtaining the names of customers through the discovery procedure set forth above, it is also possible to get other potential witnesses from your complainant. Often times your complainant has discussed his plight with other persons in the same situation but has been the only one with the initiative to report the matter to the authorities. It is also possible, of course, to get corroborative evidence through contact with other complaint receiving agencies such as the Better Business Bureau, Chamber of Commerce or various enforcement bodies such as the Departments of Justice and Agriculture.

7.33 "Shopping" Or "Testing" A Respondent.

At times a single complaint may indicate the existence of a sales practice which is consistently used by a fraudulent merchant. This would often be the case in situations where "bait and switch" or "low ball" tactics are being utilized. It is also found in automobile repair cases where evidence has tended to indicate that the merchant is attempting to provide unneeded repairs. The shopping or testing procedure quite simply involves setting up a controlled fact situation, or in the case of the automobile repair fraud a pretested vehicle, and thereafter contacting the merchant as a customer. If the fraudulent practice is followed by the merchant then the investigative personnel can

provide testimony which would be particularly valuable in rounding out the statements of prior witnesses whose memory may have failed them in certain respects. It also permits the investigator to ask certain pointed questions which could eliminate the defense of "mistake" on the part of the offending merchant.

7.34 Discovery Of Documents In Possession Of Respondent.

As stated, one of the primary difficulties in proving consumer fraud cases is convincing the judge that the fraudulent activity was not merely a mistake on the part of the respondent. In this respect the discovery of documents in the possession of the respondent can also be a valuable tool. Customer lists can provide the means for determining whether similar tactics have been utilized with others. It can also be used to examine sales documentation to determine whether an illegal course of conduct has been followed. For example, improper credit practices or refusal to sell highly advertised low price specials. If the merchant is anxious to prove his innocence often times this discovery can be secured voluntarily. If legal recourse is necessary then either an action must be started and civil discovery instituted or the Department of Justice or Agriculture can be contacted and a request made that the investigative powers available under sec. 100.18 be utilized.

7.4 What Type Of Procedure To Follow.

Once it is decided that an actionable complaint exists there still remain certain decisions regarding the advisability of starting the action and, if started, what type of procedure to follow.

7.41 Obtaining A Consent Judgment.

It is often to the advantage of both parties to settle matters through entry of a consent judgment prior to the filing of a formal complaint. To both prosecutor and prospective defendant it means saving the time and trouble of litigation and, to the defendant, it may also mean avoiding the stigma of adverse publicity of a trial.

As a result, the district attorney may wish to call the prospective defendant and his attorney in for a conference prior to commencing formal action. Usually this is accomplished by means of a letter to the prospective defendant setting forth the nature of the alleged violation and the potential civil remedies therefor. The letter should make it clear that the conference is being called as a courtesy to the defendant prior to the commencement of appropriate formal proceedings.

At this point the decision to commence formal action if a consent judgment cannot be agreed upon should already have been made and this decision should be communicated to the defendant at the outset of the conference to set aside any illusions that a lesser settlement (usually a voluntary assurance) can be obtained.

A consent judgment simply involves a stipulation between the parties for the entry of a judgment restraining the defendant from engaging in certain activities in the future, ordering him to make certain refunds and, in appropriate cases under sec. 100.26(6), ordering the payment of a civil forfeiture to the state. Once agreed upon, it is preceded by the filing of a summons and complaint to obtain the jurisdiction of the circuit court. The

stipulation usually contains:

- 1) Caption and formal recitations;
- 2) Name and address of defendant and the nature of his business activities;
- 3) A statement that the stipulation and judgment are for settlement purposes only, and do not constitute an admission that defendant has violated the laws of Wisconsin;
- 4) Date and signature of the stipulating parties and their attorneys.

The judgment should generally be framed in language broader than the activity in question. It should cover future activities both by agents and representatives of the defendant and through any corporations under the defendant's control. In addition, if the defendant is a corporation, it is generally a sound practice to include the officers of the corporation in their individual and corporate capacities to avoid possible evasion of the judgment.

Even after commencement of formal proceedings, the consent judgment may be a satisfactory resolution of the case. Usually one party or another initiates settlement discussion prior to trial. Whether a consent judgment is then acceptable depends, of course, upon an assessment of the strengths and weaknesses of the case at hand. Needless to say, if the district attorney has spent substantial time during the pretrial stages building a strong case, a stipulated judgment may not be in the public interest.

It should be made clear to the defendant that the consent judgment is a matter of public record and that, therefore, certain publicity may be involved. Moreover, it should be made clear that other state and local enforcement officials will be notified of

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the consent judgment. This is necessary because of the possibility that the defendant might continue the prohibited activities in other areas of the state. Finally, the penalties for violation of the consent judgment should be clearly spelled out to the defendant.

The appendix contains a sample form of a consent judgment.

7.42 The Temporary Injunction.

One of the remedies provided under sec. 100.18(11)(d) is the temporary injunction. In cases involving what might be termed "fly by night merchants," this remedy is particularly effective since the necessary papers can be drawn up in short order and can be served upon the defendant without inordinate delay. This remedy is also helpful in cases where the defendant is likely to leave the jurisdiction or dissipate the money he receives beyond the reach of the court. It should be noted however that from a practical standpoint, losing a motion for temporary injunction does have an effect on the posture of the ultimate litigation. Care should be exercised so that a solid prima facie case exists before requesting the temporary injunction. (See sec. 8.51 regarding elements of proof with respect to temporary injunctions.)

7.5 Litigation.

Litigation of consumer cases does not differ materially from the litigation of other civil matters, with the one possible exception that contact with complaining witnesses should be continuing. Oftentimes witnesses are reluctant to testify against a merchant who has, since the case has begun, returned their money

and satisfied their complaint. Unless the witnesses are made aware of this fact at an early stage problems may arise at trial. Another problem with witnesses is the tendency of a witness to exaggerate his claim due to the fact that his economic well being is involved. Care should be exercised in cross-examining this witness prior to trial to determine the credibility of his testimony. In addition, many concepts of consumer fraud law vary from common law contract and tort theories. The judge may well be unfamiliar with these concepts and care should be exercised in fully setting them forth to the court. A good vehicle for this is the trial brief submitted to the court prior to the taking of any testimony.

CHAPTER VIII

PROCEDURAL LAW

8.1 Introduction.

Along with the substantive law decisions discussed above, there are certain procedural law matters that can arise either in making the litigation decision or during the litigation itself. This chapter contains suggestions on a range of issues that may confront the prosecutor in handling a consumer case under sec. 100.18 (injunction and restitution to injured consumers) and sec. 100.26 (civil forfeiture and criminal penalties).

8.2 Jurisdiction Over Out Of State Defendants.

Generally, personal jurisdiction can be obtained against a defendant who is not physically within Wisconsin if he has had certain minimum contacts with the state so that the maintenance of the suit does not offend traditional concepts of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310 (1945). Wisconsin has codified this concept in its "long-arm" statute, sec. 801.05. And see Zerbel v. H. L. Federman & Co., 48 Wis.2d 54, 179 N.W.2d 872 (1970), for a discussion of the factors which the court will consider in determining whether there exist sufficient grounds to find jurisdiction.

In State of Wisconsin v. Advance Marketing Consultants, Inc. & Howard Ginsburg, 66 Wis.2d 706, 225 N.W.2d 887 (1975), the Wisconsin Supreme Court considered the sufficiency of forum contacts of a nonresident corporate officer in an action commenced to enjoin deceptive advertising under sec. 100.18(1). The court

found that the placing of advertisements in newspapers circulated in Wisconsin, the contacting of persons responding to these advertisements and the taking of earnest money deposits constituted an act or omission within the state by the defendant and the claim that members of the public have been and will in the future be misled amounted to a claim of injury to person or property that allegedly arose out of the local act or omission. Utilizing the reasoning of several recent federal cases that found personal jurisdiction over nonresident corporate officers and individual defendants who lent their name to the promotion of an alleged fraud or an illegal venture or who received benefits as a result thereof, the court found Ginsburg amenable to the jurisdiction of the court.

In Heraly v. Victor Products Corporation, 282 F. Supp. 351 (E.D. Wis. 1968), at 353, which dealt with a Maryland Corporation that maintained no corporate office in Wisconsin but did have a salesman traveling about the state contacting potential customers, the court held that this foreign corporation had "... sufficient contacts with this state so that it is amenable to service of process by the methods prescribed by the Wisconsin Statutes for foreign corporations."

The court in Lau v. Chicago & N. W. R. Co., 14 Wis.2d 329, 334, 111 N.W.2d 158 (1961), stated that where a nonresident defendant has been properly served with process:

"... 'due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional

notions of fair play and substantial justice."'"

The court in Sun-X Glass Tinting of Mid-Wisconsin v. Sun-X Internat'l., 227 F. Supp. 365 (W.D. Wis. 1964), held that a nonresident corporation which solicited and procured distributor-dealer contracts in Wisconsin on which actions were brought was doing business in Wisconsin as respects Wisconsin plaintiffs, and had sufficient minimal contacts to be amenable to process.

The court stated at 371 that:

"... [the company's] activities indicate a concerted effort to set up a marketing system in Wisconsin, and elsewhere, for its product. Numerous trips to this state, the expenditure of money here in the course of its solicitation, plus the actual establishment of dealer-distributors and the sale of its product in this state, satisfactorily indicates that the defendant engaged in acts by which it purposefully availed itself of the privilege of doing business within this state, thus invoking the benefits and protection of its laws. The defendant has at least the required minimal contacts with Wisconsin."

See also Doug Sanders Golf Intercontinental of Southwestern Wisconsin, Inc. v. American Manhattan Industries, Inc., et al., 359 F. Supp. 918 (E.D. Wis. 1973); Paulos v. Best Securities, 260 Minn. 283, 109 N.W.2d 576 (1961).

Recent law in other states also supports the proposition that businesses operating solely interstate and solely by mail may be in some cases subject to the state's police power. In the leading case of State of Washington v. Reader's Digest, 81 Wash.2d 259, 501 P.2d 290 (1972), App. Dism. (1973), 411 U.S. 945 (1973), the attorney general sought an injunction against Reader's Digest for mailing 200,000 direct mailers to Washington residents. The

mailers constituted a lottery under Washington law. The Supreme Court of Washington ruled that the state did have jurisdiction over Reader's Digest, and the United States Supreme Court dismissed the appeal for want of a substantial federal question.

8.3 Pleading - Generally.

As will be noted from the sample complaints in the Appendix of this handbook, care should be taken to make the complaint as general as possible while assuring that it still performs the function of apprising the defendant of the nature of the charge. This notice type pleading is not used to keep the names and addresses of those individual complainants from the defendant. Rather it is because once a consumer protection action has been started, more complainants or prospective claimants often come forward who should be included in the lawsuit. If the names, addresses and specifics of each individual consumer transaction are spelled out in the complaint, the complaint could be limited to them unless it was amended each time a new complainant comes forward. Clearly this would create an impossible situation.

The foregoing notice type pleading in a consumer protection lawsuit brought by an enforcement official has been specifically upheld in People v. Superior Court of Los Angeles County (Jayhill Corp.), 107 Cal. Rptr. 192, 507 P.2d 1400 (1973), which involved a request for an injunction, civil penalties and restitution to injured customers of the defendant. The Jayhill holding appears to be in accord with sec. 802.02(5)(a), which states that each averment of pleading shall be simple, concise, and direct. And see First Credit Corp. v. Myricks, 41 Wis.2d 146, 163 N.W.2d 1

(1968); State v. Zillman, 121 Wis. 472, 98 N.W. 543 (1904); Murray v. McGarigle, 69 Wis. 483, 34 N.W. 522 (1887).

The courts have also shown some hesitancy in granting a motion to make more definite and certain where the information is more within the knowledge of defendant than plaintiff. See Cheney v. The Chicago Madison and Northwestern Railroad, 75 Wis. 223, 43 N.W. 1152 (1889). A more general policy argument for denying such a motion can be made by contrasting the functions of pleading and discovery. As stated in 61 Am. Jur. 2d, Pleadings sec. 4 (1972), "The broad general principle of pleading is that ultimate issuable facts, as distinguished from evidentiary facts, and conclusions of law must be pleaded...." If the defendant can reasonably be expected to comprehend the nature of the charge, no more should be demanded. Detailed information should not burden the pleadings especially when discovery will do the job.

8.4 Pre-Trial Discovery - Interrogatories.

The use of written interrogatories pursuant to sec. 804.08 can be an effective discovery tool once an action has been started. Such interrogatories may be served on any party and must be answered within the period designated by the party submitting the interrogatories. This period must not be less than 30 days.

The interrogatories may cover relevant, non-privileged matter including the location and custody of books and documents and the identity and location of persons having knowledge of any discoverable matter. Matters which may be discovered before trial would include: names, addresses and positions held by employees and former employees; names and addresses of customers within a

certain time framework; the description and amount of advertising done; the number and amount of sales made, etc. This information is particularly helpful to determine the scope of restitution requested and often results in discovery of additional witnesses to aid the state's case.

It is important to remember that while consumer protection actions under secs. 100.18 and 100.26(6) are civil in nature, there may also be criminal penalties applicable for the same acts. (Theft by fraud or the penalties of sec. 100.26(6) for intentional violations of General Orders.) This is mentioned because the privilege against self-incrimination may be raised by defendants when served with interrogatories even though the instant action is purely civil. It is clear, however, that a corporation is not entitled to the privilege against self-incrimination. See United States v. White, 322 U.S. 694 (1944), and Wilson v. United States, 221 U.S. 361 (1911). If the interrogatories are addressed to the corporate defendant only, self-incrimination cannot be claimed even by the individuals who are co-defendants and who may be incriminated by the corporation's answers. A summary of this position is given by 4A Moore's Federal Practice 33-144, note 12 (1971 ed.):

"A corporation cannot take advantage of the fact that individual officers may be incriminated by the answers. It must find an agent who will not be so incriminated, and he must give what information the corporation may have."

See also: United States v. 48 Jars, More or Less, Etc., 23 FRD 192 (1958), and United States v. 42 Jars "Bee Royal Capsules", 162 F. Supp. 944 (D.C. N.J. 1958). So, when using interrogatories, it

is advisable to address them to the corporate defendant only.

8.5 The Injunction.

For an injunction authorized by statute, the usual equitable grounds of irreparable harm or inadequate remedy at law need not be shown. When a statute like sec. 100.18 provides for an injunction as the remedy for violation, only proof of the statutory elements of deceptive, misleading or untrue representations need be shown in order to obtain an injunction. The general rule is given by 42 Am. Jur. 2d, Injunction sec. 38 (1969):

"Where an injunction is authorized by statute and the statutory conditions are satisfied, the usual grounds for injunctive relief need not be established."

Although there is no Wisconsin law in this area, the precedent is well-established at the federal level. For cases holding that only statutory conditions must be fulfilled for an injunction provided for by statute, see Securities and Exchange Commission v. Torr, 87 F.2d 446 (2nd Cir. 1937); Henderson v. Burd, 133 F.2d 515 (2nd Cir. 1943); Walling v. Builders Veneer and Woodwork Co., 45 F. Supp. 808 (E.D. Wis. 1942).

8.51 Temporary Injunction.

Under sec. 100.18(11)(d), the Department of Agriculture, the Department of Justice or any district attorney may commence an action in the name of the state to restrain by temporary or permanent injunction any violation of sec. 100.18. Since the sole enforcement remedies for deceptive, untrue, or misleading representations under sec. 100.18 are aimed at stopping the defendants illegal conduct, the sooner the conduct is stopped the

better. In this light, a temporary injunction should be considered in almost all cases in which there is a likelihood of continued deceptive conduct pending the final resolution of the action. The legislature had this in mind when it specifically provided for a temporary injunction in the statute. See Shearer v. Congden, 25 Wis.2d 663, 131 N.W.2d 377 (1964), and Mogen David Wine Corp. v. Borenstein, 267 Wis. 503, 66 N.W.2d 157 (1954).

There are, however, certain factors with regard to temporary injunctions that are not dispensed with by statute. The granting of a temporary injunction is still within the discretion of the trial court and is granted or refused on general equitable principles. Shearer v. Congden, supra; Codept, Inc. v. More-Way North Corp., 23 Wis.2d 165, 127 N.W.2d 29 (1964). Plaintiff's pleadings and affidavits, on which the court's decisions are based, usually must show a reasonable probability of the state's ultimate success. Welch v. Chippewa Sales Co., 252 Wis. 166, 31 N.W.2d 170 (1948); Halsey, Stuart & Co. v. Public Service Commission of Wisconsin, 212 Wis. 184, 248 N.W. 458 (1933). In some cases, however, the court has granted a temporary injunction even though there is a conflict between the pleadings and supporting affidavits of the parties. See Dunn v. Acme Auto and Garage Co., 168 Wis. 128, 169 N.W. 297 (1918); Vredenburg v. Safety Devices Corp., 270 Wis. 36, 70 N.W.2d 226 (1955).

The temporary injunction is an integral part of the district attorney's litigation responsibility. This remedy has specifically been provided for by sec. 100.18(11)(d).

8.52 Discontinued Acts May Be Enjoined.

The voluntary cessation of allegedly illegal practices does not deprive a court of the power to hear and determine a sec. 100.18 injunction action. The freedom with which a defendant can return to his practices, together with the public interest in having the legality of the practices settled, militates against a mootness conclusion. The defendant's cessation and his disclaimer as to its resumption are but two factors to be considered in determining the appropriateness of the injunction. See McFarland v. Lindekugel, 107 Wis. 474, 83 N.W. 757 (1900); Clancy v. Geb, 126 Wis. 286, 104 N.W. 746 (1905); Senn v. Tile Layers Protective Union, Local No. 5, 222 Wis. 383, 268 N.W. 270 (1936); Bailey v. Patterson, 323 F.2d 201 (5th Cir. 1963); Walling v. Builders Veneer and Woodwork Co., 45 F. Supp. 808 (E.D. Wis. 1942); Doherty, Clifford, Steers & Edenfield Inc. v. FTC, 392 F.2d 921, 927 (6th Cir. 1968); Giant Food, Inc. v. FTC, 322 F.2d 977, 986-87 (D.C. Cir. 1963), cert. denied, 376 U.S. 767 (1964).

8.53 The Injunction May Be Broader Than The Specific Offense.

An injunctive order may be broad enough to include more than just the specific offense that precipitated the action. However, the order cannot enjoin the violations of the statute in general terms (like "all further violations of sec. 100.18") because this would compel the defendant to conduct himself and his business under jeopardy of punishment for contempt for violating the general statute. 142 Am. Jur. 2d, Injunctions sec. 296 (1969).

This area, between the extremes of a general injunction and an injunction only for the specific illegal conduct, has been

discussed at both the state and federal level. The one theme running through all of the cases is that the purpose of an injunction is not to punish for past offenses but to prevent illegal practices in the future. Northern Wis. Co-operative Tobacco Pool v. Bekkedal, 182 Wis. 571, 197 N.W. 936 (1924); Eugene Dietzgen Co. v. FTC, 142 F.2d 321 (7th Cir. 1944). To this end, the injunction should be broad enough to stop the practice at once and for all time and also to prevent evasion of the order by engaging in similar related practices.

The cases extend the injunction to "related illegal acts." As said in National Labor Relations Board v. Express Publishing Co., 312 U.S. 426, 437 (1941):

"It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts"

The policy behind allowing a broadly framed injunction was given by the Wisconsin Court in Northern Wis. Co-operative Tobacco Pool v. Bekkedal, 182 Wis. 598, 197 N.W. 936 (1924).

"... a court cannot look into the future and divine all of the practices which might be resorted to, to interfere with respondents business, and an order which attempted to detail the various acts and practice prohibited would necessarily be construed as permitting all not specifically prohibited, and deny to the respondent full and complete remedy to which it is entitled to. We think the [injunctive] order must necessarily be in general terms." (Emphasis added.)

The court in Bekkedal restrained the defendants from interfering "in any manner whatever" with plaintiff's business.

8.54 Liability Of Parent Corporations For Activities Of Their Subsidiaries.

The responsibility of a parent corporation for the activities

of its subsidiaries has long plagued agencies involved in protecting the consumer.

The law in this area has been clarified by the case of PF Collier and Son Corp. v. FTC, 427 F.2d 261 (6th Cir. 1970). In this case the parent corporation was held liable for the deceptive acts of its wholly owned subsidiaries. The court relaxed the usual strict rule that corporate entities are not liable for the acts of its subsidiaries, and said:

"A strict adherence to common law principles is not required in the determination of whether a parent should be held for the acts of its subsidiary, where strict adherence would enable the corporate device to be used to circumvent the policy of a public interest statute, such as section 5 of the FTC Act."

The same reasoning can be used by the local prosecutor in any sec. 100.18 injunction action. Section 100.18 is a public interest statute involving consumer protection concerns. This federal case should serve as strong precedent for getting at parent corporations for the illegal acts of their subsidiaries.

8.55 A Distributor Can Be Held Liable For The Acts Of His Agents.

Where sales are made by house-to-house canvassers, employed by a distributor, the distributor can be held fully responsible for acts of the agents, including statements and representations made by them within the scope of their employment. It does not matter that the distributor may have taken some steps to dismiss or discipline agents who used misleading and deceptive tactics. See FTC v. Standard Education Society, 148 F.2d 931 (2nd Cir. 1945), and Perma-Maid Co., Inc. v. FTC, 121 F.2d 282 (6th Cir. 1941). To hold the distributor responsible for the acts of his

"agents," the fact of agency relationship must of course be established. There may also be a question of whether the salesmen are "agents" or independent contractors. See Dettman v. Nelson Tester Co., 7 Wis.2d 6, 95 N.W.2d 804 (1959), and Meyers v. Matthews, 270 Wis. 453, 71 N.W.2d 368 (1955).

Even if the salesmen are claimed to be independent contractors the distributor may be liable for the acts of one salesman, under theories of estoppel or ratification. The conduct of an employer may be such that the law will not permit him to assert that one performing certain work for him is independent of his control. See 41 Am. Jur. 2d, Independent Contractors sec. 4 (1968).

The fact that a wrongdoer is an independent contractor will obviously not preclude recovery from his employer if it appears that the latter notified or adopted as his own the particular act which produced the injury. See 41 Am. Jur. 2d, Independent Contractors sec. 36.

A similar problem relates to covering individual corporate officers in injunctive orders. The courts have generally upheld inclusion of the corporate officers of a corporation, whether a sham or not, who formulated, directed and controlled the policies and practices of the corporation. See Standard Distributors, Inc. v. FTC, 211 F.2d 7, 15 (2nd Cir. 1954); FTC v. Standard Education Society, 302 U.S. 112 (1937).

8.6 Restitution To Injured Consumers.

As an ancillary remedy to a request for an injunction regarding the violation of sec. 100.18 of the Statutes, which

prohibits untrue, deceptive or misleading statements or representations, the law permits an action for the restitution of consumer losses. Section 100.18(11)(d) enables the Department of Agriculture, the Department of Justice or any district attorney to commence an action for injunction and restitution.

This statutory provision reflects legislative concern for the considerable economic injury caused to groups of consumers who individually would be unable to litigate their own claims because of their size and because of legal defenses such as the parole evidence rule. Furthermore, the restitution section provides a meaningful economic deterrent to fraudulent businessmen who would consider an injunction a small price to pay for retaining previously acquired economic benefits secured at the expense of a defrauded consumer.

Statutes similar to Wisconsin's have been enacted in a large number of states and have been upheld in recent State Supreme Court decisions. See Kugler v. Romain, 58 N.J. 522, 279 A.2d 640 (1971); Kugler v. Koscot Interplanetary, Inc., 120 N.J. 216, 293 A.2d 682 (1972), and People v. Superior Court of Los Angeles County (Jayhill Corp.), 507 P.2d 1400 (1973).

The underlying concept that restitution is a necessary ancillary remedy to an enforcement action for injunction was clearly and explicitly recognized in Porter v. Warner, 328 U.S. 395 (1946).

A restitution remedy such as this is primarily an equitable proceeding and the court can fashion such remedies as necessary to provide justice for defrauded claimants as well as an effective

and meaningful deterrent against continued similar activities.

Wisconsin's position on equitable proceedings coincides with its general position that once equity jurisdiction attaches the court may make full or complete relief to all parties, including the recovery of damages. Fullerton Lumber Co. v. Torburg, 274 Wis. 478, 80 N.W.2d 461 (1957), Mitchell Realty Co. v. West Allis, 184 Wis. 352, 199 N.W. 390 (1924). The restitution remedy is, of course, quite different from any contract remedy of the victim of the deceptive practice, since it is based upon a violation of sec. 100.18 rather than breach of contract. See Perma-Stone Corp. v. Merkel, 255 Wis. 565, 39 N.W.2d 730 (1949). In addition, it is well-settled that one of the most important grounds for equitable intervention is fraudulent misrepresentation or concealment, 27 Am. Jur. 2d, Equity sec. 20 (1966) at page 542.

8.61 Determining The Appropriate Measure of Restitution.

In the consumer area the measure of damages for deceptive practices is at best confusing. In the simple case of nondelivery of merchandise, the pecuniary loss the statute speaks of can easily be seen as the deposit the consumer paid; in a warranty case, it is the cost of repairs. However, in a "bait-and-switch" case it may be the difference between the price of the "bait" and the higher priced model the consumer was switched to. It may also be the dealer's profit on the more expensive machine. Or should the consumer be able to get all his money back if he returns the item he has switched to? See Perma-Stone v. Merkel, 255 Wis. 565, 39 N.W.2d 730 (1949), for the proposition that contracts made in violation of a statute or general order are void. Or, perhaps,

there are no pecuniary losses at all. In any event, in the problem case, like "bait-and-switch or "free gift" where there is no readily apparent measure of losses, it is obvious that the enforcement official should seriously weigh the value of a pecuniary loss allegation against the prospects for an ultimate recovery.

