

## CHAPTER 134

## MISCELLANEOUS TRADE REGULATIONS

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**134.01 Injury to business; restraint of will.** Any 2 or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of willfully or maliciously injuring another in his or her reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his or her will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.

**History:** 1993 a. 482.

A complaint alleging a conspiracy for the purpose of injuring another by means of perjury and resulting damage states a claim upon which relief can be granted. *Radue v. Dill*, 74 Wis. 2d 239, 246 N.W.2d 507.

Malice as essential element is discussed. *Malecki v. Fine-Lando Clinic*, 162 Wis. 2d 73, 469 N.W.2d 629 (1991).

A doctor's personal service corporation was merely the alter ego of the doctor. The doctor and the corporation did not constitute "two or more persons" under this section. *Wausau Medical Center v. Asplund*, 182 Wis. 2d 274, 514 N.W.2d 34 (Ct. App. 1994).

An employee's claim against fellow employees for injury to reputation and profession was preempted by s. 102.03. *Mudrovich v. Soto*, 2000 WI App174, 238 Wis. 2d 162, 617 N.W.2d 242, 99-1410.

Malicious injury to reputation and business claims do not require the existence of a contract in order to lie. The economic loss doctrine does not apply in the case of an independent tort based on allegations distinct from any contract allegations that seeks separate, non-economic damages. *Brew City Redevelopment Group, LLC v. The Ferchill Group*, 2006 WI 128, 297 Wis. 2d 606, 724 N.W.2d 879, 04-3238.

### 134.02 Blacklisting and coercion of employees.

(1) Any 2 or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor and who shall combine or agree to combine for any of the following purposes shall be fined not less than \$100 nor more than \$500, which fine shall be paid into the state treasury for the benefit of the school fund:

(a) Preventing any person seeking employment from obtaining employment.

(b) Procuring or causing the discharge of any employee by threats, promises, circulating blacklists or causing blacklists to be circulated.

(c) After having discharged any employee, preventing or attempting to prevent the employee from obtaining employment with any other person, partnership, company or corporation by the means described in par. (a) or (b).

(d) Authorizing, permitting or allowing any of their agents to blacklist any discharged employee or any employee who has voluntarily left the service of his or her employer.

(e) Circulating a blacklist of an employee who has voluntarily left the service of an employer to prevent the employee's obtaining employment under any other employer.

(f) Coercing or compelling any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his or her securing employment or continuing therein.

(2) (a) Nothing in this section shall prohibit any employer from giving any other employer, to whom a discharged employee has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for the employee's discharge, when requested to do so by any of the following:

1. The discharged employee.
2. The person to whom the discharged employee has applied for employment.
3. Any