It should be noted that sec. 100.18(11)(d) requires proof of a causal connection between the defendant's illegal activity and the loss the consumer suffers. The statute says the court may restore "to any person any pecuniary loss suffered because of the acts or practices involved in the action."

It should also be remembered however, that the restitution provisions of this statute are not only for the purpose of restoring money to injured consumers but also are designed to create an effective deterrent from continued illegal activity. The court is entitled to create and form its own equitable remedies, consistent with the statute, to effectively restore the status quo ante. See People v. Superior Court of Los Angeles County (Jayhill Corp.), 507 P.2d 1400 (1973), at 1402. It is a further equitable principle that the wrongdoers should not be able to take advantage of technical difficulties in proving actual damages on the part of the restitution claimant. As stated in Kugler v. Romain, 58 N.J. 522, 279 A.2d 640 (1971), at page 647:

"Denial of such relief would be unfortunate not only in this case, but it would operate as a serious impairment to the deterrent effect of the sanctions which we believe underlies the Consumer Fraud Act."
(Emphasis added.)

8.62 Mechanics Of Restitution.

Section 100.18(11)(d), Stats., clearly states that the award of restitution is in the "discretion" of the trial court. It was previously stated that the court in an equitable action such as this should have the right to "do equity and to mould each decree to the necessities of the particular case. ..." Porter v. Warner, 328 U.S. 395 (1946), at 398.

Specific procedures in a particular case will depend considerably on factors such as the type of fraud involved, the number of complainants, and the amount of restitution in each case. Of additional concern is the solvency of the defendant and availability of assets.

The primary question to reach first is the size of the group of people that may be claiming restitution. In order to fully ascertain this fact, discovery of a defendant may be necessary. This could entail a discovery of the defendant's business records or the deposition of his salesmen or office personnel. If the number of complainants is relatively small, the court may be willing to hear the testimony as part of the general trial proceeding. Some of these witnesses may have been utilized by the state as a basis for the injunction portion of the action.

If the number of witnesses increases, the fact situations become more complex and it may be necessary to utilize other procedures. In cases where there are numerous claimants, a procedure whereby the claimants are notified and asked to submit affidavits setting forth the basis for their claim may be the most convenient for the court and the parties. This affidavit procedure would eliminate those potential claimants who did not

care to participate in the action and establish a basis for the claim which could then be challenged by the defendant if it disagreed with any of the facts alleged in the affidavit. If the disagreements could not be resolved, the court would have to establish some type of hearing to deal with the disputed issues.

It may also be advisable to ask the court to appoint a referee pursuant to sec. 805.06. This may enable the court to delegate some of its fact finding responsibility. This may be particularly valuable in cases where extensive expert testimony may be needed on an individual fact situation. It would appear that sec. 814.35(3) of the Wisconsin Statutes enables the cost of the referee to be reimbursed to any county out of the state treasury.

It is clear that the statute does not require the court to grant restitution to all consumers. At such time as it would appear that the total restitution would be unwarranted or unnecessarily burdensome, the court may decide, in the interests of equity, to restrict its orders and judgments to persons fitting into a certain category.

The ordinary procedure would be for the court to order the defendants to provide restitution to persons adjudged entitled to restitution. This order could be enforced by contempt or by refusing the defendant the right to further proceed in the action until complied with. Further devices available to the court would be to enter a judgment on behalf of the state and then order the state to turn over its proceeds to the persons entitled to restitution. It may also be possible for the court to order a

restitution claimant into the action under sec. 803.03 and make him a party so the judgment can run in his favor.

Because restitution statutes are relatively new the procedures surrounding the granting of restitution by the court have not yet been fully developed. Consequently, the development of particular remedies in a restitution proceeding will be dependent upon the ingenuity of the prosecuting attorney and the equitable procedures developed by the court.

8.7 Sec. 100.26(6) -- Civil Forfeitures For Unfair And Deceptive Sales Schemes.

The authority of the district attorneys and the Department of Justice to seek civil forfeitures up to \$10,000 per violation is an important enforcement tool in compelling compliance with injunctions issued under sec. 100.18 and special or general orders issued under sec. 100.20.

The civil forfeiture authority was enacted to provide a stiff monetary penalty for noncompliance with specific injunctions or orders without the attendant criminal burdens of pleading and proof. People v. Superior Court of Los Angeles County (Jayhill Corp.), 107 Cal. Rptr. 192, 507 P.2d 1400 (1973); First Credit Corp. v. Myrichs, 41 Wis.2d 146, 163 N.W.2d 1 (1968); Kugler v. Romain, 58 N.J. 522, 279 A.2d 640 (1971); U.S. v. St. Regis Paper Co., 355 F.2d 688 (2d Cir. 1966). And see ch. 288 for general provisions concerning forfeiture actions and collections.

In determining the amount of civil forfeitures under sec. 100.26(6), the courts will, of course, primarily focus upon the number and duration of the violations. The court will also

consider the number of people reached, the financial resources of the defendants, and the general conduct of the defendants. U.S. v. Wilson Chemical Co., Inc., 1962 Trade Cases, par. 70, 478 (D.C. Pa. 1962); U.S. v. University Wool Batting Corp., 1961 Trade Cases, par. 70, 168 (S.D. N.Y. 1961); U.S. v. J. B. Williams Co., Inc., 354 F. Supp. 521 (S.D. N.Y. 1973).

There are on occasion mitigating circumstances which will result in a reduction of the civil forfeiture. The failure of officials to enforce a violation for a period of time even though they were aware of the violation or the fact that the individual or corporation has practiced long and faithful observance of an order which it has now violated are factors which have served to mitigate damages. American Greetings Corp. v. U.S., Trade Cases Par. 69587 (6th Cir. 1959); U.S. v. Home Diathermy Co., Inc., 1960 Trade Cases Par. 69, 601 (S.D. N.Y. 1959).

APPENDIX A

[When a consumer complaint is received by letter or phone, this letter can be routinely sent along with the complaint questionnaire to be filled out and returned by the complainant.]

Dear

Re:

Thank you for contacting my office concerning the above matter.

In order to assist us in fully understanding your complaint, I request that you complete the enclosed questionnaire and return it promptly to this office.

As you may know, the District Attorney cannot give you legal advice or act as your private lawyer. Consequently, you should consider consulting your own lawyer regarding this matter even though you are sending a complaint to my office.

If you would prefer to have someone assist you in completing the questionnaire, please check the space provided below, give us your telephone number and calling hours, and return this letter to me at the above address.

Sincerely yours,

District Attorney

[] Assistance Requested
Telephone Number _____

Call me at _____ a.m.
p.m.

Enclosures

[Acknowledgement letter upon return of complaint
questionnaire]

Dear

Re:

Thank you for returning the questionnaire I sent you in
connection with your recent complaint.

We will fully review your complaint and will advise you
of any action taken by this office.

Thank you for bringing this matter to my attention.

Sincerely yours,

District Attorney

[Referral letter used to transfer a complaint which falls under the laws enforced by another agency.]

Dear

Re:

Enclosed is a complaint we recently received which appears to be of a nature that should be reviewed by your agency.

Would you kindly have a member of your staff review this complaint to determine whether there has been a violation of any of the laws that you administer or enforce. We would appreciate being advised in writing of any formal action taken in this matter, as well as the final disposition given this complaint by your office.

By copy of this letter, we are advising the complainant that we are referring this complaint to your agency for appropriate handling.

Please feel free to contact us if you have any questions regarding this matter. Thank you for your cooperation.

Sincerely yours,

District Attorney

cc:

Enclosure

[No jurisdiction letter used when the complaint either has no merit or is one in which the District Attorney has no authority to act.]

Dear

Re:

We have reviewed your recent complaint regarding the above matter.

Although we understand the concerns expressed in your complaint, the facts do not presently warrant further action within the authority of the District Attorney.

The District Attorney cannot provide legal advice or represent you as your personal lawyer. Consequently, if you wish to pursue this matter, we suggest that you consider the following alternatives:

- 1) Personally negotiating your complaint or dispute;
- 2) Discussing this matter with a lawyer in private practice;
- 3) Taking action in Small Claims Court if it would have jurisdiction over your complaint or dispute. (A Small Claims Court brochure is enclosed for your information.)

We wish to express our appreciation for your cooperation in bringing this matter to our attention. It is only through the receipt of such information that we can effectively do our job of enforcing Wisconsin's consumer fraud laws.

Sincerely yours,

District Attorney

[Letter to respondent to advise him of the complaint filed against him and ask for his response to the complaint. Once his response has been received a decision can be made as to what actions should be taken.]

Dear

Re:

We have recently received the enclosed complaint from the above party.

We recognize that there can be two sides to every problem. We would, therefore, appreciate receiving your written explanation of all the facts concerning this dispute within ten days. We would also appreciate receiving your views and intentions concerning a satisfactory resolution of this complaint.

Thank you for your cooperation.

Sincerely yours,

District Attorney

[Adjustment letter used to advise the complainant that the respondent has promised to make an adjustment. This is a good way to follow up on such promises to see if they are kept.]

Dear

Re:

The above-named firm has advised this office that your complaint has been adjusted.

In the event that the complaint has not been properly adjusted, please write us within the next ten days.

We wish to express our appreciation for your cooperation in bringing your complaint to our attention. It is only through the assistance of concerned citizens that we can effectively do our job of enforcing Wisconsin's consumer fraud laws.

Sincerely yours,

District Attorney

[Follow up letter sent when there has been no response to the first letter to the respondent.]

Dear

Re:

We have yet to receive a response to our letter of _____ (copy enclosed) relating to the above referenced matter. May we have your reply on or before _____.

In the event no reply is received, we will have no alternative but to proceed upon the uncontradicted statements in the complaint. Formal proceedings, if warranted, will be based upon violations of Wisconsin's trade practice laws.

Sincerely yours,

District Attorney

Enclosure

[Letter sent to the complainant indicating that the respondent will not adjust the complaint and that there is not a sufficient basis to commence formal legal proceedings.]

Dear

Re:

We have reviewed your file as well as the response of the above firm to our inquiries concerning your complaint. It appears that the matter has not been resolved and that this firm does not feel that further adjustments are justified.

Because the facts of your complaint do not presently warrant enforcement action within the authority of the District Attorney, we are closing your file at this time. However, should subsequent complaints or evidence indicate an actionable pattern of illegal conduct by this firm, your complaint will again be reviewed for appropriate further action.

We cannot provide legal advice or represent you as your private lawyer. Consequently, if you wish to pursue this matter, we suggest that you consider the following alternatives:

- 1) Personally negotiating your complaint or dispute;
- 2) Discussing this matter with a lawyer in private practice;
- 3) Taking action in Small Claims Court if it would have jurisdiction over your complaint or dispute. (A Small Claims Court brochure is enclosed for your information.)

We wish to express our appreciation for your cooperation in bringing this complaint to our attention. It is only through the assistance of concerned citizens that we can effectively do our job of enforcing Wisconsin's consumer protection laws.

Sincerely yours,

District Attorney

[Letter sent to respondent setting a conference where preliminary investigation indicates an actionable violation of law. This approach should not be used where there is reason to believe that the respondent will not voluntarily respond to such a letter.]

Dear

Re:

This office has completed its initial investigation of the business practices of the above captioned firm.

This investigation has revealed certain facts indicating violations of Wisconsin law, specifically _____.

I would like to give all interested parties an opportunity to discuss the resolution of this matter. I have, therefore, called a meeting for this purpose on _____ at _____ in my office at _____, Wisconsin. You are invited to have an attorney present with you at the meeting.

I would appreciate your bringing to the meeting a list of all customers of your company since _____. I would also appreciate copies of all promotional materials and contracts used in the conduct of your business operation in Wisconsin.

Sincerely yours,

District Attorney

COMPLAINT QUESTIONNAIRE

- 116 -

- ① PLEASE ATTACH COPIES OF ANY PAPERS INVOLVED—such as contracts, bills, advertisements, receipts, financing papers, etc. If you want the documents returned to you, please check here. ☐

PLEASE PRINT

②

Your Name		
Address		
City	County	State
Zip Code	Area Code	Home Phone
		Work Phone

③

Complaint Against		
Address		
City	County	State
Zip Code	Area Code	Telephone

- ④ FIRST CONTACT BETWEEN YOU AND FIRM:
(Check most appropriate one.)
- ☐ I responded to a written advertisement.
 - ☐ I responded to a radio/TV ad.
 - ☐ I received information in the mail from the firm.
 - ☐ I received a telephone call from the firm.
 - ☐ I contacted or went to firm's place of business.
 - ☐ Firm contacted me in person at my home.
 - ☐ Firm contacted me in person away from my home (such as at your place of employment).

- ⑤ WHERE DID THE TRANSACTION TAKE PLACE?
(Check most appropriate one.)
- ☐ At my home.
 - ☐ At the firm's place of business.
 - ☐ Away from the firm's place of business (for example, at your place of employment, a convention, etc.)
 - ☐ Over the telephone.
 - ☐ By mail.
 - ☐ There was no transaction.

⑥ DATE OF TRANSACTION: _____ ⑦ DID YOU SIGN A CONTRACT? _____

⑧ HOW WAS THE TRANSACTION FINANCED? CASH _____, INSTALLMENT SALE PLAN _____, CREDIT CARD _____, LOAN _____, OTHER _____

⑨ WITH WHOM WAS IT FINANCED? _____

⑩ NAME OF SALESPERSON OR PERSON YOU DEALT WITH? _____

⑪ HAVE YOU CONTACTED THE FIRM ABOUT YOUR COMPLAINT? _____

⑫ WITH WHAT OTHER AGENCY HAVE YOU FILED THIS COMPLAINT? _____

⑬ WHAT ACTION WAS TAKEN? _____

⑭ IS THERE A COURT ACTION PENDING OR COMPLETED? _____ WHERE? _____

⑮ PLEASE EXPLAIN THE ENTIRE CIRCUMSTANCES OF YOUR COMPLAINT: _____

PLEASE COMPLETE THE REVERSE SIDE OF THIS QUESTIONNAIRE ALSO

[Preliminary investigation letter used when sending a specific questionnaire to customers of a respondent in the course of an investigation.]

Dear

Re:

This office is currently conducting a preliminary investigation into the sales practices of the above captioned firm.

It is my understanding that you have recently been contacted by a representative of this company. This office is most interested in sharing your experience with this company.

For your convenience I have enclosed a questionnaire. I would appreciate it if you would take the time to fill this out and mail it back to me in the enclosed envelope. If you have a contract kindly include it with your completed questionnaire. I will be happy to make a copy of your contract and return the original to you upon request.

Thank you for your cooperation in this matter.

Sincerely yours,

District Attorney

Enclosure

[Sample Special Investigative Questionnaire dealing
with violations of Ag 110 and 127)

QUESTIONNAIRE

Re: ABC, Inc.

- 1) Your Name _____
- 2) Address _____
- 3) Home Telephone No. _____ Business Telephone No. _____
- 4) When and where were you first contacted by the above firm?

- 5) Name of the firm's representative? _____
- 6) How did the representative introduce himself? _____

- 7) What did he state his purpose was in calling at your home?

- 8) Who did he say he was working for or associated with? _____

- 9) Was any offer or representation made that you would get a
special price or discount?

[] Yes [] No

If so, please describe the circumstances of the offer or
representation. _____

- 10) Was any compensation offered to you if other homeowners in
your area bought from ABC, Inc., after seeing your home or
after you gave their names to ABC?

[] Yes [] No

If so, briefly describe the offer made. _____

- 11) Was any representation made concerning a guarantee for the home improvements?

[]Yes []No

If so, what was said about:

a) The coverage of the guarantee? _____

b) The length of the guarantee? _____

c) Who would bear the costs if any repairs became necessary? _____

12) Did you sign a contract? []Yes []No

13) Were you given a copy of the contract? []Yes []No

14) Were you given a written guarantee? []Yes []No

Please submit a readable copy of any contract or guarantee provided to you.

15) Were you asked to make final payment before the work was completed?

[]Yes []No

16) Did you sign any other documents either before, during or after the work was completed?

[]Yes []No

If you received a copy of these documents, please return with the questionnaire.

17) Was the contract assigned or sold to a financial institution or other third party?

[]Yes []No

If so, please indicate the name and address of the financial institution or third party. _____

18) Please set forth any other comments or information you wish to provide us about your dealings with ABC: _____

Date _____

Your Signature

[Complaint seeking injunction and restitution under
sec. 100.18(11)(d), Stats., for violations of sec. 100.18(1).]

STATE OF WISCONSIN CIRCUIT COURT _____ COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

COMPLAINT

[ABC, INC., a _____
corporation, and GLEN GYPSTER,
individually and as an officer
of said corporation, and SAM
SWINDLE, individually and as a
sales representative of said
corporation.]

Defendants.

The State of Wisconsin, by the District Attorney for
_____ County, brings this action against the
defendant(s) named herein and complains and alleges as follows:

1. This complaint is filed and these proceedings are
instituted under sec. 100.18(11)(d), Stats., to prevent and
restrain violations of sec. 100.18(1), Stats., and to obtain
the restoration of pecuniary loss suffered by Wisconsin citizens
as a result of the acts and practices herein set forth. The
State of Wisconsin Department of Justice has been informed
of the commencement of this action and of the relief sought
herein.

[List Defendants and Place of Residence or Business]

2. The defendant ABC, Inc., is a [foreign or domestic]
corporation doing business in Wisconsin with its principal

office and place of business at _____.

3. The defendant Glen Gypster is an individual whose business address is at _____. Defendant Gypster is the [president] of defendant ABC, Inc., and formulates, directs and controls the selling practices and policies of defendant ABC, Inc.

4. The defendant Sam Swindle is an individual who resides at _____. Defendant Swindle is a [sales representative] of defendant ABC, Inc., in _____ County.

5. When in this complaint reference is made to any statement, representation, act or practice of defendant ABC, Inc., such allegation shall be assumed to mean that the officers, agents, employees or representatives of said defendant did or authorized such statement, representation, act or practice.

6. When in this complaint reference is made to the statement, representation, act or practice of the defendants, such allegation shall be assumed to mean the statement, representation, act or practice of each defendant acting individually, jointly and severally.

[Description of Defendants Operations]

7. Defendants are engaged in the business of selling [name product or service]. Beginning at an exact date unknown to plaintiff at least from [date of first transaction complained of], defendants have solicited and continue to solicit residents of _____ County and other counties in the State of Wisconsin with offers to sell said [product or service].

[Defendants have attempted to market and sell their product by stating and representing to prospective purchasers that they are winners in a contest. As "Winners," they are entitled to receive the product as a "free" gift. After the prospective purchasers agree to accept the "free" product and sign a "receipt" therefor they discover that, in fact, they have signed an installment contract obligating them to pay more than \$450.00 to keep the product "up to date." Thus, the purchaser is required to pay \$450.00 for what was represented to be a "free" gift.]

8. That the foregoing statements and representations by defendants are untrue, deceptive and misleading and are unlawful and prohibited by sec. 100.18(1) of the Wisconsin Statutes.

9. That plaintiff is informed and believes that defendants have induced numerous Wisconsin residents to enter into contracts with defendants pursuant to the foregoing statements or representations, the exact number and identity of which are known to defendants but unknown to plaintiff at this time.

10. That plaintiff is informed and believes that defendants will continue to engage in the aforesaid violations of Wisconsin law unless enjoined therefrom.

Demand for Relief

Wherefore the State of Wisconsin demands judgment against said defendants as follows:

1. That the defendants, and all persons acting or claiming

to act on their behalf, be perpetually jointly and severally enjoined and restrained from conducting their business operations within this state in violation of sec. 100.18(1) of the Wisconsin Statutes.

2. That the court order the defendants to restore any pecuniary loss suffered by any person because of the acts or practices involved in this action pursuant to sec. 100.18(11)(d), Stats.

3. For such other relief as may be just and equitable;
and

4. For the costs and disbursements of this action.

Dated at _____, Wisconsin, this _____ day of _____, 19____.

District Attorney

County

Post Office Address:

[Complaint seeking a civil forfeiture under sec. 100.26(6) for a violation of an injunction issued under sec. 100.18 or an order issued under sec. 100.20.]

STATE OF WISCONSIN _____ COURT _____ COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

COMPLAINT

[ABC, INC., a _____
corporation, and GLEN GYPSTER,
individually and as an officer
of said corporation, and SAM
SWINDLE, individually and as a
sales representative of said
corporation.]

Defendants.

The State of Wisconsin, by the District Attorney for
_____ County, brings this action against the defendant(s)
herein and complains and alleges as follows:

1. This complaint is filed and these proceedings are
instituted under sec. 100.26(6), Stats., to recover civil
forfeitures for [either a violation of an injunction issued
under sec. 100.18, Stats., or a violation of a general or
special order issued under sec. 100.20, Stats.]

[List defendants and place of residence]

2. The defendant ABC, Inc., is a _____
_____ corporation doing business
in Wisconsin with its principal office and place of business
at _____.

3. The defendant Glen Gypster is an individual whose

business address is at _____.

Defendant Gypster is the [president] of defendant ABC, Inc., and formulates, directs and controls the selling practices and policies of defendant ABC, Inc.

4. The defendant, Sam Swindle, is an individual who resides at _____. Defendant Swindle is a [sales representative] of defendant ABC, Inc., in _____ County.

5. When in this complaint reference is made to any statement, representation, act or practice of defendant ABC, Inc., such allegation shall be assumed to mean that the officers, agents, employees or representatives of said defendant did or authorized such statement, representation, act or practice.

6. When in this complaint reference is made to the statement, representation, act or practice of the defendants, such allegation shall be assumed to mean the statement, representation, act or practice of each defendant acting individually, jointly and severally.

7. Defendants are engaged in the business of selling [name product or service]. Beginning at an exact date unknown to plaintiff but at least from [date of first transaction complained of], defendants have solicited and continue to solicit residents of _____ County and other counties in the State of Wisconsin with offers to sell said [product or service].

[Defendants attempt to induce the sale of their product through a so-called "customer friendship" program. Under

this program, an explanation of which is attached hereto as Exhibit "A" and incorporated herein, each person who purchases said product is entitled to receive a \$50.00 "commission" or "discount" from the purchase price for every "friend" referred by the customer who also purchases the product.]

[8. That the aforesaid plan or program is a method of sale where the defendants, as an inducement for a consumer sale, offer compensation to prospective buyers for the names of other prospective buyers. Such compensation is given or paid after the sale and, therefore, constitutes a violation of section Ag 121.02, Wisconsin Administrative Code.]

9. That plaintiff is informed and believes the defendants have entered into numerous consumer sales with Wisconsin residents pursuant to the foregoing acts or practices, the exact number and identity of which are known to defendants but unknown to plaintiff at this time.

10. That pursuant to sec. 100.26(6), Stats., defendants are indebted to the plaintiff in the amount of not less than \$100 nor more than \$10,000 for each and every violation of [Chapter Ag 121, Wisconsin Administrative Code.]

Demand for Relief

Wherefore, the State of Wisconsin demands judgment against said defendants as follows:

1. That pursuant to sec. 100.26(6), Stats., the court ordered the defendants to pay a civil forfeiture to the State of Wisconsin in the amount of ten thousand dollars (\$10,000)

for each violation of section Ag 121.02, Wisconsin Administrative Code.

2. For the costs and disbursements of this action;
3. For such other relief as may be just and equitable.

Dated at _____, Wisconsin, this _____ day
of _____, 19____.

District Attorney

County

Post Office Address:

[Interrogatories used for purposes of pretrial discovery pursuant to sec. 804.08.]

STATE OF WISCONSIN CIRCUIT COURT _____ COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

PLAINTIFF'S
INTERROGATORIES

[ABC, INC., a _____
corporation, and GLEN GYPSTER,
individually and as an officer
of said corporation, and SAM
SWINDLE, individually and as a
sales representative of said
corporation,]

Defendants.

To: ABC, Inc., Defendant
through its attorney:

Willie Bite
Attorney at Law
1000 Wisconsin Street
Madison, Wisconsin 53704

The following interrogatories are propounded by the State of Wisconsin (plaintiff) to ABC, Inc. (defendant) in the above captioned action and are to be answered under oath and within thirty (30) days after service hereof, pursuant to sec. 804.08, Stats.

Time Period: Each interrogatory calls for information for the period commencing with _____, and continuing through _____.

INTERROGATORIES

1. State the date ABC, Inc. (hereafter referred to as

ABC) commenced doing business in the State of Wisconsin.

2. Set forth the date and state of incorporation of ABC.

3. State the address of ABC's principal place of business and the addresses of all of its other places of business.

4. State all fictitious and/or assumed names utilized by ABC to conduct business in the State of Wisconsin.

5. State the full name, home address, and position of each officer and director of ABC.

6. State the full name, home address, and position of each and every individual responsible for formulating, directing, approving, and/or controlling the policies, acts and practices of ABC in the State of Wisconsin.

7. State the full name and home address of each ABC shareholder and the amount and percentage of stock owned by each such shareholder.

8. State the full name, home address, and position(s) held by each employee, manager, agent, representative, salesman, "independent contractor," and any other individual acting for or on behalf of ABC.

9. Set forth, in detail, the duties, function, and general responsibilities of each person listed in response to interrogatories 5, 7, 8 and the inclusive time periods during which each said person, held such position. Also furnish a diagram of ABC's corporate organization and structure showing generally how the positions held by each person listed in response to interrogatories 5, 7, 8 relate to one another;

and note on each diagram the inclusive dates for which that diagram reflects ABC's corporate structure and organization.

10. If compensation to individuals listed in interrogatories 5 and 8 is based on commissions, either in whole or part, explain how each such commissions are, or were, calculated and paid.

11. With regard to each individual referred to in response to interrogatories 5 and 8 who is no longer associated with ABC, set forth the name of said individual together with a brief explanation of the reasons for, and the circumstances and conditions under which, the association was terminated.

12. Set forth the name and principal place of business of each business entity that has been or is related, in whole or in part, to ABC, whether the relationship is that of a parent, subsidiary, affiliate or otherwise.

13. Explain, in detail, all business activities engaged in by ABC, including, but not limited to, a complete description of all products/services offered, sold, and/or performed by ABC; and set forth the inclusive dates during which such activities were engaged in.

14. With regard to the solicitation and sale of products and services by ABC to Wisconsin consumers:

(a) Set forth a detailed and complete description of all products and services offered and/or sold by ABC (separately list and describe all different types, models, brand names, and any other variations of the products/services offered

and/or sold by ABC) and the inclusive dates during which each was offered and/or sold;

(b) Set forth the methods by which the retail prices of the products /services sold were calculated.

(c) Provide the name and address of ABC's supplier(s) of each of the products referred to in (a) and the inclusive dates during which each supplier supplied ABC with each of said products.

(d) Provide a copy of all contracts, agreements, and other documents which describe any and all relationships between ABC and each supplier referred to in response to (c) above.

(e) For each supplier referred to in response to (c) above, state the name of each person listed in interrogatory number 5, 7, or 8 who acts as a liaison or agent(s) on behalf of ABC with each supplier. State the inclusive dates during which each person(s) listed acted in this capacity.

15. Provide copies of each and every sales contract entered into between ABC and a Wisconsin resident for products or services offered and/or sold by ABC away from ABC's regular place(s) of business.

16. With regard to each and every transaction that was the subject of a sales contract requested by interrogatory 15, provide copies of all other documents which were utilized in connection with the transaction and which called for the

customer's signature, including, but not limited to, letters of understanding, right to cancel forms, guarantees, truth in lending disclosure statements, promissory notes, and mortgages.

17. Provide copies of all scripts, sales presentations, and training guides, whether consisting of a suggested or required format, prepared by, or on behalf of, ABC for use in connection with home solicitations and sales of products or services by ABC to Wisconsin consumers.

18. With regard to each script and presentation requested in interrogatory 17:

(a) Explain in detail the manner and extent of use of each by ABC.

(b) Provide the inclusive dates during which each script and presentation was used as either a suggested or required format.

(c) Provide the name, home address, and position of the person or persons who prepared each script and presentation; and

(d) If the person or persons referred to in response to (c) above are, or were, associated in any manner with ABC, set forth the name of each such person or persons immediate supervisor/superior.

19. Provide specimen copies of all promotional materials, sales aids, and sales presentation devices utilized by ABC in the course of making sales in Wisconsin. Materials and documents provided should include, but not be limited to,

display sheets, photographs, and letters of recommendation, endorsement, and/or comment from other purchasers or third parties.

20. With regard to each item requested in response to interrogatory 19, state the inclusive dates during which each was utilized by ABC.

21. Provide specimen copies of all contracts and other forms utilized in connection with ABC's sales of products or services to Wisconsin residents.

22. With regard to each form requested in interrogatory 21, state the inclusive dates during which each was utilized by ABC.

23. Provide specimen copies of telephone confirmation follow-up questionnaires, verification forms, and scripts utilized by ABC subsequent to the consummation of a sales contract with a Wisconsin resident.

24. With regard to each questionnaire, verification form, and script requested in interrogatory 23, state the inclusive dates during which each was utilized by ABC.

25. State the approximate percentage of contracts for products or services sold by ABC to Wisconsin consumers that are cash transactions.

26. If ABC finances any of the non-cash sales contracts, state the approximate percentage of total contracts that are financed by ABC.

27. For retail installment contracts assigned/sold by ABC to third parties, list the names and addresses of each

third party and set forth the inclusive dates within which ABC has sold/assigned retail installment contracts to each. Fully explain the manner in which ABC's customers are advised when a retail installment contract is sold/assigned to such third parties, provide specimen copies of any form letters or notices utilized to notify customers of such sales/assignments; and state the inclusive dates during which each form letter or notice was utilized. For each contract sold/assigned, state the name of the person(s) associated with ABC who was responsible for arranging the sale/assignment to third parties. Also state the name of the individual(s) acting for or on behalf of the third party, who accepted, arranged, or approved the installment contract sale/assignment.

28. With regard to each party listed in response to interrogatory 27:

(a) State whether retail installment contract sales/assignments are made with or without recourse and the inclusive dates during which the sales were made with or without recourse; and

(b) Provide copies of all contracts, agreements, correspondence, and all other documents relating to the relationship between ABC and each party with regard to the sales/assignments of ABC's retail installment contracts.

29. With regard to each sales contract required to be submitted by interrogatory 15, unless the information requested below is already included in the documents furnished in response

to interrogatory 15:

(a) State whether the contract was a cash transaction or was either financed by ABC or a third party to whom ABC had sold/assigned the sales contract subsequent to its consummation;

(b) If the sales contract was financed, state by whom it was financed and to whom it was subsequently sold/assigned, if anyone;

(c) Set forth whether the sales/assignment of the retail installment contract by ABC was with or without recourse and the date of such sale/assignment; and

(d) If the retail installment contract was sold/assigned with recourse and was subsequently returned to ABC by the party to whom it had been sold/assigned, set forth the date of, and a complete explanation for, the return of the retail installment contract to ABC.

30. For retail installment contracts where ABC arranged loans for the customer, list the name and address of the third party creditor. Also state the name of the person(s) associated with ABC who was responsible for arranging the loan, as well as the name of the individual(s) acting for or on behalf of the third party creditor who accepted, arranged or approved the loan.

31. Provide copies of all correspondence received by ABC from any Wisconsin resident who purchased goods or services

from ABC and who subsequently requested a refund or adjustment; complained of questionable practices being utilized in inducing them to initially purchase the goods or services in question, etc. Attach to each such piece of correspondence any ensuing correspondence either from ABC to the customer in question or visa-versa.

32. Set forth the name and address of every Wisconsin resident to whom ABC made a refund or adjustment, whether partial or in full, subsequent to the sale by ABC of any goods or services. In each instance, specify the date and amount of the refund and the reason for it.

33. With regard to each legal action involving ABC and one of its Wisconsin customers:

(a) Set forth the name and address of the customer; and

(b) Provide a brief description of the nature of the action including, but not limited to, the identity of the plaintiff in the action; a summary of the controversy involved in the legal action, the county in which it took place; the date the action was completed and the result of the action or the present status of the action, if it is still pending.

34. Explain fully all criteria used by ABC representatives to initially select, for sales presentations, prospective Wisconsin purchasers of goods or services being offered for sale by ABC.

Dated this ____ day of _____, 19__.

District Attorney
_____ County

Attorney for Plaintiff,
State of Wisconsin

P.O. Address:

[Consent judgment under secs. 100.18(11)(d) and 100.26(6), Stats.]

STATE OF WISCONSIN CIRCUIT COURT _____ COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

STIPULATION
AND
JUDGMENT

[ABC, INC., a _____
corporation, GLEN GYPSTER,
individually and as an officer
of said corporation, and SAM
SWINDLE, individually and as a
sales representative of said
corporation.]

Defendants.

The plaintiff and defendants stipulate as follows:

1. That the defendant ABC, Inc., is a _____
corporation with its principal office and place of business
at _____.

2. That the defendant Glen Gypster is an individual
whose business address is at _____.
Defendant Gypster is [president] of defendant, ABC, Inc.

3. That the defendant Sam Swindle is an individual
who resides at _____. Defendant
Swindle is a [sales representative] of defendant ABC,
Inc.

4. That the defendants consent to the jurisdiction of
this court over the subject matter of the judgment annexed
hereto and over each of the defendants herein.

5. That the parties hereto consent to the entry of the annexed judgment without further notice, appearance or consent of the parties.

6. That no costs shall be awarded either party upon the entry of the annexed judgment.

Dated at _____, Wisconsin, this ____ day of _____, 19__.

Consented to by the Plaintiff,
State of Wisconsin

District Attorney
County
Attorney for Plaintiff

Consented to by the Defendants

Approved as to form:

Glen Gypster, Individually
and for ABC, Inc.

Willie Bite
Attorney for Defendants

Sam Swindle

STATE OF WISCONSIN

CIRCUIT COURT

_____ COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

JUDGMENT

[ABC, INC., a _____
corporation, and GLEN GYPSTER,
individually and as an officer
of said corporation, and SAM
SWINDLE, individually and as a
sales representative of said
corporation.]

Defendants.

Upon the annexed Stipulation of the parties, IT IS HEREBY
ORDERED, ADJUDGED AND DECREED:

1. That said Stipulation of the parties is approved
and made part of the record herein;
2. That the defendants, either directly or indirectly
through their agents, representatives, employees, salesmen,
or through any corporate or other business arrangement or
device, are jointly and severally enjoined pursuant to sec.
100.18(11)(d), Stats., from making or employing any untrue,
deceptive or misleading statements or representations in
connection with the sale of any product or service in violation
of sec. 100.18(1), Stats., and are specifically enjoined
from:

(a) Misrepresenting, directly or by implication,
that defendants are connected with any charitable,
educational or nonprofit organization;

(b) Misrepresenting, directly or by implication, that defendants or their products have been endorsed or approved by any governmental or private agency or organization;

(c)

(d)

3. That pursuant to sec. 100.18(11)(d), Stats., the plaintiff, State of Wisconsin, shall have and recover, from the defendants, jointly and severally, on behalf of the Wisconsin residents hereinafter listed, the sum of \$ _____ as and for restoration of pecuniary losses suffered because of the acts and practices involved in this action. The individual restoration claims, as measured by pecuniary losses, are as follows:

The sum of \$ _____ to _____
of _____, Wisconsin.

[etc.]

The State of Wisconsin shall pay the net amounts recovered by virtue of execution on or negotiation of the judgment award in this paragraph to the claimants listed herein on a pro rata basis relative to each claimant's unpaid claim. The State of Wisconsin shall have the right to negotiate, in its sole discretion, the amounts and terms of payment to be recovered by virtue of this judgment.

4. That pursuant to sec. 100.26(6), Stats., the plaintiff, State of Wisconsin, shall have and recover from each defendant a civil forfeiture in the amount of \$ _____ for each of _____ violations of Chapter Ag _____, Wis. Adm. Code, for a total

civil forfeiture in the amount of \$_____.

5. That in the event that any individual defendant fails to pay the aforesaid civil forfeitures within _____ days following entry of this judgment, [such defendant shall be committed to the county jail for _____ County pursuant to sec. 288.09, Stats., until such civil forfeitures are paid not exceeding a period of six months, or until otherwise discharged by law.] [the plaintiff shall be entitled to recover an additional civil forfeiture in the amount of \$_____ and shall be entitled to judgment in the total amount of \$_____, less any amounts paid, which judgment may be entered by the plaintiff upon the filing of an affidavit reciting the defendants default and upon prior notification to defendant's counsel.]

6. That under no circumstances shall this judgment or the name of the State of Wisconsin, the District Attorney of _____ County, or their employes or subdivisions, be used by defendants or their agents, representatives, employes or salesmen in connection with the selling, advertising, or promotion of any product or service.

7. That defendants shall maintain adequate records to establish compliance with the provisions of this judgment which shall be provided to the Wisconsin Department of Justice or the _____ County District Attorney upon request.

Dated this _____ day of _____, 19____.

BY THE COURT:

Circuit Judge

[Short form complaint seeking a civil forfeiture under
sec. 100.26(6), Stats., for a violation of a general order
issued under sec. 100.20.]

STATE OF WISCONSIN _____ COURT _____ COUNTY _____

STATE OF WISCONSIN,

Plaintiff,

v.

SUMMONS
and
COMPLAINT

[Sam Swindle, d/b/a
Swindle's Auto Service],

Defendant(s).

THE STATE OF WISCONSIN, to Said Defendant(s):

YOU ARE HEREBY SUMMONED and required to serve upon

_____, District Attorney of _____

County, whose address is _____

_____, an answer to the complaint which is
herewith served upon you within 20 days after service of this
summons upon you, exclusive of the day of service, and in case
of your failure so to do judgment will be rendered against you
according to the demand of the complaint.

District Attorney
_____ County

Attorneys for Plaintiff,
State of Wisconsin

COMPLAINT

The plaintiff, State of Wisconsin, by _____,
District Attorney of _____ County, alleges and complains
as follows:

1. Defendant Sam Swindle resides at 42 South Street, City of Blaine, Johnson County, Wisconsin and engages in the business of conducting an auto repair shop at 10 Main Street, City of Blaine, Johnson County, Wisconsin.

2. While engaged in said business, defendant acted in violation of Chapter Ag 132, Wisconsin Administrative Code, an order issued under sec. 100.20(2), Stats., in the following respect(s):

a. [Defendant failed to provide a customer, prior to commencement of any repairs whose price to the customer may exceed \$25, with either a written price quotation or choice of estimate alternatives for the repairs, as required by sec. Ag 132.03, Wis. Adm. Code, in the following repair transactions:

<u>Customer Name</u>	<u>Date of Transaction</u>
a) John Moe	July 7, 1977
b) Jane Doe	July 8, 1977
c) David Smith	July 10, 1977]

b. [Defendant collected or attempted to collect for repairs not authorized by the customer, in violation of sec. Ag 132.07(2)(a), Wis. Adm. Code, in the following repair transactions:

<u>Customer Name</u>	<u>Date of Transaction</u>
a) John Moe	July 7, 1977
b) Mary Jones	July 5, 1977]

3. Pursuant to the provisions of sec. 100.26(6), Stats., and by virtue of the acts alleged in paragraph two hereof, defendant(s) are indebted to the plaintiff for a forfeiture in the total amount of \$2,500, or \$500 for each of the violations above alleged.

WHEREFORE, plaintiff, State of Wisconsin, demands judgment against the defendant(s) as follows:

1. That defendant(s) is/are indebted to plaintiff in the amount of \$2,500.

2. For the costs and disbursements in this action and for such other relief as the court deems just.

Dated:

District Attorney _____ County

Attorney(s) for Plaintiff,
State of Wisconsin

P.O. Address:

[Criminal complaint under sec. 100.26(3), Stats., for a violation of a general order issued under sec. 100.20.]

STATE OF WISCONSIN _____ COURT _____ COUNTY _____

STATE OF WISCONSIN,

Plaintiff,

v.

[John Felon, d/b/a Felons
Home Improvement, 10 N.
South Street, Blaine,
Wisconsin],

Defendant(s).

CRIME(S)

[Unfair home solicitation and
home improvement trade
practices]

VIOLATIONS CHARGED

[Sections Ag 110.05(2)(d) and
127.03(2)(a), Wis. Adm. Code,
as promulgated by sec. 100.20(2),
Wis. Stats.]

COMPLAINING WITNESS

The above named complaining witness, being first duly sworn, says that the above named defendant(s), in the County of _____, State of Wisconsin.

COUNT #1

[Did unlawfully engage in an unfair home solicitation selling practice, to wit: on June 8, 1977, the defendant came to the home of Mr. & Mrs. John Moe located at 123 Pine Street, Blaine, Wisconsin, and stated that he represented the U.S. Aluminum Company and that if the Moes purchased aluminum siding from defendant they would be billed directly by U.S. Aluminum. In fact, the defendant does not represent the U.S. Aluminum Company and the Moes were not billed directly by the U.S. Aluminum Company but were billed directly by defendant.]

Through such practice(s) and method(s) of business defendant did intentionally fail to obey sec. Ag 127.03(2)(a), Wisconsin Administrative Code, a regulation made under sec. 100.20(2) of the Wisconsin Statutes relating to unfair trade practices and unfair methods of competition in business. This offense is punishable upon conviction by a fine of not less than \$25 nor more than \$5,000 or imprisonment of not more than one

year in the County Jail or both a fine and imprisonment,
pursuant to sec. 100.26(3) of the Wisconsin Statutes.

COUNT #2

[Did unlawfully engage in an unfair home improvement trade practice, to wit: on June 8, 1977, Mr. & Mrs. John Moe signed a home improvement contract with defendant which failed to state the dates or time period on or within which the home improvement work was to begin and be completed by the defendant.]

Through such practice(s) and method(s) of business defendant did intentionally fail to obey sec. 110.05(2)(d), Wisconsin Administrative Code, a regulation made under sec. 100.20(2) of the Wisconsin Statutes relating to unfair trade practices and unfair methods of competition in business. This offense is punishable upon conviction by a fine of not less than \$25 nor more than \$5,000 or imprisonment of not more than one year in the County Jail or both a fine and imprisonment, pursuant to sec. 100.26(3) of the Wisconsin Statutes.

Complainant states that (s)he is a deputy sheriff for Johnson County, and that (his/her) complaint is based upon the following:

[Complainant was personally informed by Mr. & Mrs. John Moe, who are residents of Johnson County and whom complainant believes to be truthful, that defendant came to their home and made the aforesaid representations and presented them with the aforesaid contract. Complainant personally observed said contract and saw that it did not state a date or time period on or within which the work was to begin and be completed. Further, the complainant personally contacted the personnel department of the U.S. Aluminum Company which confirmed that defendant is not and never has been an employe or representative of the U.S. Aluminum Company.]

Complainant

Subscribed and sworn to before me and approved for filing this
_____ day of _____, 19____.

District Attorney

APPENDIX B

Consumer Protection
Administrative Codes

Chapter Ag 109

FREEZER MEAT AND FOOD SERVICE PLAN TRADE PRACTICES

Ag 109.01 Definitions
Ag 109.02 Prohibited trade practices

Ag 109.03 Contract requirements
Ag 109.04 Custom cutters

Ag 109.01 Definitions. (1) "Buyer" means both actual and prospective purchasers but does not include persons purchasing for resale.

(2) "Contract" means all written agreements subscribed by a buyer and includes promissory notes and sales agreements.

(3) "Food service plan" means any contract under which the seller agrees to furnish the buyer with any food, or food and any other product or service, whether or not a membership fee or similar charge is involved. It includes a contract to furnish a wholesale cut.

(4) "Misrepresent" means the use of any untrue, deceptive or misleading oral or written statement, advertisement, label, display, picture, illustration or sample.

(5) "Person" means individuals, corporations, partnerships and any other form of business organization, and all officers, directors, agents, employees and representatives thereof.

(6) "Custom cutter" means one who breaks down carcass meat into retail cuts.

(7) "Product" means food and non-food consumer goods unless otherwise indicated.

(8) "Represent" means the use of any form of oral or written statement, advertising, label, display, picture, illustration or sample.

(9) "Seller" means any person soliciting or making a sale, whether or not a contract is involved, and includes his principal or any other person for whom the sale is procured.

(10) "Wholesale cut" means a whole carcass of beef, swine or sheep or any part thereof customarily classified as being of commercial size and usually requiring further cutting into cuts of retail size for use by consumers.

History: Cr. Register, September, 1967, No. 141, eff. 1-1-68; am. (2), Register, December, 1967, No. 144, eff. 1-1-68; am. (2), (3) and (4), renum. (6) to (9) to be (7) to (10) and cr. (6), Register, June, 1975, No. 234, eff. 7-1-75.

Ag 109.02 Prohibited trade practices. No person advertising, offering for sale or selling any wholesale cut or food service plan shall engage in any unfair methods of competition or unfair trade practices, and particularly including, but not limited to the following:

(1) **BAIT SELLING.** (a) Disparage or degrade any product advertised or offered for sale by the seller, or display any product or depiction thereof to any buyer in such a manner as would be likely to discourage the sale of the advertised or offered product, in order to

Register, June, 1975, No. 234

induce the purchase of another product, or represent that a product is for sale when such representation is used primarily to sell another product.

(b) Substitute any product for that ordered by the buyer without the buyer's consent.

(c) Fail to have available a sufficient quantity of any product represented as being for sale to meet reasonably anticipated demands, unless the available amount is disclosed fully and conspicuously.

(2) PRICE CONCESSIONS AND SPECIAL OFFERS. (a) Misrepresent to the buyer that he is being given an introductory, confidential, close-out, going out of business, factory, packer, special or wholesale price or discount, grand opening or any similar price concession. Grand opening sales shall not extend more than 21 days after the first announcement of the promotion.

(b) Offer any gift or prize, without fully and conspicuously disclosing all terms of the offer, including all rules, conditions and the expiration date of the offer. Any gift or prize offered shall be given at the time any potential recipient qualifies for the gift or prize as set forth in the offer.

(c) Misrepresent that insurance or some other form of protection is available to the buyer, or misrepresent the terms, conditions or limitations thereof.

(d) Misrepresent that the buyer will receive certain benefits or privileges from payment of a membership fee or similar charge, or fail to furnish to the buyer prior to the signing of any contract a written statement of all such benefits and privileges.

(3) SAVINGS REPRESENTATIONS. (a) Use any price list related to the seller's food service plan which contains prices other than the seller's current billing prices.

(b) Fail to furnish to, and leave with the buyer prior to his signing of any contract or the placing of any order pursuant to the contract, a written copy of a current price list which shall contain an accurate description and the billing price of each product on the list including, whenever applicable, for food products: grade, net weight or measure, brand or trade name; and for non-food products: brand or trade name, model number and year, size or capacity. All price lists shall conspicuously specify an expiration date. Orders placed with the seller prior to the expiration date shall be billed at the prices set forth in such current price list.

(c) Misrepresent the amount of money that the buyer will save on purchases of any product or compare the seller's prices either with prices of other sellers not selling in the same trade area or with prices of products which are not of the same grade or quality.

(d) Represent to the buyer that a specified amount of food products or the cost thereof is sufficient to meet the requirements of the buyer. Any computation as to amount of food required shall be determined solely by the buyer, except that the seller may furnish current official government data on average food consumption and costs. A written itemization of all food to be sold, with the price and accurate description of each item including, whenever applicable,

grade, net weight or measure, and brand or trade name shall be furnished to the buyer prior to the signing of any contract.

(e) Misrepresent that the buyer can purchase all or most of his food requirements, or any non-food product in connection with a food service plan.

(4) GUARANTEES. (a) Represent that the same products and services offered for sale by the seller of a food service plan will be available to the buyer from sellers in other areas without payment of another membership fee or similar charge by the buyer unless the seller agrees to refund such membership fee or similar charge in full if he cannot arrange for the buyer to receive such products and services elsewhere.

(b) Make any promise, either to exchange unsatisfactory food products or to give a refund therefor, which expires in less than 60 days from the date of delivery of such products, or fail to honor such promise, where through no fault of the buyer, said food does not meet minimum standards of quality expected by the ordinary consumer.

(c) Give any guarantee or warranty which is not clear and specific or with which the seller is unable to comply; or misrepresent that someone else is the guarantor or warrantor of any product or service, or fail to furnish the buyer with a copy of such guarantee or warranty.

(d) Misrepresent the date of performance of any contract.

(5) IDENTITY OF SELLER. (a) Represent that a person is, or that the seller will provide the service of, a nutritionist or home economist, unless such person has completed specialized training in such fields or is otherwise technically qualified.

(b) Misrepresent that the seller, his products or service have been approved by any better business bureau, chamber of commerce, service club, financial institution, government agency or any other commercial or civic organization, or any official or employee thereof, or that the seller is a member of such organization.

(6) PRICE AND FINANCING. (a) Misrepresent or fail to disclose fully and conspicuously at the time of the sale, the name of the financing institution or contract assignee, if any.

(b) Fail to advise the buyer before signing any contract that the contract may be transferred or assigned to a financial institution or other third party and payment enforced by them.

(c) Misrepresent the total amount that the buyer will be obligated to pay.

(d) Misrepresent that the offer or sale or any part thereof is made on a trial basis, or fail to disclose fully and conspicuously that the buyer must pay a membership fee or similar charge in full if such payment is required.

(e) Misrepresent that the seller will pay or reimburse the buyer for the expenses of delivering or moving a freezer or any other product for the buyer.

(f) Fail to disclose fully and conspicuously any extra charges for cutting, wrapping, freezing, delivery or other services.

(g) Represent the price of a wholesale cut in terms other than price per single pound.

(h) In all wholesale cut advertising which in any manner represents the availability of credit terms or payment plans, the seller shall fully disclose if the purchaser must obligate himself to a party other than the seller if the total of the purchaser's obligation is not fully paid at the time of delivery.

(7) PRODUCT REPRESENTATION. (a) Misrepresent the cut, grade, brand or trade name, or weight or measure of any food product.

(b) Use the abbreviation "U.S." in describing a food product not graded by the United States department of agriculture, except that foods may be described as "U.S. Inspected" when true.

(c) Misrepresent a food product through the use of any term similar to a government grade.

(d) Fail to disclose, when a yield grade is advertised, a definition of the yield grade in the following terms:

"Yield Grade 1 - Extra Lean"

"Yield Grade 2 - Lean"

"Yield Grade 3 - Average Waste"

"Yield Grade 4 - Wasty"

"Yield Grade 5 - Exceptionally Wasty"

(e) Advertise or offer for sale in combinations wholesale cuts with one unit price.

(f) Fail to disclose fully and conspicuously the correct government grade for any food product if such product is represented as having been graded.

(g) Fail to disclose fully and conspicuously that the yield of consumable meat from any wholesale cut will be less than the weight of the wholesale cut. The seller shall, for each wholesale cut advertised, use separately and distinctly in at least 10 point type the following disclosure: "Sold hanging weight subject to cutting loss."

(h) Misrepresent the amount or proportion of retail cuts that a wholesale cut of meat will yield.

(i) Fail to furnish the buyer with a complete and accurate signed statement, at the time of delivery, showing the net weight of meat delivered to the buyer. If weighed with immediate wrappings, such fact shall be stated. Both the actual net weight of the wholesale cut, prior to cutting and trimming, and the delivered weight shall be disclosed to the buyer in writing at time of delivery. This section shall apply separately to each wholesale cut sold on any individual order.

(j) Fail to disclose fully and conspicuously whether a quarter of a carcass is the front or hind quarter, or represent any meat as a quarter if it has been cut from a quarter prior to sale.

(k) Represent any wholesale cut as a "half" or "side" unless it consists of a front and hind quarter. Both quarters shall be from the same side of the same animal unless the seller discloses fully and conspicuously that they are from different sides or different animals as the case may be. Each quarter shall be of the same grade or quality

as the other quarters comprising the half or side and the seller shall advise the buyer of the weight of each quarter prior to sale. In selling quarters individually or as part of a half or side, if actual weights are not known or cannot be determined prior to sale, approximate weights may be used, provided: The buyer is informed that the weights are approximate, the weights are so identified on any purchase order or contract, and the seller agrees with the buyer, in writing, to make a cash refund or grant a credit on delivery for the difference between actual weight and the approximate weight on which the sale was made.

(l) Use the words "bundle", "sample order", "split side", or words of similar import to describe a quantity of meat or poultry unless the seller itemizes each cut and the weight thereof which the buyer will receive.

(m) Advertise or offer free, bonus or extra product or service combined with or conditioned on the purchase of any other product or service unless such additional product or service is accurately described including, whenever applicable, grade, net weight or measure, type, and brand or trade name. The words "free," "bonus," or other words of similar import, shall not be used in any advertisement unless the advertisement clearly and conspicuously sets forth the total price or amount which must be paid to entitle the buyer to the additional product or service.

(n) Misrepresent the breed, origin or diet of slaughtered animals or parts thereof offered for sale. Sellers making such claims shall have written records available to substantiate such fact.

(o) Represent the price of any food freezer without fully and conspicuously disclosing its brand or trade name, model number and year, and size or capacity.

History: Cr. Register, September, 1967, No. 141, eff. 1-1-68; am. (4) (b) and (7) (g) and (l), Register, December, 1967, No. 144, eff. 1-1-68; am. (6) (b), Register, May, 1968, No. 149, eff. 6-1-68; am. (1) (intro. par.), (1) (a), (3) (a), (4) (b), (6) (a), (6) (b), and (6) (g), r. (2) (a), renum. (2) (b) and (c) to be (2) (a) and (b) and am., renum. (2) (d) and (e) to be (2) (c) and (d), renum. (3) (b) to (d) to be (3) (c) to (e), am. (3) (d), cr. (3) (b), cr. (6) (h), renum. (7) (d) to (m) to be (7) (f) to (o), am. (7) (g), (i), (l) and (m) and cr. (7) (d) and (e), Register, June, 1975, No. 234, eff. 7-1-75.

Ag 109.03 Contract requirements. (1) **SERVICE PLAN.** Any seller of a food service plan which does not involve an extension of credit shall comply with the following:

(a) Give the buyer at the time of execution a true copy of the contract, which shall include its date of execution and all terms and conditions of the sale and a copy of any price list, guarantee, service agreement or other document incorporated or referred to in the contract.

(b) Print clearly and conspicuously on the contract the name and mailing address of the seller.

(c) All blank spaces shall be filled in or a line drawn through them before the contract is signed by the buyer.

(d) When a representation is made that insurance will be provided, the terms, conditions and limitations thereof, as well as the name and address of the insurer if different from the seller shall be set forth in the contract or in a separate insurance policy. The individual policy,

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group certificate or notice of proposed insurance shall be furnished to the buyer prior to execution of the contract. If the individual policy is not furnished at the time the contract is executed, the contract shall state when the individual policy will be furnished to the buyer.

(2) CANCELLATION. (a) In all transactions which are not consumer approval transactions, the buyer shall have the right to cancel the contract until midnight of the third business day (as defined in s. 421.301(6), Wis. Stats.) after the seller has given the notice to the buyer in accordance with this chapter. Notice of cancellation may be given by delivering or mailing written notice thereof, signed by the buyer, to the seller at the address set forth in the contract. Notice of cancellation given by mail shall be considered given at the time mailed. Notice of cancellation need not take any particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the contract.

(b) The seller shall give 2 copies of a typed or printed notice to the buyer. The notice must:

1. Be printed in capital and lowercase letters of not less than 12-point boldface type;

2. Appear under the conspicuous caption: "CUSTOMER'S RIGHT TO CANCEL";

3. Read as follows: "You may cancel this agreement by mailing a written notice to (insert name and mailing address of seller) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing 'I hereby cancel' and adding your name and address. A duplicate of this page is provided by the seller for your records."

4. Compliance with requirements of federal statutes, rules or regulations governing form of notice of right of cancellation shall be deemed to satisfy the notice requirements of this chapter, provided such compliance does not deprive the customer of any rights or benefits he would otherwise enjoy under Wisconsin law.

(c) Within 10 days after the contract has been cancelled, the seller shall cause any money paid by the buyer, including a downpayment, to be returned to the buyer and shall take any appropriate action to reflect the termination of the transaction including any security interest created as a result.

(d) In the event that cancellation pursuant to paragraph (a) of this subsection occurs subsequent to the delivery of any goods by the seller, the buyer has the duty to take reasonable care of the goods in his possession before cancellation and for a reasonable time after tender, not to exceed 20 days. If the seller fails to comply with any of the provisions of paragraph (c) of this subsection, he is not entitled to any of the rights or remedies set forth in this paragraph.

(3) If any part of a contract is to be performed by a person other than the seller, the contract and all advertisements shall fully and conspicuously disclose the name and address of the person responsible for performance.

(4) Every contract executed in connection with an initial sales transaction shall bear separately on its face the following statement:

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"This contract is governed by Wis. Adm. Code Chapter Ag 109, administered by the Wis. Dept. of Agriculture, 801 W. Badger Road, Madison 53713. Every holder takes subject to claims and defenses of the maker or obligor."

(5) Every contract shall state clearly and separately the total net price of food products sold; total net price of non-food products sold; service or delivery charges; and membership fees or similar charges.

(6) Every contract shall describe separately all terms and conditions of any guarantee or warranty, including exclusions and time limitations, cost of repairs and replacement parts, labor or service charges, and replacement of unsatisfactory or unused product. If any part of the guarantee or warranty is given or is to be performed by any person other than the seller, that fact and the name and address of such person shall be stated in the contract. Any manufacturer's guarantee or warranty for a non-food product shall be furnished to the buyer upon delivery of such product.

(7) Every contract which includes a food freezer shall state specifically the brand or trade name, model number and year, and size or capacity of the freezer.

(8) Contract provisions for liquidated damages for breach by the buyer shall be reasonable and in no event shall exceed 10% of the contract price or \$25, whichever is less.

(9) Contracts shall not contain any provision whereby the buyer agrees to waive any rights or defenses he may have under this chapter.

(10) No provision of this chapter shall be deemed to relieve the seller of any obligation he might otherwise have under the Wisconsin Consumer Act.

History: Cr. Register, September, 1967, No. 141, eff. 1-1-68; am. (1), (3), (4), (8) and (9), Register, December, 1967, No. 144, eff. 1-1-68; am. (4) (a) to (c), cr. (4) (d) and (e), am. (9) and cr. (13), Register, May, 1968, No. 148, eff. 6-1-68; r. and recr. Register, June, 1975, No. 234, eff. 7-1-75.

Ag 109.04 Custom cutters. Each custom cutter shall, for each wholesale cut, furnish to the customer a signed, written statement of the actual net weight of each wholesale cut prior to cutting and trimming, and the delivered weight after cutting and trimming.

History: Cr. Register, June, 1975, No. 234, eff. 7-1-75.

Chapter Ag 110

HOME IMPROVEMENT TRADE PRACTICES

Ag 110.01	Definitions	Ag 110.05	Home improvement contract requirements
Ag 110.02	Prohibited trade practices	Ag 110.06	Preservation of buyer's claims and defenses
Ag 110.03	Building permits		
Ag 110.04	Guarantees or warranties		

History: Ch. Ag 110 as it existed on May 31, 1974 was repealed and a new Ch. Ag 110 was created, Register, May, 1974, No. 221, effective June 1, 1974.

Ag 110.01 Definitions. (1) "Home improvement" means the remodeling, altering, repairing, painting, or modernizing of residential or non-commercial property, or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, garages, basements and basement waterproofing, fire protection devices, heating and air-conditioning equipment, water softeners, heaters and purifiers, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs or improvements made in or on, attached to or forming a part of the residential or non-commercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or non-commercial property.

(2) "Residential or non-commercial property" means a structure used, in whole or in part, as a home or place of residence by any natural person, whether or not a single or multi-unit structure, and that part of the lot or site on which it is situated and which is devoted to the residential use of the structure, and includes all appurtenant structures. The term extends to all other existing non-commercial structures and the immediate premises on which they are situated even though they are not used for residential purposes.

(3) "Home improvement contract" means an oral or written agreement between a seller and an owner or a seller and a tenant or lessee of residential or non-commercial property, or a seller and a tenant or lessee if the tenant or lessee is to be obligated for the payment of home improvements made in, to, or upon such property, and includes all agreements under which the seller is to perform labor or render services for home improvements, or furnish materials in connection therewith.

(4) "Seller" means a person engaged in the business of making or selling home improvements and includes corporations, partnerships, associations and any other form of business organization or entity, and their officers, representatives, agents and employees.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Ag 110.02 Prohibited trade practices. No seller shall engage in the following unfair methods of competition or unfair trade practices:

(1) **MODEL HOME REPRESENTATIONS.** Misrepresent or falsely state to a prospective buyer that the buyer's residential or non-commercial property is to serve as a "model" or "advertising job", or use any

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other prospective buyer lure to mislead the buyer into believing that a price reduction or other compensation will be received by reason of such representations.

(2) **PRODUCT AND MATERIAL REPRESENTATIONS.** Misrepresent directly or by implication that products or materials to be used in the home improvement:

(a) Need no periodic repainting, finishing, maintenance or other service.

(b) Are of a specific or well-known brand name, or are produced by a specific manufacturer or exclusively distributed by the seller.

(c) Are of a specific size, weight, grade or quality, or possess any other distinguishing characteristics or features.

(d) Perform certain functions or substitute for, or are equal in performance to, other products or materials.

(e) Meet or exceed municipal, state, federal, or other applicable standards or requirements.

(f) Are approved or recommended by any governmental agency, person, firm or organization, or that they are the users of such products or materials.

(g) Are of sufficient size, capacity, character or nature to do the job expected or represented.

(h) Are or will be custom-built or specially designed for the needs of the buyer.

(i) May be serviced or repaired within the buyer's immediate trade area, or be maintained with replacement and repair parts which are readily available.

(3) **BAIT SELLING.** (a) Offer or represent specific products or materials as being for sale, where the purpose or effect of the offer or representation is not to sell as represented but to bait or entice the buyer into the purchase of other or higher priced substitute products or materials.

(b) Disparage, degrade or otherwise discourage the purchase of products or materials offered or represented by the seller as being for sale, by statements or representations in conflict with other claims or representations made with respect to such products and materials, to induce the buyer to purchase other or higher priced substitute products or materials.

(c) Refuse to show, demonstrate or sell products or materials as advertised, offered, or represented as being for sale.

(d) Substitute products or materials for those specified in the home improvement contract, or otherwise represented or sold for use in the making of home improvements by sample, illustration or model, without the knowledge or consent of the buyer.

(e) Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands.

(f) Misrepresent that certain products or materials are unavailable or that there will be a long delay in their manufacture, delivery, service or installation in order to induce a buyer to purchase other or higher priced substitute products or materials from the seller.

(4) IDENTITY OF SELLER. (a) Deceptively gain entry into the prospective buyer's home or onto the buyer's property under the guise of any governmental or public utility inspection, or otherwise misrepresent that the seller has any official right, duty or authority to conduct an inspection.

(b) Misrepresent that the seller is an employe, officer or representative of a manufacturer, importer or any other person, firm or organization, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract.

(c) Misrepresent the status, authority or position of the sales representative in the organization he represents.

(5) GIFT OFFERS. Offer or advertise any gift, free item or bonus without fully disclosing the terms or conditions of the offer, including expiration date of the offer and when the gift, free item or bonus will be given, or fail to comply with the terms of such offer.

(6) PRICE AND FINANCING. (a) Misrepresent to a prospective buyer that an introductory, confidential, close-out, going out of business, factory, wholesale, or any other special price or discount is being given, or that any other concession is made because of materials left over from another job, a market survey or test, or any other reason.

(b) Misrepresent that any person, firm or organization, whether or not connected with the seller, is especially interested in seeing that the prospective buyer gets a bargain, special price, discount or any other benefit or concession.

(c) Misrepresent or mislead the prospective buyer into believing that insurance or some other form of protection will be furnished to relieve the buyer from obligations under the contract if the buyer becomes ill, dies, or is unable to make payments.

(d) Misrepresent or mislead the buyer into believing that no obligation will be incurred because of the signing of any document, or that the buyer will be relieved of some or all obligations under the contract by the signing of any document.

(e) Request the buyer to sign a completion slip or certificate, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract.

(f) Fail to disclose that the offered or contract price does not include delivery or installation, or that other requirements must be fulfilled by the buyer as a condition to the performance of labor, services, or the furnishing of products or materials at the offered or contract price.

(g) Mislead the prospective buyer into believing that the down payment or any other sum constitutes the full amount the buyer will be obligated to pay.

(h) Misrepresent or fail to disclose all financing charges, interest service charges, credit investigation costs, building or installation

permit fees, or other obligations, charges, cost or fees to be paid by the buyer.

(i) Fail to disclose that the home improvement contract, promissory note or other evidence of indebtedness may be assigned or sold to a financial institution or any other third party.

(j) Advise or induce the buyer to inflate the value of the buyer's property or assets, or to misrepresent or falsify the buyer's true financial position in order to obtain credit.

(k) Increase or falsify the contract price, or induce the buyer by any means to misrepresent or falsify the contract price or value of the home improvement for financing purposes or to obtain additional credit.

(l) Fail to give or furnish to the buyer lien waivers in writing from all contractors, subcontractors, and materialmen at or prior to the time final payment is made on the home improvement contract.

(m) Where partial payments are required at various stages in the performance of the contract, fail to give or furnish to the buyer lien waivers in writing from all contractors, subcontractors and materialmen for the proportionate value of all labor, services and products or materials furnished or delivered as of the time partial payment is made.

(7) PERFORMANCE. (a) Deliver materials, begin work, or use any other tactic to pressure the buyer into a home improvement contract, or make any claim or assertion that a binding contract has been agreed upon where no final agreement or understanding exists.

(b) Fail to begin or complete work on the dates or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage, unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing.

(c) Fail to give timely notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

(8) INTERFERENCE WITH COMPETITORS. (a) Make false derogatory statements concerning any competitor, the competitor's equipment, products or materials, workmanship, performance, reputation or responsibility, or attempt to or induce the breach of any existing home improvement contract between a prospective buyer and a competitor, or interfere with or obstruct the performance of any home improvement contract by a competitor.

(b) Misrepresent that the work of a competitor was performed by the seller.

(c) Misrepresent that the seller's products, materials or workmanship are equal to or better than those of a competitor.

(d) Use or imitate the trade-marks, trade names, labels or other distinctive marks of a competitor.

(9) **SALES REPRESENTATIONS.** (a) Misrepresent or mislead the buyer into believing that a purchase will aid or help some public, charitable, religious, welfare or veteran's organization, or any other person, group or organization, or misrepresent the extent of such aid or assistance.

(b) Fail to make any statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading.

(c) Misrepresent that the customer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74. am. (7) (b) and cr. (9) (c), Register, March, 1976, No. 243, eff. 4-1-76.

Ag 110.03 Building permits. (1) No seller contracting for the making of home improvements shall commence work until all applicable state or local building and construction permits have been issued as required under state laws or local ordinances.

(2) Where midpoint or final inspections are required under state laws or local ordinances, copies of inspection certificates shall be furnished to the buyer when construction is completed and before final payment is due or the signing of a completion slip is requested of the buyer.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Ag 110.04 Guarantees or warranties. (1) The seller shall furnish the buyer a written copy of all guarantees or warranties made with respect to labor, services, products or materials furnished in connection with home improvements. Such guarantees or warranties shall be specific, clear and definite and shall include any exclusions or limitations as to their scope or duration. Copies of all guarantees or warranties shall be furnished to the buyer at the time of execution of the contract, except that separate guarantees or warranties of the manufacturer of products or materials may be furnished at the time such products or materials are installed.

(2) The seller shall comply with the terms of any guarantee or warranty the seller agreed or promised to perform.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Ag 110.05 Home improvement contract requirements. (1) The following home improvements contracts and all changes in the terms and conditions thereof, shall be in writing:

(a) Contracts requiring any payment of money or other consideration by the buyer prior to completion of the seller's obligation under the contract.

(b) Contracts which are initiated by the seller through face-to-face solicitation away from the regular place of business of the seller, mail or telephone solicitation away from the regular place of business of the seller, mail or telephone solicitation, or handbills or circulars delivered or left at places of residence.

(2) Home improvement contracts and all changes in the terms and conditions thereof, required under this section to be in writing, shall

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be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, and particularly the following:

(a) The name and address of the seller, including the name and address of the sales representative or agent who solicited or negotiated the contract for the seller.

(b) A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products or materials are to be used, a description of such products or materials shall be clearly set forth in the contract.

(c) The total price or other consideration to be paid by the buyer, including all finance charges. If the contract is one for time and materials the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated.

(d) The dates or time period on or within which the work is to begin and be completed by the seller.

(e) A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement.

(f) A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller or which are required to be furnished to the buyer under section Ag 110.04 (1), Wis. Adm. Code.

(g) A description or identification of any other document which is to be incorporated in or form part of the contract.

(3) A copy of all contracts required to be in writing shall be furnished to the buyer before any work is begun or any payment is due.

(4) Where a representation is made that insurance or some other form of protection will be provided, the contract shall clearly state the terms, conditions and limitations thereof, as well as the name and address of the insurer or the person who is to furnish such protection, if different from the seller. A copy of the insuring or protection agreement shall be furnished to the buyer before final payment is due under the contract.

(5) If a person other than the seller is to act as the general contractor or assume responsibility for performance of the contract, the name and address of such person shall be disclosed in the oral or written contract, except as otherwise agreed, and the contract shall not be sold or assigned without the written consent of the buyer.

(6) If the buyer is unable to read or write or is blind, written contracts shall be read to the buyer by a third party designated by the buyer, and having no connection with the seller. If a language other

than English is primarily used in contract negotiations, written contracts must be both in English and the language principally used.

(7) Liquidated damages for breach of contract by the buyer if made a part of the contract shall not exceed 10% of the contract price and in no event more than \$100.

(8) If the buyer is required to sign a note, the amount and terms of the note shall correspond exactly with those stated in the oral or written contract.

(9) The seller shall comply with the terms and conditions of oral or written contracts entered into by the seller.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Ag 110.06 Preservation of buyer's claims and defenses. (1) Every assignee of a home improvement contract takes subject to all claims and defenses of the buyer or his successors in interest.

(2) No seller shall enter into any home improvement contract wherein the buyer waives the right to assert against the seller or any assignee any claim or defense the buyer may have against the seller under the contract.

(3) No seller shall use any promissory note or instrument, other than a check, in connection to a home improvement contract unless it bears the following statement in contrasting bold-face type: "This is a home improvement instrument and is non-negotiable. Every holder takes subject to claims and defenses of the maker or obligor."

(4) Every holder or transferee of a negotiable instrument executed in violation of this section, who knew or should have known at the time the document was acquired that it was made to evidence an obligation for home improvements, or who knew or should have known that the payee or transferor was engaged in the home improvement business, takes subject to all claims and defenses of the maker or obligor.

(5) Claims and defenses of any buyer against an assignee or transferee under the contract shall be limited to the total amount for which the buyer was obligated at the time of entering into the contract.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Chapter Ag 112

MOTOR FUEL TRADE PRACTICES

Ag 112.01	Definitions	Ag 112.06	Special offers
Ag 112.02	Discrimination	Ag 112.07	Price signs
Ag 112.03	Coercion	Ag 112.08	Prohibited trade practices
Ag 112.04	Price posting		
Ag 112.05	Price logging		

History: 1-2-56; Chapter Ag 112 as it is in effect on August 31, 1972 was repealed and a new chapter Ag 112 was created, Register, May, 1972, No. 197, eff. 9-1-72.

Ag 112.01 Definitions. As used in this chapter and in Wis. Adm. Code chapter Ag 113, the following terms are defined as follows:

(1) "Retailer", "wholesaler", "sell at retail" and "sell at wholesale" shall have the same meanings as those terms have in section 100.30 (2), Wis. Stats.

(2) "Supplier" means a person who manufactures motor fuels or who is a controlled subsidiary of one who manufactures motor fuels and is engaged in the business of selling motor fuels to wholesalers, retailers or consumers.

(3) "Motor fuel" includes motor fuels and special fuels as defined in chapter 78, Wis. Stats.

(4) "Person" means any individual, sole proprietorship, partnership, corporation or other business entity or any individual acting on behalf of any individual, sole proprietorship, partnership, corporation or other business entity.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72.

Ag 112.02 Discrimination. (1) No supplier or wholesaler of motor fuel shall enter into any agreement or arrangement whereby directly or indirectly discrimination is made in the price at which said supplier or wholesaler sells motor fuel to wholesalers or retailers thereof, where the effect of such discrimination may be to substantially lessen competition or to tend to create a monopoly, or to injure, destroy or prevent competition with any person in the marketing of motor fuel in the community in which said supplier or wholesaler is thus selling at a lower price; provided, that it shall be a justification for such a discrimination in price if the difference, made by said supplier or wholesaler in the price to the wholesaler or retailer to whom said supplier or wholesaler sells at a lower figure, is merely commensurate with an actual difference in the quality or quantity of motor fuel sold to said wholesaler or retailer or in the transportation charges or other expenses of marketing involved in the sale to said wholesaler or retailer. Nothing herein contained shall prevent a seller from showing that his lower price was made in good faith to meet an equally low price of a competitor.

(2) No person any part of whose business is the sale of motor fuel to wholesalers shall sell motor fuel for ultimate consumption or use at a price lower than that at which he sells to such wholesaler unless such lower price is justified as provided in subsection (1).

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72.

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Ag 112.03 Coercion. No supplier or wholesaler shall threaten any of his customers with any price discrimination or use any form of coercion with the purpose or effect of changing or maintaining resale prices of such customer.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72.

Ag 112.04 Price posting. (1) Every wholesaler or retailer of motor fuel shall post in a conspicuous interior place easily accessible to the public at each location at which he sells such products a placard showing:

(a) The total selling price per gallon before any discounts of each grade of motor fuel sold at such location, including state and federal tax.

(b) The amount of state and federal tax per gallon.

(c) The amount per gallon of any discounts offered and the conditions upon which offered.

(d) When applicable, the cash redemptive value of trading stamps in relationship to the price per gallon or dollar basis as part of the sale.

(e) When applicable, a statement that merchandise is offered or given as part of the sale.

(f) The date and time the posted prices went into effect. Prices posted shall remain in effect not less than 24 hours.

(g) The amount of any discount or other price concession offered to any class of customers.

(2) Meters on pumps or other dispensing equipment shall be set to conform to the total selling price shown on the placard as required by paragraphs (a) and (b) of subsection (1). Any other advertising of price of motor fuel shall be at the total selling price as posted and shall be on a per gallon basis, provided, however, such advertising may, in addition, give details as to discounts and the monetary value of sales inducements.

(3) Prices shall be the same for the same grade of motor fuel at every pump or other dispensing outlet, except truck islands, self-service pumps or limited service pumps at any one location.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72.

Ag 112.05 Price logging. (1) Every supplier, wholesaler and retailer of motor fuel shall maintain a price log which records the price of each grade of motor fuel sold by him, together with the date and time of any price change. This log may be composed of copies of the posting placards required under section Ag 112.04. Records of such prices shall be retained at his principal place of business or other location conveniently accessible for 3 years and shall be made available upon request of the department.

(2) Any person required to maintain a price log under this section who intends to rely upon the defense of meeting competition, in the event of an alleged violation of the laws of the state or general or special orders of the department, shall include in his price log a reference to any evidence or documentation of such lower competitive price. Such evidence or documentation also shall be made available at the request of the department.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72.

Ag 112.06 Special offers. (1) No person shall advertise any reduction in the price of motor fuel or any inducement for the sale of

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motor fuel as a temporary market entry device, a special promotion or a clearance, reduction or going out of business sale without indicating the period of time such sale or promotion will remain in effect.

(2) No person shall advertise the price of motor fuel as a special or temporary promotion if such price remains in effect for a period in excess of 30 days.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72.

Ag 112.07 Price signs. All printed or display advertising of the price of motor fuel at the location at which it is sold, except the placards required herein and the meters on pumps and other dispensing equipment, shall:

(1) Include the grade and total selling price per gallon for every grade of motor fuel available at that location and use the same size numbers for the price of each grade in such advertising. Lettering identifying grades shall be readily identifiable from the street.

(2) Indicate whether discounts or trading stamps are offered in connection with the sale of motor fuels. Lettering identifying discounts or trading stamps shall be readily identifiable from the street.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72.

Ag 112.08 Prohibited trade practices. No person advertising, offering for sale or selling any motor fuel shall:

(1) Substitute an inferior grade of motor fuel for that ordered by a buyer without the buyer's consent.

(2) Represent to any buyer that his purchase will entitle him to refer other buyers to the seller, and that such referrals will entitle him to a commission, compensation or any other reward, or that he will be entitled to future purchases at special or reduced prices as a result of such referrals.

(3) Offer any gift or prize tied in with a sale without full and conspicuous disclosure of all terms of such offer, all conditions thereof and the expiration date of such offer, or fail to honor such offer. Advertise, offer to sell or give any item of merchandise or service in connection with the sale of motor fuel at a specific location unless such advertisement or offer states the price per gallon of motor fuel required to be purchased.

(4) Misrepresent that membership in an organization created by the seller will entitle a buyer to certain benefits, privileges or concessions not otherwise available to other buyers.

(5) Advertise or make claims for components, blending techniques or final quality of any motor fuel unless such person furnishes to the department upon request, factual data in support of such advertisements or claims.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72.

Chapter Ag 114

REAL ESTATE ADVERTISING, ADVANCE FEES

Ag 114.01 Definitions
Ag 114.02 Misrepresentations

Ag 114.03 Contracts

Ag 114.01 Definitions. As used herein:

- (1) "Advance fee" means a payment for listing or advertising, in any manner, the sale or lease of property.
- (2) "Property" means any interest or estate in real estate or in a business.
- (3) "Person" shall include a corporation.

History: Cr. Register, November, 1958, No. 35, eff. 12-1-58.

Ag 114.02 Misrepresentations. No person in soliciting advance fees or contracts therefor shall make any of the following representations contrary to fact:

- (1) That the amount of the advance fees or the time of their payment is other than as provided by written contract.
- (2) That advance fees are not payable prior to the sale of property.
- (3) That advance fees or any part thereof will be refunded if the property is not sold within a specified time, or that refunds are freely and customarily made if property is not sold.
- (4) That he or any person whom he represents has or will furnish a list of qualified prospects who are interested in buying the type of property involved.
- (5) That he or any person whom he represents can secure the sale of the property within a specified period of time.
- (6) That he or any person whom he represents is affiliated or has any business connection with any real estate or business opportunity brokers.
- (7) That he or any person whom he represents resides in or maintains an office within the state.
- (8) That he or any person whom he represents will perform any act or engage in any service beyond the acts or services required by the terms of any written contract between the parties.
- (9) That he is an experienced or qualified appraiser of property.
- (10) That the property will sell at a named price or at a price in excess of that named or asked by the owner.

History: Cr. Register, November, 1958, No. 35, eff. 12-1-58.

Ag 114.03 Contracts. No person soliciting advance fees shall fail to furnish the property owner contracting therefor with a true copy of the entire contract, which shall specifically identify each advertising medium to be used and the size and number of advertising insertions to be made therein.

History: Cr. Register, November, 1958, No. 35, eff. 12-1-58.

Register, December, 1967, No. 144

Chapter Ag 116

DECEPTIVE OFFERS OF EMPLOYMENT

Ag 116.01 Disclosure of purchase requirement Ag 116.02 Contract provisions

Ag 116.01 Disclosure of purchase requirement. No person shall advertise or represent, either orally or in writing, through any media any offer of employment to engage any person as an employee, sales representative, independent dealer or other arrangement involving the selling of products dealt in by the advertiser, where a purchase or investment is required to obtain such employment, unless such requirement is fully disclosed in the advertisement or representation, together with the amount of the purchase price or investment required. No such advertisement or representation shall contain any false or misleading claims as to the nature of the employment or the amount of earnings, commissions or other compensation to be earned.

History: Cr. Register, September, 1962, No. 81, eff. 10-1-62.

Ag 116.02 Contract provisions. (1) Every contract for the sale of goods which is entered into by reason of any offer of employment or other arrangement as provided in Wis. Adm. Code section Ag 116.01 shall be in writing and shall clearly and completely set forth any and all provisions, guarantees, warranties, representations or statements made by the seller or his representatives. Such contract shall separately state the cost of the goods, all carrying, interest or other charges, and the total gross price to be paid by the purchaser. The contract shall specifically state whether or not it may be assigned. A true and correct copy of such contract and any note the purchaser is required to sign shall be furnished to the purchaser.

(2) Such contracts shall in addition give a full description of the work to be performed by the buyer, together with the rate of pay or remuneration and how it is to be determined. The description shall include the usual working hours and minimum term of employment, as well as any other limitations or conditions imposed by the seller.

(3) Where a representation is made that a specific or exclusive territory, area or location is to be allocated to the buyer, the contract shall fully describe such territory, area or location. The contract shall state whether or not the territory is exclusive and any other condition or limitation imposed.

History: Cr. Register, September, 1962, No. 81, eff. 10-1-62.

Chapter Ag 121

REFERRAL SELLING PLANS

Ag 121.01 Definitions

Ag 121.02 Prohibition

Ag 121.01 Definitions. (1) "Compensation" means anything of value, including commissions, fees, money, credits, discounts, rebates, premiums, goods, or any other kind of property, and services.

(2) "Consumer sale" means a sale or lease of goods, services, or an interest in land primarily for personal, family, or household use.

(3) "Referral selling plan" means any method of sale where the seller or lessor, as an inducement for a consumer sale, offers compensation to a prospective buyer or lessee either for (a) names of other prospective buyers or lessees, or (b) otherwise aiding the seller or lessor in making consumer sales.

(4) "Seller" or "lessor" means individuals, corporations, partnerships, or any other organization, but does not include banks, savings and loan associations, insurance companies and public utilities to the extent exempted from department regulation under section 93.01 (13), Wis. Stats.

History: Cr. Register, December, 1968, No. 156, eff. 1-1-69.

Ag 121.02 Prohibition. No seller or lessor shall use any referral selling plan unless the compensation is given or paid prior to the sale.

History: Cr. Register, December, 1968, No. 156, eff. 1-1-69.

Chapter Ag 122

CHAIN DISTRIBUTOR SCHEMES

Ag 122.01 Unfair trade practice	Ag 122.03 Prohibition
Ag 122.02 Definitions	Ag 122.04 Statutory exemption

Ag 122.01 Unfair trade practice. The promotional use of a chain distributor scheme in connection with the solicitation of business investments from members of the public is an unfair trade practice under section 100.20, Wis. Stats. When so used the scheme serves as a lure to improvident and uneconomical investment. Many small investors lack commercial expertise and anticipate unrealistic profits through use of the chance to further perpetuate a chain of distributors, without regard to actual market conditions affecting further distribution and sale of the property purchased by them or its market acceptance by final users or consumers. Substantial economic losses to participating distributors have occurred and will inevitably occur by reason of their reliance on perpetuation of the chain distributor scheme as a source of profit.

History: Cr. Register, March, 1970, No. 171, eff. 4-1-70.

Ag 122.02 Definitions. (1) "Chain distributor scheme" is a sales device whereby a person, upon a condition that he make an investment, is granted a license or right to recruit for profit one or more additional persons who also are granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above license or right to recruit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme.

(2) "Investment" is any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and includes, without limitation, franchises, business opportunities and services. It does not include real estate, securities registered under chapter 551, Wis. Stats., or sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.

(3) "Person" includes partnerships, corporations and associations.

History: Cr. Register, March, 1970, No. 171, eff. 4-1-70.

Ag 122.03 Prohibition. No person shall promote, offer or grant participation in a chain distributor scheme.

History: Cr. Register, March, 1970, No. 171, eff. 4-1-70.

Ag 122.04 Statutory exemption. This chapter does not apply to banks, savings and loan associations, insurance companies and public utilities to the extent exempted from department regulations under section 93.01 (13), Wis. Stats.

History: Cr. Register, March, 1970, No. 171, eff. 4-1-70.

Register, March, 1970, No. 171

Chapter Ag 124

PRICE COMPARISON ADVERTISING

Ag 124.01	Declaration of policy	Ag 124.05	Seller's offered prices
Ag 124.02	Definitions	Ag 124.06	Seller's future prices
Ag 124.03	Price comparison; general	Ag 124.07	Competitor's prices
Ag 124.04	Seller's actual sale prices	Ag 124.08	Retail price labeling
		Ag 124.09	Reporting

History:

September 19, 1972. Ch. Ag 124, Price Comparison Advertising, was adopted. Publication in the WIS. ADM. REGISTER was withheld by department action.

December 29, 1972. Ch. Ag 124 was repealed by emergency procedure.

February 13, 1973. Ch. Ag 124 was permanently repealed by the department, effective March 1, 1973 upon publication in the notice section.

Ag 124.01 Declaration of policy. Price comparison advertising is a form of advertising commonly used in the sale or offering for sale of consumer property or services whereby current prices are compared with former or future prices or other stated values to demonstrate price reductions or cost savings. While price comparisons accurately reflecting market values in the trade area provide consumers with useful information in making value comparisons and market buying decisions, price comparisons based on arbitrary or inflated prices or values can only serve to deceive or mislead. Further abuse occurs when sellers fail to disclose material information essential to consumer understanding of the comparisons made. The use of arbitrary or inflated price comparisons in violation of this rule as an inducement to the sale of consumer property or services is injurious to both the consuming public and competitors, and is an unfair trade practice and unfair method of competition under section 100.20, Wis. Stats.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

Ag 124.02 Definitions. (1) "Advertisement" is any oral, written or graphic statement or representation made in connection with the solicitation of business in any manner by a seller and includes, without limitation because of enumeration, statements and representations contained on any label, tag or sign attached to, printed on, or accompanying consumer property, or printed in a catalog or any other sales literature or brochure.

(2) "Consumer property or services" means any personal property or services sold primarily for personal, family, or household use and not for resale or for use or consumption in a trade or business.

(3) "Date" as applied to "date on which a price comparison is stated in the advertisement" in newspapers, catalogs, or other printed publications means either the date of publication or distribution or the date on which the completed advertising copy is submitted to the printer for final printing and publication, provided such sub-

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mission date does not exceed 30 days from date of actual publication or distribution.

(4) "Seller" means a person engaged in the sale of consumer property or services and includes corporations, partnerships, associations and any other form of business organization or entity. The term does not include banks, savings and loan associations, insurance companies and public utilities to the extent exempt from department regulation under section 93.01 (13), Wis. Stats.

(5) "Price comparison" means the direct comparison, in any advertisement, of a seller's current price for consumer property or services with any other price or statement of value for such property or services expressed in dollars, cents, fractions or percentages.

(6) The terms "sell" or "sale" include a lease.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisement in catalogs it shall take effect July 1, 1974.

Ag 124.03 Price comparison; general. No price comparison may be made by a seller:

(1) Based on a price other than one at which consumer property or services were sold or offered for sale by him or a competitor, or will be sold or offered for sale by him in the future, in the regular course of business in the trade area in which the price comparison is made.

(2) In which the consumer property or services differ in composition, grade or quality, style or design, model, name or brand, kind or variety, or service and performance characteristics, unless the general nature of the material differences is conspicuously disclosed in the advertisement with the price comparison.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

Ag 124.04 Seller's actual sale prices. (1) No price comparison may be made by a seller based on a price at which consumer property or services were sold by him other than a price at which such property or services were actually sold by him in the last 90 days immediately preceding the date on which the price comparison is stated in the advertisement.

(2) Notwithstanding subsection (1), a price comparison may be made by a seller based on a price at which consumer property or services were actually sold by him at any time prior to the 90-day period specified in subsection (1), provided the advertisement discloses with the price comparison the date, time or seasonal period of such sale or of a related advertisement.

(3) Notwithstanding subsections (1) and (2), no price comparison under this section may be made by a seller based on a price which exceeds his cost plus normal markup regularly used by him in the sale of such property or services, or consumer property or services of like kind.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

Ag 124.05 Seller's offered prices. (1) No price comparison may be made by a seller based on a price at which he has offered for sale

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but has not sold consumer property or services unless:

(a) The price is a price at which such property or services were actually offered for sale by him in the last 90 days immediately preceding the date on which the price comparison is stated in the advertisement; and

(b) The consumer property or services were offered for sale for at least 4 weeks during such 90-day period.

(2) Notwithstanding subsection (1), a price comparison may be made by a seller based on a price at which consumer property or services were offered for sale by him during any other 90-day period prior to the 90-day period specified in subsection (1) (a), provided:

(a) The consumer property or services were offered for sale for at least 4 weeks during such 90-day period; and

(b) The advertisement discloses with the price comparison the date, time or seasonal period of such offer.

(3) Notwithstanding subsections (1) and (2), no price comparison under this section may be made by a seller based on a price which exceeds his cost plus normal markup regularly used by him in the sale of such property or services, or consumer property or services of like kind.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

Ag 124.06 Seller's future prices. No price comparison may be made by a seller based on a future price increase unless:

(1) The effective date of the future price increase, if more than 90 days after the price comparison is stated in the advertisement, is disclosed with the price comparison;

(2) The future price increase takes effect on the date disclosed in the advertisement, or if not disclosed in the advertisement, within 90 days after the price comparison is stated in the advertisement; and

(3) The consumer property or services are continuously offered for sale by him at a price not less than the future price increase stated in the advertisement for a period of at least 4 weeks after its effective date, except where compliance becomes impossible because of circumstances beyond his control.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

Ag 124.07 Competitor's prices. No price comparison may be made by a seller based on a competitor's price unless:

(1) The competitor's price is a price at which the competitor sold or advertised consumer property or services for sale at any time within the 90-day period immediately preceding the date on which the price comparison is stated in the advertisement;

(2) The competitor's price is a price that is representative of prices at which the consumer property or services are sold or advertised for sale in the trade area in which the price comparison is made and is not an isolated price; and

(3) Disclosure is made with the price comparison that the price used as a basis for the comparison was not the seller's own price.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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Ag 124.08 Retail price labeling. (1) A price label permanently imprinted on or affixed to consumer property or its container, by the manufacturer or supplier, and not under control of the retail seller or instigated by him, or which is required to be attached to such property under federal law, need not be covered or obliterated for purposes of compliance with these rules when the retail seller's current offering price is attached to, printed on or placed on a label, tag or sign accompanying such property, provided no other price comparison based thereon is made by the retail seller. This exemption shall not apply to a price label which can be removed by the retail seller without damage to consumer property or its container, except where removal is prohibited by federal law.

(2) Disclosure of the date, time or seasonal period as required under sections Ag 124.04 (2) or 124.05 (2) (b), need not be made on a label, tag or sign used at the premises of the retail seller in connection with the offer or sale of consumer property of a seasonal nature if the comparison is based on a price used during the immediately preceding selling season.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

Ag 124.09 Reporting. Persons making price comparisons shall, within 14 days after receipt of written demand from the department, submit a report in writing setting forth information on which the price comparison was based. The department may require that such reports be submitted under oath or affirmation. Additional time for cause shown may be granted upon request.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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Chapter Ag 125

MOBILE HOME PARKS

Ag 125.01	Declaration of policy	Ag 125.06	Changes in rental terms or park rules
Ag 125.02	Definitions	Ag 125.07	Sale of mobile home; transfer of tenancy
Ag 125.03	Tie-in sales; separate or discriminatory charges	Ag 125.08	Mobile home relocation
Ag 125.04	Rental agreement; requirements	Ag 125.09	Termination of tenancy
Ag 125.05	Rental agreement; limitations	Ag 125.10	Prohibited practices; general

Note: Chapter Ag 125 as it existed on May 31, 1976 was repealed and a new chapter Ag 125 was created effective June 1, 1976.

Ag 125.01 Declaration of policy. Zoning restrictions imposed by local units of government on the development and use of land for the location of mobile homes have resulted in a shortage of rental sites in many areas of the state. This shortage has had the effect of limiting competition between mobile home park operators in the rental of sites, placing many of them in a dominant market position with respect to persons renting or seeking to rent mobile home sites. This has impaired the bargaining position of tenants, and resulted in the imposition of undue burdens and requirements as conditions to the rental of mobile home sites. These have included required tie-in purchases of goods and services, including mobile homes, from the park operator or persons named by the operator, with the result that competition in the sale of such goods and services has been inhibited. Park entry requirements, coupled with the shortage of mobile home sites, have further limited the possibilities for relocating mobile homes between parks, thereby subjecting tenants to the threat of serious financial loss unless permission is granted to sell their mobile homes in place. This has made tenants susceptible to the threat of arbitrary eviction, and further encouraged the imposition of arbitrary terms and charges, including terms and charges not disclosed at the outset of tenancy. These and other acts or practices by mobile home park operators constitute unfair methods of competition and unfair trade practices in business, and are prohibited under section 100.20, Wis. Stats.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.02 Definitions. (1) "Mobile home" means a unit designed to be towed or transported and used as a residential dwelling, but does not include such units used primarily for camping, touring, or recreational purposes.

(2) "Site" means any plot of land which is rented, or intended to be rented for the accommodation of a mobile home occupied for residential purposes, but does not include a plot of land accommodating a mobile home occupied on a strictly seasonal basis.

(3) "Mobile home park" means any tract of land containing 2 or more sites.

(4) "Person" means any individual, corporation, partnership, association, business organization or entity.

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(5) "Operator" means any person engaged in the business of renting sites in a mobile home park to tenants.

(6) "Tenant" means any person renting a site from an operator.

(7) "Rental agreement" means an agreement between an operator and a tenant for the rental of a site.

(8) "Utility service" means electricity, water, sewer, and gas and petroleum fuels, including liquified petroleum gas.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.03 Tie-in sales; separate or discriminatory charges. No operator shall:

(1) Require, as a condition to the rental of any site, the purchase of a mobile home from the operator or any dealer, manufacturer, or agent named by the operator.

(2) Represent to any person that the purchase of a mobile home from the operator or any dealer, manufacturer, or agent named by the operator will give the purchaser an advantage over others in the rental or continued occupancy of a site.

(3) Discriminate or threaten to discriminate in rental charges or in any other respect against a tenant for failure of the tenant to purchase a mobile home from the operator or any dealer, manufacturer, or agent named by the operator.

(4) Solicit or receive any payment or other thing of value from any seller of a mobile home for agreeing to rent a site to the purchaser of such mobile home.

(5) Solicit or receive any payment or other thing of value from any person upon the representation or understanding that such consideration will give that person an advantage over others in the rental or continued occupancy of a site.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.04 Rental agreement; requirements. (1) Every rental agreement shall be in writing, and a copy thereof shall, at the time the agreement is entered into, be furnished to the tenant. If a mobile home is purchased from or through the operator, a copy of the rental agreement shall be furnished to the tenant before the tenant signs the purchase contract. The rental agreement shall conspicuously set forth all terms and conditions affecting the rental of the site, and shall include, but not be limited to:

(a) The amount of rent for each rent paying period and all property, services and facilities provided by the operator and included in the rent.

(b) The amount of any security deposit, installation, or other charge payable by the tenant under the rental agreement but not included in the rent. All charges shall be stated in the main body of the rental agreement, and not in a separate or supplementary document.

(c) A disclosure of the tenant's duty to remove the mobile home from the park upon termination of tenancy, unless otherwise provided in the rental agreement.

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(d) All park rules and regulations. If the rules and regulations are contained in a separate document, that document shall be furnished to the tenant together with the principal agreement.

(e) The approximate size of the site and its location in the park.

(f) The amount of the monthly mobile home parking fee assessed by local units of government and payable by the tenant. If the monthly fee is not known, an approximation shall be given.

(2) The initial, and each succeeding rental agreement shall be for a term of no less than one year, unless a shorter term is requested by the tenant and agreed to by the operator. Except for mobile home parking fees assessed by local units of government, rent and other charges under the rental agreement shall not be increased during the term of the agreement. Under any agreement for a rental term of 2 or more months, rental payments shall, at the option of the tenant, be payable in equal monthly installments.

(3) The operator shall, at the time the rental agreement is entered into, and throughout the term of the rental agreement, make available to the tenant the name, address, and telephone number of a person who may be contacted concerning the maintenance of facilities and services provided by the operator. Such information shall be included in the tenant's copy of the rental agreement or in a separate written notice furnished to the tenant.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.05 Rental agreement; limitations. (1) No park entrance or exit fee shall be charged to any tenant; nor shall any charge be made for the sale of mobile home equipment or accessories, or the furnishing of services or facilities to the tenant unless the tenant is free to purchase or obtain such goods or services from other sources of the tenant's own choosing. This subsection shall not apply to:

(a) A security deposit not exceeding an amount equal to one month's rent, if provided for in the rental agreement.

(b) Reasonable charges for moving a tenant's mobile home on or off the park premises, or for connecting or disconnecting park or service facilities to or from the mobile home.

(c) Charges for underground utility services installed by the operator prior to the time at which such services became available from a public utility, subject to subsection (3).

(d) Reasonable charges, if set forth in the rental agreement, for snow removal, lawn care, or similar services performed by the operator upon the failure of a tenant to fulfill obligations under the rental agreement. Before charges may be imposed under this exception, the tenant, if available, shall be given prior notice and a reasonable opportunity to fulfill obligations under the rental agreement.

(2) Charges for utility services provided by the operator shall be reasonably competitive with prices for such services from public utilities or other local sources, and shall be computed on quantities used by the tenant. As an exception to this requirement, charges for water furnished by the operator may be assessed on a flat rate or other uniform basis, without regard to quantities used, if metering devices have not been installed. Whenever a utility charge is computed on the quantity of the

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utility service used by the tenant, the tenant shall be provided with a written invoice specifying both the charge and the quantity used.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.06 Changes in rental terms or park rules. (1) If any change or increase in rent or fees, or any other substantial change in the terms or conditions of tenancy is to be made in connection with the renewal of any rental agreement, a copy of the proposed new agreement, or amendments to the existing agreement, shall be furnished to the tenant, in writing, at least 28 days prior to the date on which the proposed new agreement is to take effect. All changes shall be specifically brought to the tenant's attention by a separate statement on the proposed rental agreement or in a separate document attached thereto. The operator or a representative of the operator shall meet with tenants, or any group of tenants, on the proposed changes, at their request. Nothing in this section shall be construed as interfering with the operator's right to terminate any tenancy in accordance with chapter 704, Wis. Stats., and section Ag 125.09, if the tenant declines to accept the proposed new agreement.

(2) Nothing in this chapter prohibits a park operator from changing general park rules and regulations during the term of any rental agreement or tenancy, provided all tenants are given at least 28 days prior written notice of any proposed change, and an opportunity to meet with the operator or a representative of the operator on such change before it takes effect.

(3) Notice of proposed changes in rental terms and conditions or park rules and regulations under subsections (1) or (2) may be furnished to the tenant in person or by mail. Notice by mail shall be considered actual notice.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.07 Sale of mobile home; transfer of tenancy. (1) No tenant shall be required to designate the operator, or any person named by the operator, as agent for the sale of a tenant's mobile home; nor shall any other unreasonable restriction be imposed by the operator on the sale of a tenant's mobile home by the tenant or an agent of the tenant's own choosing.

(2) No payment or other thing of value shall be solicited or received by the operator as a condition to the assignment or sublease of a rental agreement by a tenant, or as a condition to the transfer of tenancy to a buyer of the tenant's mobile home.

(3) This section does not prohibit the operator from acting as agent for the sale of a tenant's mobile home at the tenant's request, pursuant to a separate written agreement, but no charge may be made under such an agreement in excess of a reasonable commission or fee for services actually rendered.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.08 Mobile home relocation. (1) No tenant shall be required to relocate a mobile home within a park during the term of the rental agreement, or to assume the cost of any required relocation under a new or renewal rental agreement, except in emergency or where the tenant has violated the terms and conditions of the rental agreement. This does not apply to a mobile home which has been vacated by the tenant.

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(2) Any required relocation shall, except in emergency, be preceded by written notice setting forth the reason for such relocation. Notice shall be given within the time period required under chapter 704, Wis. Stats., for termination of tenancies.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.09 Termination of tenancy. (1) Whenever an operator terminates any rental agreement or refuses, upon the expiration of a lease, to renew the lease or to enter into a new rental agreement, the operator shall provide the tenant with written notice setting forth the reason for such termination or refusal. Notices of termination shall comply with the requirements of chapter 704, Wis. Stats., as applicable.

(2) No operator shall terminate a rental agreement or refuse, upon expiration of a lease, to renew the lease or to enter into a new rental agreement for the reason that:

(a) The tenant has reported a violation, by the operator, of this chapter or any other law to any governmental authority, or filed suit alleging such violation.

(b) The tenant is a member of a tenant's union or association.

(c) The operator wishes to make a site available to a person purchasing a mobile home from the operator or an agent of the operator.

(3) No payment or other thing of value, except for normal rental payments, shall be solicited or received by any park operator for permitting a tenant to leave the tenant's mobile home in the park upon termination of tenancy.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Ag 125.10 Prohibited practices; general. No operator shall:

(1) Make any false, deceptive, or misleading representation to induce a mobile home sale or site rental, or make any representation inconsistent with or contrary to the written rental agreement.

(2) Impose any term or condition, or any rule or regulation which the operator knows or reasonably ought to know is in conflict with this chapter or other applicable law.

(3) Require any tenant to make permanent improvements to the mobile home park or any of its facilities, or assess any separate charge therefor.

(4) Restrict the choice of vendors from whom a tenant may purchase goods or services, except that an operator may prohibit all solicitation by sellers of goods or services within the mobile home park.

(5) Enter a tenant's mobile home without the tenant's permission and reasonable prior notice to the tenant, except that if the tenant cannot be contacted and the operator reasonably believes that entry is necessary because of emergency, or to preserve and protect the mobile home or the park, the operator may enter without notice or permission.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76.

Chapter Ag 127

HOME SOLICITATION SELLING

Ag 127.01 Definitions

Ag 127.02 Disclosure obligations; contract requirements

Ag 127.03 Prohibited practices

Ag 127.04 Unfair employment offers

Ag 127.01 Definitions. (1) "Home solicitation selling" means the selling or leasing, or the offering for sale or lease, of goods or services primarily for personal, family, or household purposes, including courses of instruction or training, where the sale, lease, or offer thereof is either personally solicited or consummated by a seller at the residence or place of business or employment of the buyer, at a seller's transient quarters, or away from seller's regular place of business. Personal solicitation includes solicitation made directly or indirectly by telephone, person-to-person contact, or by written or printed communication other than general advertising indicating a clear intent to sell goods or services at a regular place of business, and other than catalog or mail solicitation not accompanied by any other solicitation. Transient quarters includes hotel or motel rooms, or any other place utilized as a temporary business location.

(2) "Buyer" means both actual and prospective purchasers or lessees of any goods or services offered through home solicitation selling.

(3) "Seller" means a person or organization engaged in home solicitation selling or the making of home solicitation sales, or advertising, offering or dealing in goods or services for the purpose of home solicitation selling, or providing or exercising supervision, direction, or control over sales practices used in home solicitation sales, but does not include banks, savings and loan associations, insurance companies and public utilities to the extent exempt from department regulation under section 93.01(13), Wis. Stats., or licensed real estate brokers or salesmen with respect to real estate listings or the sale or leasing of real estate, or incidental sales made by persons not regularly engaged in the business of selling goods or services. The term includes sales representatives, employees, or agents of a seller, however designated by the seller. It also includes a supplier or distributor of goods and services to a seller if:

(a) The seller is a subsidiary or affiliate of the supplier or distributor.

(b) The seller interchanges personnel or maintains common or overlapping officers or directors with the supplier or distributor; or

(c) The supplier or distributor provides or exercises supervision, direction or control over the selling practices of the seller.

(4) "Home solicitation sale" or "sale" means a sale or lease resulting from home solicitation selling as defined in subsection (1)

History: Cr. Register, September, 1972, No. 201, eff. 10-1-72; emerg. am. (1) eff. 10-2-72; am. (1) and (3) intro. par., Register, January, 1973, No. 205, eff. 2-1-73; am. (3) (intro.), Register, March, 1976, No. 243, eff. 4-1-76.

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Ag 127.02 Disclosure obligations; contract requirements. (1) In a home solicitation sale every seller shall, at the time of initial contact or communication with the buyer, clearly and expressly disclose: the seller's individual name, the name of the business firm or organization he represents, and the identity or kind of goods or services he offers to sell. When the initial contact is made person-to-person or through other oral communications, such disclosure shall be made before asking any questions or making any statements other than an initial greeting.

(2) In a home solicitation sale, before any sale is consummated or any contract signed, the seller shall fully disclose to the buyer the total price to be paid, less trade-ins or allowances, for any goods or services sold or to be sold, including credit or finance charges other than those made pursuant to prior existing open-end credit arrangements, and all other terms and conditions of sale affecting the buyer's obligation for payment. In credit transactions other than those made pursuant to prior existing open-end credit plans, the seller shall furnish to the buyer prior to the time first payment is due, a true copy of any agreement signed by the buyer evidencing the transaction showing the individual name of the person making the sale, and the name, mailing address and telephone number of the person or firm whom the seller represents. In cash transactions, the seller shall furnish the buyer, at or prior to the time payment is made, a sales slip or other document evidencing the transaction showing the date of sale, a description of the property or services sold, the total price paid or to be paid less trade-ins or allowances, the individual name of the person making the sale, and the name, mailing address and telephone number of the person or firm whom the seller represents. If a language other than English is principally used in making the sale, all sales documents or agreements must be both in English and in the language principally used.

History: Cr. Register, September, 1972, No. 201, eff. 10-1-72; emerg. r. (3) eff. 10-2-72; am. (1), (2) and r. (3), Register, January, 1973, No. 205, eff. 2-1-73.

Ag 127.03 Prohibited practices. (1) No seller engaged in making a home solicitation sale shall represent directly or by implication that the seller:

(a) Is making an offer to specially selected persons or that the buyer or prospective buyer has been specially selected, unless such representations are true and the specific basis on which such representations are made is concurrently disclosed to the prospective buyer.

(b) Is conducting a survey, test or research project, or engaged in a contest or other venture to win a cash award, scholarship, vacation or similar prize, when in fact the principal objective is to make a sale or lease or to obtain information to help identify sales prospects.

(c) Is conducting a special sales promotion campaign or making a special offer limited to a few persons only or for a limited period of time, or is authorized to place the product or service in a few homes, unless the representations are true and the specific basis on which such representations are made is concurrently disclosed to the prospective buyer.

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(d) Will give any product or service free or as a gift or without cost or charge, or at a nominal cost or charge, if the furnishing of such product or service is contingent on the making of any payment or purchase of any other product or service. Other terms, conditions and obligations upon which receipt and retention of any gift or free item are contingent shall be fully and clearly disclosed in connection with the offer of any gift or free item. This does not prohibit the making of combination offers where the purchase of one item at a reduced price is contingent upon the purchase of other items at a regular price, provided the terms and conditions of the offer are fully disclosed to the buyer, the buyer is informed of the total price he must pay and the price of items included in the offer are based on the price at which such items are regularly sold by the seller.

(e) Will provide any service purchased for a longer period than the seller is obligated to provide under the contract.

(f) Will in any way reduce the regular price for the goods or services to the buyer for the use of the buyer's name or a written expression of his opinion.

(2) No seller engaged in making a home solicitation sale shall misrepresent, directly or by implication:

(a) The identity of the seller, the business firm or organization he represents, or his affiliation or association with other firms, businesses or governmental entities, or the identity of the goods or services he offers to sell.

(b) The savings which will be accorded or made available to the buyer.

(c) The length of the sales presentation.

(d) The delivery or performance date.

(e) The nature of any document the buyer is requested or required to execute in connection with the purchase or lease of any goods or services.

(f) Any limitations and restrictions on the guarantee or warranty made by the seller, including any duty which the buyer must perform as a condition precedent to the guarantee or warranty becoming effective.

(g) Finance or interest charges or installments to be paid in connection with sales made on credit, or any other terms or conditions under which credit will be extended.

(3) No seller engaged in making a home solicitation sale shall use any false, deceptive or misleading representations to induce a sale, or use any plan, scheme or ruse which misrepresents the true status or mission of the person making the call, or fails to promptly leave the premises at which a sales presentation is made when requested to do so.

(4) No seller engaged in making a home solicitation sale shall make any material representations with respect to the warranty or guarantee of the product or services he sells unless such representations are true and are furnished to the buyer in writing as part of any sales document or agreement, or in a separate statement of warranty

or guarantee. Separate statements of warranty or guarantee shall be furnished to the buyer prior to the time first payment is due.

(5) No seller engaged in making a home solicitation sale shall make any statement or representations inconsistent with or contradictory to any contract document or instrument in writing evidencing the transaction.

History: Cr. Register, September, 1972, No. 201, eff. 10-1-72; emerg. am. (1) (d) and (e), eff. 10-2-72; am. (1) (a), (c), (d) and r. (e); renum. (1) (f) and (g) to be (e) and (f); cr. (2) (g); am. (4) and cr. (5), Register, January, 1973, No. 205, eff. 2-1-73; am. (1) (intro.) and (b), (2) (intro.), (3), (4) and (5), Register, March, 1973, No. 243, eff. 4-1-76.

Ag 127.04 History: Cr. Register, September, 1972, No. 201, eff. 10-1-72; emerg. r. eff. 10-2-72; r. Register, January, 1973, No. 205, eff. 2-1-73.

Ag 127.04 Unfair employment offers. No seller shall represent in any offer of employment, including offers made in training sessions or advertisements, that prospective representatives, agents or salesmen will be paid on a salary basis if they accept employment when, in fact, they will be paid on a commission basis.

History: Cr. Register, September, 1972, No. 201, eff. 10-1-72; emerg. renum. Ag 127.06 to be Ag 127.04, eff. 10-2-72; renum. Ag 127.05 to be Ag 127.04, Register, January, 1973, No. 205, eff. 2-1-73.

Chapter Ag 132

MOTOR VEHICLE REPAIR

Ag 132.01	Definitions	Ag 132.06	Invoice
Ag 132.02	Repair order	Ag 132.07	Prohibited practices
Ag 132.03	Repair price information	Ag 132.08	Disclosure of regulation
Ag 132.04	Authorization to proceed	Ag 132.09	Records
Ag 132.05	Return of parts	Ag 132.10	Waiver

Ag 132.01 Definitions. (1) "Motor vehicle" means any self-propelled vehicle as defined in chapter 340, Wis. Stats., which is required to be registered with the state of Wisconsin division of motor vehicles, or with an equivalent governmental agency of another state, but does not include any vehicle whose manufacturer's specified gross vehicle weight rating exceeds 16,000 lbs.

(2) "Shop" means any individual, corporation, partnership, or other form of business organization engaged in the motor vehicle repair business, and all officers, directors, agents, employees, and representatives thereof, but excludes the following:

(a) A shop engaged solely in the business of repairing the motor vehicles of a single commercial, industrial or governmental establishment, or of 2 or more such establishments which are related by common ownership or corporate affiliation.

(b) A person repairing his own or a family member's motor vehicle.

(3) "Customer" includes any person authorized by the customer to act on the customer's behalf.

(4) "Repair" means the improvement, adjustment, replacement, examination, diagnosis, maintenance, servicing, removal or installation of any component or part of a motor vehicle, but does not include towing or the supply of motor fuel to a motor vehicle.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.02 Repair order. Prior to the commencement of any repairs whose price to the customer may exceed \$25.00, the shop shall provide the customer with a copy of a dated written repair order legibly describing the repairs to be performed; except that such copy need not be provided if the customer's motor vehicle has been brought to the shop without face-to-face contact between the customer and a representative of the shop. The shop shall record the odometer reading of the customer's motor vehicle on the repair order, and shall sign the customer's copy.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.03 Repair price information. (1) **GENERAL REQUIREMENT.** Prior to the commencement of any repairs whose price to the customer may exceed \$25.00, the shop shall provide the customer with either:

(a) A price quotation for the repairs, pursuant to subsection (2), or

(b) A choice of estimate alternatives, pursuant to subsection (3); except that neither a price quotation nor a choice of estimate

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alternatives need be provided if the customer's motor vehicle has been brought to the shop without face-to-face contact between the customer and a representative of the shop. Nothing in this section shall be construed as requiring a shop to provide a price quotation or choice of estimate alternatives if the shop does not agree to perform the requested repairs; but no shop shall make the performance of repairs contingent upon the customer's waiver of any right under this chapter.

(2) PRICE QUOTATION. (a) If the shop elects to give the customer a price quotation for the requested repairs, rather than a choice of estimate alternatives, such quotation shall be made in writing on the repair order, and shall be accompanied by the statement, conspicuously printed on the repair order, that:

"THIS PRICE FOR THE AUTHORIZED REPAIRS WILL NOT BE EXCEEDED IF THE MOTOR VEHICLE IS DELIVERED TO THE SHOP WITHIN 5 DAYS."

(b) The price quoted for the authorized repairs shall not be exceeded if the customer's motor vehicle is delivered to the shop within 5 days after the date on which the price is quoted in writing on the repair order.

(3) ESTIMATE. (a) If the shop elects to give the customer a choice of estimate alternatives, rather than a price quotation, the following statement shall be conspicuously disclosed to the customer either on the repair order or by a form, attached to the repair order, on which the repair order number has been entered:

"YOU ARE ENTITLED TO A PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. THE REPAIR PRICE MAY BE LESS THAN THE ESTIMATE, BUT WILL NOT EXCEED THE ESTIMATE WITHOUT YOUR PERMISSION. YOUR SIGNATURE WILL INDICATE YOUR ESTIMATE SELECTION."

1. I request an estimate in writing before you begin repairs.

2. Please proceed with repairs, but call me before continuing if the price will exceed \$_____.

3. I do not want an estimate.

”

A copy of the signed statement shall be given to the customer along with his copy of the repair order, if the statement is on a separate form.

(b) If the customer signs estimate alternative 1, or if none of the estimate alternatives is signed by the customer, the shop shall provide the customer with a written, good faith estimate on the repair order prior to commencing repairs; except that no estimate need be provided if the repair price will not exceed \$25.00, of if the customer's motor vehicle has been brought to the shop without face-to-face

contact between the customer and a representative of the shop, or if the shop gives the customer a price quotation for the repairs.

(4) **WAIVERS.** (a) The shop may accept a written revocable waiver, covering no fewer than 4 motor vehicles owned or leased by the customer, under which the customer waives his right to a prior price quotation or estimate for all repairs to such motor vehicles.

(b) Neither a revocable blanket waiver made pursuant to paragraph (a), nor a single estimate waiver made by signing alternative 3 under subsection (3) shall have effect unless made by the customer voluntarily and with knowledge of the meaning of the waiver.

(5) **CHARGES.** No shop shall charge for making a repair price quotation or estimate unless, prior to making the price quotation or estimate, the shop discloses to the customer the amount of the charge, or, if the amount cannot be determined, the basis on which the charge will be calculated. Nor shall any shop impose, or threaten to impose, a charge which is clearly excessive in relation to the work involved in making the price quotation or estimate.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.04 Authorization to proceed. (1) Before undertaking any repairs other than those previously authorized by the customer, the shop shall call the customer and provide him with a description of the proposed additional repairs, together with a good faith estimate of the price for such repairs. The shop shall not then undertake the additional repairs until it receives the customer's written or oral authorization to do so.

(2) If the shop has given the customer an estimate and the price for the authorized repairs will exceed the estimate, or if the customer has signed estimate alternative 2 under section Ag 132.03 (3) and the price for the authorized repairs will exceed the amount designated, the shop shall call the customer before continuing with the repairs, and shall provide the customer with a new, good faith estimate of the repair price. The shop shall not then continue with the repairs until it receives the customer's written or oral authorization to do so.

(3) Any written authorization under subsection (1) or subsection (2) shall be made on the repair order, or on the invoice where a repair order is not required by this chapter, and shall specify any newly authorized repairs, as well as the newly authorized repair price estimate. If authorization under subsection (1) or subsection (2) is received orally, the shop shall specify on the repair order or invoice any newly authorized repairs, as well as the newly authorized repair price estimate; and it shall further specify the date and time of authorization, and the person and telephone number called.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.05 Return of parts. (1) Parts from a customer's motor vehicle which are replaced by the shop shall be returned to the customer if they are requested by the customer at the time the repair order is taken; except that parts which must be returned to the manufacturer because of a warranty or exchange agreement need not be returned to the customer upon such request, but shall instead be made available for the customer's inspection when the customer retakes possession of his motor vehicle.

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(2) At the time the repair order is taken, the shop shall inform the customer, either orally or in writing, that the customer is entitled to the return of replaced parts if he requests them at that time; except that such disclosure need not be made if the customer's motor vehicle has been brought to the shop without face-to-face contact between the customer and a representative of the shop.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.06 Invoice. The shop shall provide every customer, at the time the customer retakes possession of his motor vehicle, with a copy of a dated invoice for any repairs to the motor vehicle. The invoice shall include the following information:

(1) An itemized description of all labor, parts, and merchandise supplied, including that which is supplied without cost, or at reduced cost, to the customer because of a shop or manufacturer's warranty. Where labor, parts, or merchandise carry a warranty from the shop or manufacturer, such fact shall be stated on the invoice.

(2) If any used, rebuilt, or reconditioned part has been installed, a statement identifying such part as being used, rebuilt, or reconditioned, as the case may be.

(3) If any part of a system is composed of both new parts and used, rebuilt, or reconditioned parts, a statement indicating such fact.

(4) The price for the authorized repairs, stated as the total price or as separate total prices for parts and labor. If units of time based on flat-rate average time are stated, the actual time required to complete the repairs shall also be stated.

(5) The identity of each person performing the repairs, including the name of any shop retained as a subcontractor.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.07 Prohibited practices. (1) No shop shall misrepresent, directly or by implication:

(a) The cost of repairs authorized by the customer;

(b) The terms or conditions of any warranty or service agreement;

(c) That repairs are necessary;

(d) That repairs have been made; or

(e) That the motor vehicle is in a dangerous condition, or that the customer's continued use of the motor vehicle will be hazardous to persons or harmful to the motor vehicle.

(2) No shop shall collect or attempt to collect for:

(a) Repairs not authorized either orally or in writing by the customer;

(b) Repairs which the shop knew or reasonably ought to have known to be unnecessary; or

(c) Repairs which have not been made.

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(3) No shop which is also a warrantor or a party to a service agreement shall refuse to repair a motor vehicle in accordance with the terms and conditions of the warranty or service agreement.

(4) No shop shall fail to return any customer's motor vehicle because the customer has refused to pay for unauthorized repairs, or because the customer has refused to pay repair charges in excess of the price authorized pursuant to section 132.03 or section 132.04 Wis. Adm. Code, provided that the customer pays the authorized price for the authorized repairs.

(5) No shop shall alter a customer's motor vehicle with intent to create a condition requiring repairs.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.08 Disclosure of regulation. The following statement shall be conspicuously printed, either on the invoice or on another form given to every customer for whom the shop performs repairs:

"Motor vehicle repair trade practices are regulated by Wis. Adm. Code Chapter Ag 132, administered by the Trade Division, Wis. Dept. of Agriculture, 801 West Badger Road, Madison 53713."

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.09 Records. Every shop shall maintain repair records which shall include repair orders and attached forms, repair invoices, payroll records, and invoices for parts purchased by the shop. Such records shall be available for reasonable inspection by the Wisconsin department of agriculture or other law enforcement agency, and shall be retained for at least 2 years.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Ag 132.10 Waiver. No shop shall solicit or accept the waiver of any provision of this chapter, except as specifically authorized in this chapter.

History: Cr. Register, June, 1975, No. 234, eff. 9-1-75.

Chapter Ag 133

**BASEMENT WATERPROOFING UNFAIR TRADE
PRACTICES**

Ag 133.01 Declaration of policy
Ag 133.02 Definitions
Ag 133.03 Prohibited practices

Ag 133.04 Guarantees
Ag 133.05 Seller's analysis
Ag 133.06 Interpretation

Ag 133.01 Declaration of policy. Basement water problems and particularly those arising from poor drainage or high water tables are often difficult to correct without a thorough analysis of causative factors and the performance of extensive and costly waterproofing services. The effectiveness of such services, unlike many other services, cannot readily be determined until heavy rains or other conditions responsible for basement water problems occur. In the performance of basement waterproofing services certain methods or processes have been used at substantial cost to the consumer which are ineffective, inadequate or unsuitable for the correction of basement water problems. Guarantees, if given, may often be vague, ambiguous or unenforceable against the seller, or otherwise made without reasonable expectancy of performance on the part of the seller to the detriment of the buyer. These and other abuses in the sale of basement waterproofing services are contrary to the public interest and are unfair trade practices and unfair methods of competition prohibited under section 100.20, Wis. Stats.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75.

Ag 133.02 Definitions. (1) "Advertising" means any oral, written, printed or graphic statement or representation made in connection with the solicitation or sale of basement waterproofing services.

(2) "Basement waterproofing" means the use or application of materials or processes for the prevention or control of water leakage or flow through the basement walls or flooring into the interior portion of a basement.

(3) "Engineer's analysis" means a written report from a professional engineer registered in the state of Wisconsin containing an analysis of soil conditions, water tables or pressure, and other factors or conditions affecting the existence and correction of basement water problems, and an opinion as to the probability that the process and the particular substances or materials which are to be used in the performance of basement waterproofing services will or will not cure the basement water problem or have a significant waterproofing effect.

(4) "Pressure pumping" means a basement waterproofing process by which a substance is injected into the ground adjacent to the basement walls or beneath the basement foundation or floor by pipes or other conduits for the purpose of protecting or sealing the basement walls, foundation or floors against water penetration.

(5) "Seller" means a person, firm, corporation or other business organization or entity engaged in the business of basement

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waterproofing and includes any of their representatives, agents and employees.

(6) "Seller's analysis" is a written statement by the seller of the causes and conditions responsible for the buyer's basement water problem and the specific processes and materials to be used in correcting the problem.

(7) "Guarantee" means any promise, made by or on behalf of the seller in connection with the sale of basement waterproofing services, which provides that the seller's services, materials or workmanship are defect free or will meet a specified level of performance over a specified period of time, or which provides that the seller will correct, repair, service, replace, make refunds for or otherwise remedy any systems, problems, defects or malfunctions that relate to or arise out of basement waterproofing services. The term includes service contracts or agreements made by or on behalf of the seller in connection with a basement waterproofing contract under which the seller provides or agrees to perform, over a fixed or extended period of time, basement waterproofing inspection, maintenance or repair services, whether or not a separate or additional charge is made for such services.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; cr. (7), Register, March, 1976, No. 243, eff. 4-1-76.

Ag 133.03 Prohibited practices. No seller shall engage in the following unfair trade practices or unfair methods of competition:

(1) Make or offer to make any guarantee with respect to basement waterproofing services unless the guarantee meets the requirements of section Ag 133.04, and is furnished to the buyer in writing with a seller's analysis prior to final execution of any contract.

(2) Make any guarantee the seller knows or reasonably ought to know cannot be performed or which exceeds the period of time the seller or other persons obligated under the guarantee may be able to honor or perform under the guarantee.

(3) Submit a seller's analysis to the buyer which the seller knows or reasonably ought to know is founded on incorrect facts or conclusions.

(4) Enter into a basement waterproofing contract which provides, in whole or in part, for the performance of services which the seller knows or reasonably ought to know are unnecessary or will not materially serve to correct the buyer's basement water problem, unless such unnecessary or noncorrective services are separately and distinctly identified and enumerated in the seller's analysis, or an amendment thereto, provided to the buyer prior to execution of a basement waterproofing contract.

(5) Advertise basement waterproofing services in a manner which explicitly states or otherwise suggests or implies that such services will be guaranteed unless they are in fact guaranteed and a copy of the guarantee is furnished to the buyer in connection with any basement waterproofing contract.

(6) Advertise that basement waterproofing services of the seller are or will be effective unless the seller is experienced in and uses basement waterproofing methods generally recognized as being

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effective for the prevention or control of basement water problems in the basement waterproofing industry.

(7) Sell basement waterproofing services using the pressure pumping method unless the need or effectiveness of such method is established in a seller's analysis verified by an engineer's analysis furnished to the buyer prior to the sale, and the work is guaranteed as provided under section Ag 133.04.

(8) Advertise basement waterproofing services using the pressure pumping process without disclosing in the advertisement that an engineer's analysis recommending this process is required as a condition to the use thereof and must be furnished to the buyer before a contract is signed.

(9) Enter into any contract for basement waterproofing services which does not contain all agreements, promises or representations made with respect to such services, and which is not in writing and signed by the buyer and seller.

(10) Fail to provide, in all instances where the seller's basement waterproofing services are not guaranteed, the following disclaimer, which shall be set forth on the face of the contract, separate and apart from all other contract provisions and in bold face type: **"THE BASEMENT WATERPROOFING SERVICES PROVIDED BY THIS CONTRACT ARE NOT GUARANTEED."**

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. (1) and (4), cr. (9) and (10), Register, March, 1976, No. 243, eff. 4-1-76.

Ag 133.04 Guarantees. (1) All guarantees shall be furnished to the buyer in writing prior to the final execution of any contract and include the name and address of the seller or person responsible for performance under the guarantee. Guarantees shall be considered part of the basement waterproofing contract and any breach in the terms or conditions thereof shall entitle the buyer to a full refund of money paid under the contract, less the value of benefits actually derived from the performed services. The burden of establishing any benefit to the buyer shall be on the seller.

(2) All guarantees shall be set forth in clear and explicit terms and shall fully guarantee that the work or services to be performed will effectively prevent or control the basement water problem they were designed or intended to prevent or control for the period of time specified in the guarantee. Basement dampness may be excluded from the guarantee if agreed to by the buyer in writing and the guarantee or contract contains the following statement in bold face type: **"THE GUARANTEE PROVIDED HEREIN DOES NOT COVER DAMPNESS ON THE BASEMENT WALLS—IT DOES COVER ANY WATER LEAKAGE OR FLOW."**

(3) All guarantees shall contain a provision that any remedial work or services to be performed under the guarantee shall begin within 45 days and be completed within 6 months after notice by the buyer to the seller of any failure of the waterproofing services under the contract. Notice of any claim by the buyer under the guarantee shall be deemed actual notice if mailed by certified mail to the seller's address as set forth in the guarantee.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75.

Register, March, 1976, No. 243

Ag 133.05 Seller's analysis. Sellers of basement waterproofing services shall prepare and furnish to the buyer a signed copy of the seller's analysis prior to the final execution of any basement waterproofing contract.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; r. and recr. Register, March, 1976, No. 243, eff. 4-1-76.

Ag 133.06 Interpretation. A seller under this chapter is also a seller under Wis. Adm. Code section Ag 110.01(4) and is subject to chapter Ag 110 home improvement trade practice rules. In the event of any conflict between this chapter and chapter Ag 110, the provisions of chapter Ag 133 shall prevail.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75.

Chapter MVD 24

MOTOR VEHICLE TRADE PRACTICES

MVD 24.01	Definitions	MVD 24.04	Contract requirements
MVD 24.02	Advertising and sales representations	MVD 24.05	Warranties
MVD 24.03	Disclosure of the condition of the motor vehicle	MVD 24.06	Waiver

MVD 24.01 Definitions. As used in this chapter:

(1) "New" means any untitled or non-privately titled motor vehicle of the stated model year which has not been operated more miles than required for pre-delivery test, dealer exchange and delivery.

(2) "Used" means any motor vehicle other than a new motor vehicle and includes executive or demonstrator.

(a) "Executive" means any untitled or non-privately titled motor vehicle which was used primarily by executives of licensed manufacturers, distributors or dealers and not used for demonstration to the public.

(b) "Demonstrator" means any untitled or non-privately titled motor vehicle which was used primarily for the purpose of demonstration to the public.

(3) "Damage" means defects caused by reasons other than normal depreciation and wear through vehicle age and useage.

(4) "Licensee" means any motor vehicle manufacturer, distributor, dealer, or salesman, or any combination, thereof licensed by the motor vehicle division.

(5) "Privately titled" vehicle means a vehicle titled by a private individual or any party other than a licensed motor vehicle manufacturer, distributor, or dealer.

(6) "Privately owned and privately driven" means all privately owned, non-lease motor vehicles.

(7) "Sale" includes lease with the option of purchase.

(8) "Manufacturer" as referred to in this chapter includes distributor.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. (2) and (6), Register, April, 1977, No. 266, eff. 5-1-77.

MVD 24.02 Advertising and sales representations. (1) The use of false, deceptive or misleading advertising or representations by any licensee to induce the purchase of a motor vehicle constitutes an unfair practice and is prohibited.

(2) Any licensee, making any statement of fact to the public in any advertisement or written statement or representation concerning the motor vehicles it offers for sale, the services it provides or other aspects of its business operation shall possess detailed evidence of the

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validity and accuracy thereof, which evidence shall be furnished to the division upon request.

(a) Terms such as "largest" when referring to dealership size shall be based solely on vehicle sales volume and must clearly state the basis for the claim, including vehicle make, time period if other than entire prior 12 months and geographic area if other than statewide, in the advertisement.

(3) When the price of a motor vehicle is advertised by a dealer licensee, it shall include all charges that must be paid by the buyer to acquire ownership of the vehicle with the exception of sales tax and title and registration fees. The amount of down payment required may be advertised only in conjunction with the price.

(4) No specific price shall be stated in an advertisement as an offer for a trade-in, if the price so stated is contingent upon the condition, model, or age of the prospective buyer's vehicle to be traded. Use of the phrases "up to", "as much as" or similar phrases regarding a trade-in allowance are unfair practices and prohibited.

(5) The use of new motor vehicle list prices to advertise comparative savings for used vehicles is an unfair practice and prohibited.

(6) The term "repossessed" shall not be used in any public representation.

(7) It is an unfair practice to use the word "free" or any other word or words of similar import, in advertisements or in other offers to the public, as descriptive of an article of merchandise, equipment, accessories or service which is not an unconditional gift, under the following circumstances:

(a) When all conditions, obligations or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer will be misunderstood; and, regardless of such disclosure,

(b) When, with respect to any article of merchandise, equipment, accessories, or service, the offerer

1. Increases the ordinary and usual price of such article or merchandise, equipment, accessory, or

2. Reduces its quality, or

3. Reduces the quantity or size thereof.

(c) The disclosure required by paragraph (a) of this rule shall appear in close conjunction with the word "free", or other words of similar import, whenever such word first appears in each advertisement or offer. A disclosure in the form of a footnote, to which reference is made by use of an asterisk or other symbol placed next to the word "free" will not be regarded as compliance.

(8) Use of phrases such as "write your own deal", "name your own price", "appraise your own vehicle", and similar phrases is an unfair practice and prohibited.

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(9) Use of phrases such as "last of the remaining", "close-out", "final clearance", and similar phrases when used in reference to used motor vehicles is an unfair practice and is prohibited, unless the licensee is actually discontinuing business.

(10) It is an unfair practice for a licensee to advertise motor vehicles or types of motor vehicles for sale unless the licensee has available, for delivery within a reasonable time, a quantity of said vehicles sufficient to meet reasonably anticipated demands, unless the advertisement clearly and specifically discloses any limitations as to the quantity available or time of delivery.

(11) Dealer and salesman licensees are prohibited from advertising motor vehicle sales at an address or listing a phone number other than that of the licensed business premises. Advertisements shall include the business name.

(12) Franchised new vehicle dealers, distributors and manufacturers are the only licensees permitted to advertise or sell new vehicles.

(13) When advertising any motor vehicle, a dealer or salesman licensee must state the vehicle's model year and, if the vehicle is of the current or previous model year, must designate the vehicle as used if such is the fact. Reference to "low mileage", "X miles", "one-owner", "demonstrator", "executive" or other words of similar meaning shall serve to designate the vehicle as used.

(14) Whenever a sale or promotion offering free gifts, merchandise, equipment, accessories, service, discounts, price reductions, or cash is advertised, any such advertisement shall also specifically disclose the expiration terms or date of such sale or promotion.

(15) Whenever a promotion or sale involving 2 or more vehicles damaged by the same cause as a result of the same incident is offered by a dealer licensee, all accompanying advertising must disclose the cause of damage, regardless of the extent of such damage.

(16) Whenever a dealer licensee offers, promotes the sale of, or sells a flood damaged vehicle, all advertising relating to that vehicle must disclose that the vehicle has been flood damaged regardless of the extent of such damage.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. (5) and (14), Register, June, 1974, No. 222, eff. 7-1-74; am. (2) (a), r. (2) (b), (3) (a) and (8), renum. (9) and (10) to be (8) and (9), (11) and (15) are renum. (10) and (14) and am., renum. (12), (13), (14), (16) and (17) to be (11), (12), (13), (15) and (16), Register, April, 1977, No. 256, eff. 5-1-77.

MVD 24.03 Disclosure of the condition of the motor vehicle.

(1) Model year designation. (a) Changing the model year of a motor vehicle with a manufacturer's specified gross vehicle weight of more than 1,000 pounds or less than 10,000 pounds from that originally designated by the manufacturer is an unfair practice and prohibited. If no model year is designated, the year of manufacture applies.

(b) Changing the model year of a motor vehicle with a manufacturer's specified gross vehicle weight of 1,000 pounds or less or of 10,000 pounds or more from that originally designated by the manufacturer is an unfair practice and prohibited, except that the model year of such a vehicle may be redesignated no more than once providing 1. the manufacturer redesignates all like motor vehicles of

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the same series, and 2. the manufacturer continues to manufacture new vehicles of the same series after such redesignation, and 3. such vehicles of the same series are identical in all respects, and 4. the customer is informed of the redesignation in writing on the purchase contract. If no model year is originally designated, the year of manufacture shall be deemed the "originally designated" model year.

(2) The dealer and salesman licensees must disclose to the prospective buyer of any new motor vehicles when any equipment or accessories originally installed have been removed or replaced by a dealer prior to sale, if replacement items are not of equal quality.

(3) Prior to delivery of a new motor vehicle, the dealer licensee shall furnish to the customer a copy of the pre-delivery test and inspection made pursuant to the manufacturer's specifications filed under section 218.01 (3) (a) 22, Wis. Stats. The manufacturer shall file with the motor vehicle division a copy of any amended delivery and preparation obligations of its dealers at least 30 days prior to adoption of such changes.

(4) Except as provided in (g) following, each used motor vehicle displayed or offered for sale by a dealer licensee shall have attached to the vehicle in a conspicuous place, a writing (window sticker) clearly informing the buyer, prior to sale, in simple and concise language:

(a) That the vehicle is used. In addition to being designated as "Used", vehicles which were known to be previously privately driven, executive, demonstrator, taxi-driven, police vehicle, driver-education, lease, rental, public vehicle, company vehicle, municipal owned, or flood damaged regardless of the extent of such damage shall be clearly and specifically identified as such. Disclosure of the prior use and flood damage is limited to that which the dealer could ascertain with reasonable diligence.

(b) The odometer reading at time the vehicle was obtained by the dealer and disclosure that such reading is known to be actual mileage, or that such reading is known to be inaccurate in which case actual mileage shall be disclosed if known, or that such reading is not known to be actual mileage, as corroborated by the prior owner's mileage statement, available and subsequently shown to the purchaser, in accordance with section MVD 24.03 (7) [(8)], Wis. Adm. Code. Such writing shall further disclose that the name and address of the vehicle's prior owner is available upon request.

(c) The vehicle asking price, make, year model, identification number, engine type (V-8, 6) and type of transmission (standard, four-speed, automatic).

(d) The basic terms and conditions of warranty, if offered.

(e) That the vehicle is being sold on an "as-is" or "with all faults" basis if such is the fact. In such event, the writing shall further state in bold faced type that "Except for any manufacturer's or other express warranty which exists on this vehicle, the entire risk as to the quality and performance of the vehicle is with the buyer, and should the vehicle prove defective following the purchase, the buyer will assume the entire cost of all servicing and repair."

(f) That the condition of the vehicle for sale is such that it cannot be legally operated at all times on Wisconsin highways, if such is a fact. The language shall state:

"WARNING!

This vehicle may not be operated or licensed and must be towed or hauled from this location if purchased in its present condition. If all defects which prohibit its legal operation are not corrected prior to your accepting delivery of the vehicle, it must be inspected and approved by a certified law enforcement officer before it can be licensed and operated on Wisconsin highways. Such inspection certification and the title must be submitted by the owner to the division together with proper registration fee."

(g) Such written disclosure as required by (4) preceding does not apply to:

1. Each used motor vehicle prior to being offered for sale, providing a written statement "Not for sale" is displayed on each such motor vehicle.

2. Each executive or demonstrator displaying a new vehicle price label until such time as offered for sale.

(5) Dealer and salesman licensees must inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed by the division of all significant existing mechanical and structural defects and damage.

(a) Disclosure of information required on the prescribed form is limited to that which the licensee could ascertain as a result of reasonable diligence, which shall consist of but is not limited to an inspection of all used motor vehicles, in the manner and on the form prescribed by the division. Such inspection shall consist of but is not limited to a walk-around and interior inspection, under-hood inspection, under-vehicle inspection and a test-drive. Such form, disclosing existing defects and damage shall be completed in duplicate, the original of which shall be retained by the dealer for 3 years and a copy of which shall be reviewed with and furnished to the purchaser prior to execution of the vehicle purchase contract, whether or not there are existing significant defects or damage.

(b) An inspection shall be made and findings disclosed on the inspection form prior to affixing the window sticker to the vehicle and displaying the vehicle for sale as required by subsection (4) and the inspection form shall be retained by the dealer for review with the purchaser prior to contract execution.

(c) Unless otherwise agreed to in the written purchase contract, the use of the inspection form provided for herein shall neither create any warranties, express or implied, nor affect warranty coverage provided for in the purchase contract.

(6) Illegal, inoperable or junk condition. (a) Prior to execution of a vehicle purchase contract, if the condition of a vehicle for sale is such that it cannot be legally operated at all times in accordance with chapter 347, Wis. Stats., and Wis. Adm. Code chapter MVD 5, or if a

vehicle is inoperable in such a manner as to make compliance impossible to determine, the dealer and salesman licensee must:

1. Disclose that fact to all retail purchasers in conspicuous contrasting bold faced type on the face of the vehicle purchase contract prior to its execution in the following language:

"WARNING!

This vehicle may not be operated or licensed and must be towed or hauled from this location if purchased in its present condition. If all defects which prohibit its legal operation are not corrected prior to your accepting delivery of the vehicle, it must be inspected and approved by a certified law enforcement officer before it can be licensed and operated on Wisconsin highways. Such inspection certification and the title must be submitted by the owner to the division together with proper registration fee." and

2. Specify for the retail purchaser the defects which are in violation of chapter 347, Wis. Stats., and Wis. Adm. Code chapter MVD 5, on the vehicle purchase contract or on the form prescribed by the division.

(b) If the dealer licensee does not correct all defects which prohibit its legal operation, as required to be specified in (a) 2, preceding, prior to delivery of the vehicle to a retail purchaser:

1. The vehicle must be towed or hauled from the dealer's premises, and

2. The application for title shall be marked **"THIS VEHICLE MAY NOT BE LEGALLY OPERATED ON WISCONSIN HIGHWAYS AND NO REGISTRATION WILL BE ISSUED"** and forwarded by the dealer licensee to the division on behalf of the purchaser.

(c) Prior to issuance of registration plates, the final vehicle equipment inspection referred to in paragraphs (a) and (b) may be made by a certified law enforcement officer or an employe of division of motor vehicles, appointed as an authorized agent by the administrator.

(d) If the general condition of a vehicle is such that it is considered by the dealer licensee to be a junk vehicle, at time of sale, the purchase contract shall state "Sold as junk vehicle" and the dealer licensee shall so notate the title and forward same to the division. Such purchaser shall be advised that such vehicle may subsequently be re-titled and operated only after it has been inspected and approved by a certified law enforcement officer, the statutory \$25 inspection fee paid and such certification and inspection fee is submitted to the division together with title and registration application and appropriate fee.

(7) Use of previously distributed forms. Warning statements required to be included on the window sticker or in a vehicle purchase contract under this section which were printed and distributed to dealers prior to the effective date of this rule 5-1-77 and which conform to all requirements of this chapter in effect prior to that date may be used until the supply is exhausted. All such forms printed and distributed after the effective date of this rule shall comply with the provision of this chapter.

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(8) Mileage disclosure. (a) Paragraphs (b) and (c) following do not apply to a motor vehicle with a gross weight rating of more than 16,000 pounds, or a motor vehicle 25 years old or older.

(b) For each motor vehicle offered for sale by a dealer, the dealer shall:

1. Have on file an odometer statement signed by the prior owner, except for new vehicles obtained by such dealer direct from the manufacturer or distributor, and
2. Show such statement to each prospective retail purchaser, prior to sale, and
3. Retain such statement in his records for 3 years, and
4. Furnish a new, current odometer statement to the purchaser, and
5. Retain a copy of such statement in his records for 3 years.

(c) Such prior owner's and dealer's statement shall contain:

1. A pre-printed statement "Federal regulations require you to state the odometer mileage before transfer of ownership. An inaccurate statement may make you liable for damages to your transferee (purchaser), pursuant to Section 409 (a) of the Motor Vehicle Information and Cost Savings Act of 1972, Public Law 92-513.", and

2. A description of the vehicle, and

3. His name and address, and

4. His signature, and

5. The date of ownership transfer, and

6. The odometer reading, qualified by a statement that either such reading is known to be actual mileage, or that such reading is known to be inaccurate in which case actual mileage shall be disclosed if known, or that such reading is not known to be actual mileage.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; r. and recr. (4) and (7); am. (6) (a) 2., Register, June, 1974, No. 222, eff. 7-1-74; r. and recr. (6), Register, June, 1974, No. 222, eff. 10-1-74; am. (4) (intro.), (4) (f), (5) (a) and (6) (a) 1, renum. (5) (b) to be (6) (c), cr. (5) (b), am. (6) (a) 1, renum. (6) (c) to be (6) (d) and am., cr. (6) (c), renum. (7) to be (8) and cr. (7), Register, April, 1977, No. 256, eff. 5-1-77.

MVD 24.04 Contract requirements. (1) All dealer licensees shall furnish a document that clearly notifies the prospective retail buyer on its face that he is making an offer to purchase that will become a binding motor vehicle purchase contract if accepted by the dealer licensee, that the dealer licensee must accept or reject the offer within 2 working hours or the offer is automatically voided and that the offeror may rescind the offer unless and until accepted by the dealer licensee. All conditions precedent to the acceptance of the purchaser's offer by the licensee shall be clearly set forth in the contract. Until acceptance or rejection of the offer, the licensee shall be prohibited from selling the vehicle to any other party.

(2) A retail contract to purchase must be executed and must be clearly entitled "MOTOR VEHICLE PURCHASE CONTRACT" to clearly disclose the nature of the contract the buyer is signing. An exact copy of such contract shall be provided to the buyer prior to or at the time of sale.

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(3) A contract or offer to purchase shall, on its face:

(a) Clearly identify the names and addresses of the dealer licensee and purchaser.

(b) Describe the motor vehicle purchased and the trade-in vehicle by year, make, model, and identification number.

(c) State the date and time each necessary signature is affixed.

(d) Include the salesman's name and license number in an area other than where signed by the purchaser and dealer or authorized representative.

(e) Specify a delivery date on the face of the contract and state further in bold faced type next to the delivery date that: "Regardless of reason, if the vehicle ordered by the buyer cannot be delivered within 15 days of the specified delivery date, the buyer may cancel the order and receive a full refund of any down payment, trade-in vehicle, or trade-in allowance only if the trade-in is not available."

(f) Make specific reference to all express warranties which are part of the transaction.

(g) Clearly inform the prospective purchaser in bold faced type whether or not there is a remaining new vehicle warranty which will be honored by the manufacturer if such is known by the dealer. If, and only if, such fact is not known by the dealer, the contract shall state in bold faced type that: "The selling dealer has not determined whether the manufacturer shall honor any remaining new vehicle warranty on this vehicle and the buyer, *not the seller*, assumes the risk that no new vehicle warranty may be applicable."

If a dealer licensee states that there is a remaining new vehicle warranty on a vehicle which will be honored by the manufacturer and warranty transfer is subsequently rejected, the selling dealer shall be obligated to honor the warranty.

(h) In the event the sale is made on an "as-is" or "with all faults" basis, state such fact in bold faced type and further state in bold faced type that "Except for any manufacturer's or other express warranty which exists on this vehicle, the entire risk as to the quality and performance of the vehicle is with the buyer, and should the vehicle prove defective following the purchase, the buyer will assume the entire cost of all servicing and repair."

(4) A dealer licensee may request a down payment, deposit, or title for trade-in unit from a prospective retail buyer at the time the offer to purchase or purchase contract is being negotiated, provided that the down payment, deposit, or title is returned to the prospective retail buyer within two working hours if the contract is not accepted by the dealer licensee. If the prospective buyer is not present or available during such two-hour period, such items must be returned in person or be mailed during the following business day.

(5) Any increase in price, to a retail customer, after having accepted an order of purchase or a contract from a buyer, is prohibited except that (a) a trade-in vehicle may be reappraised if it subsequently suffered damage, or parts or accessories have been removed, or (b) as provided in (6) following.

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(6) Motor vehicle price changes. (a) A motor vehicle manufacturer, importer, or distributor which accepts orders placed on behalf of private retail customers shall furnish motor vehicle dealers with price lists upon which retail motor vehicle purchase contracts may be executed. Such price lists shall set forth the base prices of the various models along with the prices of all optional equipment, accessories and destination or transportation charges. The prices set forth in such price lists shall remain in effect until receipt by the dealers of written official price change notification which shall contain the specific dollar amounts of increases applicable to the various models, optional equipment, accessories and destination or transportation charges.

(b) Unless a motor vehicle manufacturer, importer, or distributor has adopted a formal policy of not accepting orders placed on behalf of private retail customers and such policy is clearly set forth to franchised dealers, price increases imposed by such motor vehicle manufacturer, importer, or distributor are prohibited on those vehicles for which dealers had orders written with private retail customers prior to the dealer's receipt of the official price change notification referred to in (a) preceding. A sales contract signed by a private retail customer shall constitute evidence of each such order. In the event of motor vehicle manufacturer, importer, or distributor price reduction the amount of any such reduction received by a dealer shall be passed on to the private retail customer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or decrease. Price increases caused by any of the following reasons shall not be subject to the provisions of this section:

1. The addition of new equipment as required by state or federal law.
2. In the case of foreign make vehicles, revaluation of the U.S. dollar by the U.S. government.
3. State or federal tax rate changes.

(c) The provisions of sections MVD 24.04 (5) and 24.04 (6), Wis. Adm. Code shall:

1. Be suspended during periods in which the federal government has imposed controls on the prices of motor vehicles, and
2. Not apply to motor vehicles with a gross weight rating of more than 16,000 pounds.

(7) On any new, demonstrator, or executive vehicle, any uncorrected damage or any corrected damage exceeding 6% of the manufacturer's suggested retail price, as measured by retail repair costs, must be disclosed in writing prior to delivery. Damage to glass, tires, and bumpers are excluded from the 6% rule when replaced by identical manufacturer's original equipment.

(8) A dealer licensee shall not assess an additional service fee or charge for completing any sales-related vehicle inspections or forms which are required by law or rule.

(9) The use of a motor vehicle purchase contract which requires the purchaser to waive any claims the purchaser may have for breach of contract by the licensee is an unfair practice and prohibited.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. (1), (3) (e) and (4); r. and recr. (6); cr. (9), Register, June, 1974, No. 222, eff. 7-1-74; am. (7), r. (8), renum. (9) to be (8) and am., cr. (9), Register, April, 1977, No. 258, eff. 5-1-77.

MVD 24.05 Warranties. (1) If a sale of a motor vehicle by a licensee is made subject to a warranty, such warranty must be in writing and must be provided to the buyer prior to or at the time of sale and must include the following items:

- (a) Clear identification of the names and addresses of warrantors.
 - (b) Clear identification of the party or parties to whom the warranty is extended.
 - (c) Parts covered.
 - (d) Exceptions and exclusions from the terms of the warranty.
 - (e) A statement of what the warrantor will do in the event of a defect or malfunction, at whose expense, and for what period of time.
 - (f) A statement of what the person guaranteed must do and expenses he must bear.
 - (g) The procedure which the person guaranteed should take in order to obtain performance of any obligation under the warranty, including the identification of any class of persons authorized to perform the obligations set forth in the warranty.
- (2) The elements of the warranty shall be stated in words or phrases which clearly disclose the nature or scope of the warranty.
- (3) No implied warranty of merchantability or fitness shall be excluded or modified in the sale of a motor vehicle unless the sale is explicitly negotiated between the buyer and dealer licensee on an "as-is" or "with all faults" basis and is in conformity with sections MVD 24.03 (4) (e) and 24.04 (3) (h) of this code.
- (4) Warranties shall not be advertised unless the basic terms and conditions of the warranty are disclosed in the advertisement.
- (5) The use of the words "without charge" and other similar words or phrases in connection with the warrantor's services or responsibilities under a warranty constitutes an unfair practice and is prohibited unless the warrantor does not assess any costs or charges in connection with the required repair or replacement of a warranted item or services.
- (6) If a valid warranty claim made during the warranty period, as evidenced by a dealer repair order indicating date and mileage, cannot be remedied until after expiration of the warranty period, the warrantor shall continue to be obligated for such claim until properly remedied.
- (7) Parts repaired or replaced by a dealer on a new vehicle which was received from the manufacturer or distributor in a damaged condition shall carry the same warranty as the original parts.

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(8) Manufacturers shall reimburse dealers for warranty repairs at a reasonable labor rate and at a reasonable allowance for parts replaced. Manufacturers shall notify dealers of the acceptance or denial of a warranty claim within 30 days of receipt of the claim, and shall make payment to the dealer within 30 days of acceptance of the claim, except for instances beyond the manufacturer's control.

(9) Repair service agreement is not considered a warranty, but for the purposes of disclosure and performance as provided in sections MVD 24.05 (1) through (6), Wis. Adm. Code, the term warranty shall include repair service agreement.

(10) It is an unfair practice and prohibited for a warrantor to fail to service or repair a motor vehicle in accordance with the terms and conditions of the warranty or service agreement.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; cr. (9), Register, June, 1974, No. 222, eff. 7-1-74; renum. 24.06 (2) to be 24.05 (10), Register, December, 1975, No. 240, eff. 1-1-76; am. (3), Register, April, 1977, No. 256, eff. 5-1-77.

Note: MVD 24.06 Motor vehicle repairs and services was repealed effective 1-1-76.

MVD 24.05 Waiver. Waiver of any requirement of chapter MVD 24, except as specifically provided for in chapter MVD 24 is prohibited and void.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; renum. from 24.07 to 24.05, Register, December, 1975, No. 240, eff. 1-1-76.

Chapter Bkg 80

WISCONSIN CONSUMER ACT RULES

Bkg 80.01	Wisconsin consumer act rules; organization	Bkg 80.331	Form requirements other than open-end—microfilm copies
Bkg 80.05	General definitions; consumer credit transactions	Bkg 80.34	Prohibition of blank writings
Bkg 80.06	General definitions; customer	Bkg 80.341	Notice to co-signers
Bkg 80.07	General definitions; finance charge	Bkg 80.35	Notice to co-signers; open-end accounts
Bkg 80.08	General definitions; official fees	Bkg 80.351	Notice to co-signers; co-signer copies
Bkg 80.09	General definitions; required deposit balance	Bkg 80.352	Receipts; accounting; evidence of payment; release of any security interest
Bkg 80.201	Finance charge for consumer credit transactions; per diem charge	Bkg 80.36	Receipts; accounting; evidence of payment; customer inquiries
Bkg 80.210	Finance charge for consumer credit transactions; maximum rates under section 422.201 (3), Wis. Stats.	Bkg 80.361	Assignment of earnings prohibited; revocation
Bkg 80.22	Finance charge for consumer credit transaction; credit cards and coupon books	Bkg 80.37	Notice of assignment; joint obligor customers
Bkg 80.221	Finance charge for consumer credit transactions; actuarial method-compounding	Bkg 80.371	Notice of assignment; address of customer
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Bkg 80.231	Finance charge for consumer credit transactions; rate for licensees	Bkg 80.391	Restrictions on security interest; proceeds
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Bkg 80.01 Wisconsin consumer act rules; organization. In order to facilitate the organization of rules promulgated under the

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Wisconsin consumer act and to assist interested persons in relating the rules to the act, each rule shall refer to specific sections of the act. The rules shall be published so as to retain the numerical order of the sections of the act to which they refer. However, each statutory reference does not constitute the sole statutory authority for any particular rule.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.05 General definitions; consumer credit transactions. Acquisition of a leasehold interest in real property by a customer from a merchant is not a consumer lease within the meaning of section 421.301 (11) Wis. Stats. For laws governing the leasing of real estate see chapter 704, Wis. Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.06 General definitions; customer. A person seeks or acquires real or personal property, services, money or credit for personal, family, household or agricultural purposes within the meaning of section 421.301 (17) Wis. Stats. when such real or personal property, services, money or credit is to be used primarily, that is 50% or more, for one or more of these purposes.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.07 General definitions; finance charge. A delinquency or default charge is not a finance charge within the meaning of section 421.301 (20), Wis. Stats. if imposed for actual unanticipated late payment, delinquency, default or other such occurrence. However, when a merchant's billings are not paid in full within a stipulated time period and under such circumstances the merchant does not, in fact, regard such accounts in default (For example, by customarily failing to institute collection activity or by continuing to extend credit) and imposes charges periodically for delaying payment of such accounts from time to time until paid, the charge so imposed comes within the definition of a finance charge and the credit so extended comes within the definition of open-end credit.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.08 General definitions; official fees. Official fees within the meaning of section 421.301 (26) (a), Wis. Stats., shall include any fee charged by a register of deeds or the secretary of state for the filing or recording of any instrument of conveyance or other document for the purpose of perfecting a security interest for which the parties have contracted. See also Wis. Adm. code section 80.352.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.09 General definitions; required deposit balance. The definition of "required deposit balance" in section 421.301 (38), Wis. Stats., together with the definition of "amount financed" requires that the required deposit balance be deducted from the amount financed for the purpose of calculating the finance charge and making disclosures. The purpose is to accurately disclose to the customer the amount of funds or credit of which he will have actual use, and thus the creditor is required to deduct from the funds advanced any compensating balance the creditor requires to be maintained with him. Consequently, the term does not apply to a deposit balance or deposit investment maintained by the customer with a financial

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institution other than the creditor, which is taken by the creditor as collateral for the advance made. The reference to "any investment" refers to deposit-type investments such as "share accounts" maintained with savings and loan associations, credit unions or mutual savings banks. The term "investment" in section 421.301 (38), Wis. Stats., does not include investment securities of the type defined in chapter 408, Wis. Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.201 Finance charge for consumer credit transactions; per diem charge. Charges under section 422.201, Wis. Stats., on consumer transactions other than those pursuant to an open-end plan where the finance charge is computed on the declining unpaid principal balance from time to time outstanding may be computed on actual unpaid balances at 1/360th of the annual rate for the actual number of days outstanding provided the use of this method shall be disclosed conspicuously together with all other disclosures required by subchapter III of chapter 422, Wis. Stats., and provided the finance charge obtained by the application of this method does not exceed the maximum charge permissible under the act.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.210 Finance charge for consumer credit transactions; maximum rates under section 422.201 (3), Wis. Stats. The maximum discount rate on loans in which the principal (exclusive of interest) does not exceed \$3,000 is 9½% per year on that part of the face amount of the note (total of payments) not exceeding \$1,000 and 8% per year on any remainder of the face amount. Discount loans may be made for any number of whole months (excluding any irregular first instalment period) up to the maximum maturity, e.g. loans of 6, 17, 24, etc. months are permitted. On contracts for periods which are less or greater than one year, or which are not a multiple of one year, the discount rate shall be computed proportionately (½ of the annual discount rate) for each month. See section 138.09 (7) (b) 1, Wis. Stats. Example: Total of payments = \$1345.20 (24 x \$56.05); Interest (Finance Charge) = \$245.23 (9½% x 2 yrs. x \$1,000 plus 8% x 2 yrs. x \$345.20); Amount Financed = \$1,099.97 (\$1345.20 — \$245.23).

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.22 Finance charge for consumer credit transaction; credit cards and coupon books. With respect to a consumer credit transaction involving the receipt or acceptance by a customer of any credit card, plate, merchandise certificate, letter of credit, coupon book or other like credit device, except gift certificates purchased by a customer for use by a person other than the customer, the unpaid balance in such transaction within the meaning of section 422.201, Wis. Stats., shall include only the cash value of any money, property, labor or services, not including the credit device itself, acquired by the actual use or redemption of such credit device together with authorized additional charges. For example, where a customer receives a coupon book or several merchandise certificates in the amount of \$200 and subsequently redeems one coupon or certificate in the amount of \$25, the customer's unpaid balance upon which a finance charge may be assessed is limited to the \$25 cash value of the goods or services which the customer has actually received. This rule shall not

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apply to merchandise certificates acquired by a customer pursuant to an open-end plan if:

- (1) Acquisition of certificates is not a condition of the extension of credit to the customer,
- (2) Unused certificates may be returned at any time for full credit to the customer's account,
- (3) The acquisition cost is not billed to the customer for at least one month, and does not bear a finance charge for a minimum period of 2 months, after the certificate is acquired, and
- (4) The customer is given notice, at least 15 days prior to the imposition of a finance charge, of the date by which any unused certificates must be returned to avoid imposition of finance charges on the price thereof.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.221 Finance charge for consumer credit transactions; actuarial method-compounding. The term "actuarial method" as used in section 422.201, Wis. Stats., shall mean the method by which that portion of each payment not applicable to an escrow account is applied first to any finance charge or permitted additional charge accrued from the time of any prior payment or from the time credit is extended and the remainder, if any, is applied to the unpaid amount financed. With the exception of the calculation of delinquency charges, amounts remitted may be applied to interest and charges and then to principal on the most delinquent instalment due and then to interest and charges on the next instalment proceeding to more current installments until the amount remitted is exhausted. For purposes of computing the finance charge under subsection 422.201 (9), a merchant may calculate the finance charge on an unpaid balance which includes unpaid finance charges.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.23 Maximum charges; precision and rounding. When preparing charts and tables, programming electronic devices or performing numerical calculations in connection with sections 422.201, 422.204, and 422.209, Wis. Stats., any number of decimal places may be used to express the multiplying factor, provided that such factor shall be carried out at least to the nearest ten-thousandth or if expressed as a per cent to the nearest one-hundredth of a percent. Where the number of decimal places used exceeds the minimum, the final digit may be rounded. In any case, the same multiplier must be used consistently with regard to all calculations in the transaction, including computation of interest, deferrals or rebates. Where the multiplier complies with this rule, the final product may be rounded to the nearest cent provided that products of 5 mills and over shall be rounded upward.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.231 Finance charge for consumer credit transactions; rate for licensees. Section 422.201 (3), Wis. Stats., refers to sections 138.09 and 218.01, Wis. Stats., for the determination of finance charges under the Wisconsin consumer act receivable by licensees. The language of sections 138.09 (7) and 218.01 (6) with respect to finance charges receivable by licensees is both comprehensive and

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preemptive. Therefore, although these sections provide for finance charges which, in various situations, are less than or greater than those permitted by section 422.201 (2), licensees under section 218.01 with respect to the sale of motor vehicles, and licensees under section 138.09 with respect to any loan are limited in each case by section 422.201 (3) to that finance charge receivable according to the applicable provisions of the appropriate licensing act, except as the election to receive a minimum finance charge is limited by section 422.201 (8).

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.24 Finance charge for consumer credit transactions; rate on sale of farm equipment. Section 422.201 (4), Wis. Stats., refers to the class 2 rate for motor vehicles, as specified in section 218.01 (6) for determination of the maximum finance charges in consumer credit transactions other than those pursuant to an open-end plan receivable by sellers of farm equipment, farm implements and farm tractors, other than section 218.01 licensees, under the Wisconsin consumer act. As section 422.201 (4) contemplates finance charges which, in various situations, are less than or greater than those permitted by section 422.201 (2), sellers within section 422.201 (4) are limited in the sale of farm equipment, farm implements and farm tractors to the finance charge receivable according to the class 2 rate in section 218.01 (6). See section 422.201 (8) for election to receive a minimum finance charge. On sales of other goods and services by such sellers the rates described in section 422.201 (2) or (3) will apply, as appropriate. Licensees under section 218.01 shall apply the rates set out in section 218.01 (6) to the sale of all motor vehicles, but shall be limited to the class 2 rate in section 218.01 (6) as to the sale of all other farm equipment and implements.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.241 Finance charges for consumer credit transactions; minimum finance charge. Section 422.201 (8) provides for the election of a minimum finance charge by any merchant, including licensees under section 218.01, who are limited to the election provided by this section notwithstanding the minimum time price differential provisions of section 218.01 (6) (a) 6.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.26 Additional charges; cost of insurance. Disclosure of the cost of insurance as required by section 422.202 (1) (c) must include written notice to the customer of the term of such insurance and the dollar charge for such term. Where the term of the insurance is the same as the term of the transaction a disclosure of that fact shall be an adequate disclosure of the term of such insurance.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.261 Additional charges; equivalent security interest. The term "equivalent security interest" as used in section 422.202 (2) (b) shall include a seller's interest under a land contract or a first lien deed of trust, and a second mortgage where there are no intervening liens and the mortgagee holds the first mortgage on the subject property. For cross reference application of this definition, see also

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sections 422.303 (4), 422.306 (2), 422.408 (6), 422.409 (2) and 422.411 (2), Wis. Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.262 Additional charges; title examinations. Title examinations within the meaning of section 422.202 (2) (b) 1 of the act shall include the fee for a written title opinion prepared by an attorney upon examination of the abstract of title to the real property which is the subject of the consumer credit transaction on which the charge is assessed.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.27 Additional charges; substantial improvement of real property. The term "substantial improvement of real property" as used in section 422.202 (2) (b) shall mean any improvement to real property, the cash price of which shall be at least \$1,400.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.271 Delinquency charges; deferred instalment. Where the parties have agreed to a delinquency charge in accordance with section 422.203 and instalments have subsequently been deferred, the merchant may collect a delinquency charge on any deferred installment which is not paid in full on or before the 10th day after its deferred due date unless such instalment is again deferred.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.28 Deferral charges; unilateral deferral at no cost. Notwithstanding section 422.204, Wis. Stats., any number of instalments may be deferred unilaterally by the creditor without the notice that would otherwise be required provided there is no charge for such deferral.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.281 Deferral charges; alternative computation. The methods for computing deferral charges described in sub. 422.204 (1) (a) and (b), Wis. Stats., are alternatives and a creditor may elect to use either method to the extent that he can apply it to the particular transaction. However, if the transaction is not one to which sub. (1) (a) could apply, for example, because of irregular payments, then the creditor must compute the deferral pursuant to sub. (1) (b).

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.29 Deferral charges; "Rule of 78". The portion of the precomputed finance charge attributable to the final instalment of the original schedule of payments as used in section 422.204 (1) (a), Wis. Stats., shall mean the pre-payment rebate calculated according to the Rule of 78 if the contract were prepaid in full on the payment date immediately preceding final originally scheduled maturity.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.30 Advances to perform agreement of customer; notice. Written notice of non-performance by a customer pursuant to section 422.207 shall be by personal delivery of such notice to the customer or by mailing such notice by regular, registered or certified mail to the customer's last known address. Where notice is by mail, notice shall

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be deemed given on the day of mailing. Unless otherwise demonstrated by either party a period of 10 days exclusive of the date on which notice is deemed given shall be presumptively a reasonable time within which to perform.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.301 Rebate on prepayment; irregular instalment amounts and/or due dates. The unearned portion of the precomputed finance charge on consumer credit transactions described in section 422.209 (3) shall be computed in accordance with the provisions of section 138.05 (2) (b), Wis. Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.311 General requirements and provisions; consummation. For the purpose of disclosing all information required by subchapter III of chapter 422, Wis. Stats., a transaction shall be considered consummated at the time a contractual relationship is created between a merchant and a customer irrespective of the time of performance of either party.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.32 Disclosure customer copies. For purposes of section 422.302 (3), Wis. Stats., documents which evidence the customer's obligation shall include documents which evidence an obligation to pay as well as those which evidence an obligation to perform including, but not limited to, a mortgage and a security agreement.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.321 Form requirements other than open-end—set off. As a condition to the exercise of a right of set off a merchant shall in accordance with section 422.302 conspicuously disclose his right to apply any amounts owed by the merchant to the customer against any amounts owed by the customer to the merchant. No merchant shall exercise a right to set off prior to giving the customer notice of his right to cure any default, if applicable, and waiting the appropriate number of days in accordance with section 425.105 of the act.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.331 Form requirements other than open-end—microfilm copies. A creditor may retain copies of documents as required by section 422.303 (5) by microfilm or other similar photographic process provided such creditor is able to reproduce individual permanent photo copies which retain substantially the same print size as the original document.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.34 Prohibition of blank writings. Blanks relating to price, charges or terms of payment which are inapplicable to a transaction must be filled in a manner which reveals their inapplicability. Pursuant to section 422.304 a general clause or statement in a contract to the effect that spaces which are not filled in are inapplicable to the particular transactions does not satisfy the requirement of this section and may not be relied upon by the creditor.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

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Bkg 80.341 Notice to co-signers. In addition to the language required by section 422.305 (1) a merchant may include within the explanation of co-signer obligation a form number, the date of execution, instructions for completion, a union printing label and an acknowledgement for execution by the co-signer that he has received a copy of the form.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.35 Notice to co-signers; open-end accounts. In cases where a co-signer assumes liability on an open-end credit account, sub. (a) of the Explanation of Co-Signer Obligation under section 422.305 shall be modified to include, in addition to the information set forth in the Act, in lieu of the current dollar amount of the transaction, "an amount not exceeding \$_____". Sub (b) of the Explanation must contain a statement that if the co-signer wishes to terminate the guarantee with respect to any future transactions on the account, the co-signer must give written notice to the creditor. An explanation of the form described in this rule will satisfy the requirements of section 422.305 and no further notice or Explanation of Co-Signer Obligation need be given the co-signer with respect to subsequent individual purchases or loans under the account. However, in case of any subsequent change in the terms of the account which could increase or extend the contingent liability of the cosigner, whether the merchant was authorized to make unilateral changes from time to time under the original terms of the account, an explanation of such change must be given to the co-signer together with a new Explanation of Co-Signer Obligation which must be executed by the co-signer.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.351 Notice to co-signer; co-signer copies. For purposes of section 422.305 (3), Wis. Stats., a co-signer shall be furnished with a copy of each document signed by the co-signer, a copy of each document evidencing the customer's obligation to pay and the Explanation of Co-Signer Obligation.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.352 Receipts; accounting; evidence of payment; release of any security interest. The creditor may satisfy his obligation to release any security interest under section 422.306 (4) by either (1) recording the necessary instrument and forwarding the same to the customer or his designee by mail or by return on the instrument or (2) by delivering the necessary instrument fully completed and executed to the customer's designee, but in no instance to the customer, for recording. The recording or filing fee may be treated as an official fee within the meaning of section 421.301 (26) of the act. Where the transaction is secured by a lien on a motor vehicle and the title is not in the possession of the creditor, the creditor may satisfy the requirements of this subsection by mailing a completed release of lien to the customer together with an envelope addressed to the Department of Motor Vehicles, Bureau of Vehicle Registration, postage prepaid, and a letter of instruction advising the customer to forward the release and title to the department to obtain release of the secured party's interest.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.
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Bkg 80.36 Receipts; accounting; evidence of payment; customer inquiries. Should a customer or his representative question in writing any bill or statement of a merchant, or of an assignee where notice of assignment pursuant to section 422.409 has been given, such merchant or assignee shall in accordance with section 422.306 respond to the specific question or dispute raised by the customer within 30 days of such inquiry, provided such inquiry is not made on an instrument of payment or the returnable portion of the statement if the creditor conspicuously discloses this requirement on the instrument or statement. A reasonably disputed debt under section 427.104 (1) (f) shall include an indebtedness questioned under this rule from the due date of the merchant's response to the date such response is made.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.361 Assignment of earnings prohibited; revocation. In any case where a merchant takes an assignment of earnings subject to section 422.404 for payment or as security for payment of an obligation the assignment shall contain on its face a statement in substantially the following language: "THE CUSTOMER MAY TERMINATE THIS ASSIGNMENT AT ANY TIME WITHOUT PENALTY."

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.37 Notice of assignment; joint obligor customers. Where a consumer credit transaction involves joint obligor customers, one copy of a Notice of Assignment as described in section 422.409 may be forwarded to all such customers who reside at the same last known address at the time the notice is given, if addressed to all such joint obligor customers. In all other cases a separate notice must be sent to each joint obligor customer. The same procedure shall be observed with respect to giving the following notices under the act: Notice of unilateral deferral, section 422.204 (8); Notice of non-performance, section 422.207 (1); Notice of right to cancel, section 423.203; Notice to cancel property insurance, section 424.303 (1); Notice of right to cure default, section 425.104 (1).

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.371 Notice of assignment; address of customer. The notification of assignment under section 422.409 shall be addressed to the last address furnished by any customer to the assignor if such address is different from the address contained in the contract. The same procedure shall be observed with respect to giving the following notices under the act: Notice of unilateral deferral, section 422.204 (8); Notice of nonperformance, section 422.207 (1); Notice of right to cancel, section 423.203; Notice to cancel property insurance, section 424.303 (1); Notice of right to cure default, section 425.104 (1).

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.38 Restriction on liability in consumer lease. A reasonable charge for excess mileage in the case of a motor vehicle lease as established by reasonable standards of the industry as observed in the relevant market area with respect to the mileage and the rate per mile shall be considered a charge for damages to the leased property within the meaning of section 422.412, Wis. Stats.,

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provided that the mileage allowance and the charge per excess mile shall be conspicuously stated in the original lease agreement.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.391 Restrictions on security interest; proceeds. A security interest with respect to a consumer credit sale as described in section 422.417 (1), Wis. Stats., may include repair or replacement parts in the property sold as well as proceeds of the property subject to section 409.306, Wis. Stats., regarding proceeds.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.392 Waivers prohibited; dwelling. For the purposes of section 422.419 (1) (a), Wis. Stats., the term "dwelling" shall include, any garage, shed, barn or other building on the premises whether attached or unattached.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.44 Consumer approval transaction; duty of customer. In any case where a customer given notice of cancellation and the merchant fails to perform his obligation pursuant to section 423.204 of the act, the duty of the customer under section 425.205 to take reasonable care of the goods in his possession shall cease 40 days after notice of cancellation is given.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.60 Accrual of cause of actions; "default". For the purposes of section 425.103 (2) (a), Wis. Stats., the term "default" with respect to the first or last instalment of a transaction other than one pursuant to an open-end plan shall mean to have outstanding such scheduled payment for more than 40 days after its original or deferred due date.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.61 Cure of default; commencing legal action. The phrase "commence any action" as used in section 425.105 (1), Wis. Stats., refers only to the commencement of legal proceedings in a court of law.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.62 Cure of default; date of notice and tender. For the purposes of section 425.105 (2) notice of the customer's right to cure a default is deemed given on the date of mailing and the date of tender of performance shall be the date of mailing or personally delivering the amount of all unpaid instalments, deferral and delinquency charges which are due and unpaid.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.63 Exempt property; garnishee summons. In order to assist each employer in determining and applying the applicable wage exemption standard, in the case of any garnishment involving a consumer credit transaction governed by section 425.106, Wis. Stats., the garnishee summons should bear the legend "Consumer Credit Transaction Garnishee Summons" placed opposite the identification of parties in the legend and the last paragraph of the form set forth in

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section 267.04 (2), Wis. Stats., should be modified to conform with the requirements of section 425.106 (1) (a) of the act.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.64 Exempt property; medical services. For the purposes of section 425.106, Wis. Stats., the term "medical services" shall include the cost of hospital accommodations.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.65 Exempt property; wages. Where an employee's pay period is one calendar week or less, the exempt wage under section 425.106 (1) (a) 2 of the act shall be equal to the exemption for an employee with the same number of exemptions paid on a calendar week basis as determined by the formula in this subsection regardless of the number of hours actually worked by the employee during such pay period. Where the employee's pay period is a multiple of whole calendar weeks (for example where the pay period is every 2 weeks, 3 weeks, or 4 weeks) the exempt wage is equal to the weekly rate determined by the formula in this subsection times the number of calendar weeks in such pay period. Where an employee's pay period is greater than one calendar week and is other than a multiple of whole calendar weeks (for example where the pay period is every 10 days, 15 days, or semi-monthly) the exempt wage is equal to the sum of the exemption for each calendar week plus an amount equal to one-seventh of the weekly rate for such employee for each additional day in such pay period.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.66 Body attachments. The term "warrant" as used in section 425.113, Wis. Stats., refers to warrants issued pursuant to section 273.05, Wis. Stats., and does not limit or effect the power of a court to issue an order or attachment pursuant to section 295.04, Wis. Stats., where a person has failed to appear at a supplemental examination.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.67 Voluntary surrender of collateral. Pursuant to section 425.204 a creditor may notify a customer of his right to voluntarily surrender the collateral. Such a notice will not be considered a request or demand pursuant to sub. (3) of this section.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.68 Nonjudicial enforcement limited; surrender of collateral. A customer will not be deemed to have surrendered the collateral under sections 425.204 (3), and 425.206 (1) (a), Wis. Stats., where such surrender is not a voluntary surrender, if the merchant:

(1) Fails to provide a notice to the customer which clearly informs the customer of his right to a hearing on the issue of default before any repossession; (2) The merchant misrepresents any material fact or state of the law to the customer; or (3) The merchant violates any provision of chapter 427, Wis. Stats. The notice contained in subsection (1) of this rule is not required if the collateral has been abandoned by the customer.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

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Bkg 80.69 Restrictions on deficiency judgments; amount owing. The phrase "amount owing at the time of default" as used in section 425.209, Wis. Stats., shall mean the unpaid balance of the account excluding any unearned finance or additional charges but including any unpaid deferral or deficiency charges.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.70 Restrictions on deficiency judgments; repossession. For purposes of section 425.209 the term "repossession" shall include action to recover collateral pursuant to section 425.205 and possession of the collateral as a result of a surrender of the collateral as described in sections 425.204 (3), and 425.206 (1) (a), Wis. Stats., where such surrender is not a voluntary surrender.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.71 Restrictions on deficiency judgments; renouncing rights in collateral. Prior to obtaining the statement of a customer renouncing rights in the collateral pursuant to section 425.209 (2), Wis. Stats., the merchant shall notify the customer by written notice that by signing the statement the customer waives all rights to recover any surplus that may result from the sale of the collateral.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.80 Investigatory powers; merchant's records. Merchants shall maintain copies of records of all consumer transactions subject to the act and all advertisements, printings, displays, publications or distributions the terms of which relate to the extension of consumer credit in order to permit an investigation pursuant to section 426.106, Wis. Stats., for a period not less than that during which a customer may bring an action with respect to such transaction or advertisement as limited by section 425.307.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.81 Powers of administrator; penalty. The term "penalty" as used in section 426.104 (4) (a) is limited to those statutory penalties referred to in sections 425.302 (1) (a); 425.303 (1); 425.304 (1); 425.305 (1); and 426.301, Wis. Stats., and does not preclude a customer from obtaining judgement for actual damages sustained.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.82 Powers of administrator; submission for approval. Acts, practices or procedures submitted to the administrator pursuant to section 426.104 (4) (b), Wis. Stats., shall be typed or mechanically reproduced. An original and 3 copies shall be submitted by either personal delivery, registered mail or certified mail, return receipt requested.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

Bkg 80.85 Discrimination on the basis of sex or marital status unconscionable conduct. (1) **DECLARATION OF POLICY.** It is the declared policy of the state of Wisconsin that no person shall be discriminated against in the granting or extension of any form of credit, or in the capacity or privilege of obtaining any form of credit, on the basis of the applicant's sex or marital status. Such discrimination is hereby declared by the commissioner of banking to be unconscionable conduct under authority of section 426.108, Wis.

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Stats. The purpose of this rule is to eliminate discrimination in the granting of consumer credit on the basis of sex or marital status and to outline steps by which merchants can avoid such unlawful conduct. This regulation shall not apply to merchants chartered by any Wisconsin administrative agency which issues a regulation prohibiting discrimination in the granting of consumer credit on the basis of sex or marital status.

(2) UNCONSCIONABLE CONDUCT. Discrimination in the extension of consumer credit by a merchant to a customer on the basis of the sex or marital status of the customer shall be an unconscionable credit practice prohibited pursuant to section 426.108, Wis. Stats. Discrimination in the extension of consumer credit on the basis of the customer's sex or marital status shall mean any denial of credit, increase in the charge for credit, restriction on the amount or use of credit, a different application procedure or the application of different credit criteria based on the customer's sex or marital status and shall include, but not be limited to:

(a) The application of different credit criteria resulting in less favorable treatment in the granting of credit to women,

(b) A requirement that a customer who is contractually liable reapply for credit upon a change in name or marital status or a termination of credit to a customer who is contractually liable following a change in the customer's name or marital status without evidence of an unfavorable change in the customer's credit worthiness,

(c) A refusal to grant credit to a qualified customer in that person's birth-given first name and surname or a birth-given first name and a combined surname,

(d) A requirement that a spouse co-sign the credit application, debt instrument, or other document signed by the applicant spouse unless such signature is required by statute or such requirement is imposed without regard to sex or marital status on all similarly qualified customers who apply for a similar type and amount of credit except that with respect to secured credit the signature of a spouse on a document necessary to create a valid lien, convey clear title or waive inchoate or survivorship rights to property, may be required where the merchant's standards of credit worthiness require without regard to the applicant's sex or marital status security or collateral as a condition of the extension of credit in the amount requested,

(e) To evaluate any source of income including maintenance, alimony and child support on any basis other than its amount, its regularity and the period of receipt as of the date of the application together with any particular factors affecting the likelihood of continued payment, and

(f) Requesting information about birth control practices or child bearing intentions or capability of any customer or customer's spouse.

(3) WRITTEN CREDIT POLICY. The management of each financial organization as defined in section 71.07 (2) (d) 1, Wisconsin Statutes, each person or organization licensed under section 138.09, Wisconsin Statutes, and each credit card issuer shall adopt a detailed statement of its policy of nondiscrimination in extending consumer credit including its commitment to avoid the specific prohibited practices set

forth in this regulation. This statement of policy shall be available to any customer upon request at each office where extensions of credit are made, except that in the case of credit card issuers, the statement shall be furnished upon request of an applicant directed to any office from which such cards are issued. A copy of such policy statement shall be filed with the office of the commissioner of banking upon request by that office. Such written policy shall be applied impartially to each person seeking credit.

(4) NOTICE OF ACTION AND RETENTION OF RECORDS. Each merchant shall within a reasonable time after receiving a credit application notify the customer of action taken on the application and shall upon request provide a customer whose application has been denied with the reasons for such denial, including the fact that information supplied by the customer cannot be verified if that is the case. A record of all reasons for denial or a record of the denial form number and each alternative therein applied to the customer along with the credit application and all other related documentation shall be retained by the merchant in reasonable order accessible by reference to the name of the customer, for a period of 15 months from the date of notice of action on each credit application.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76.

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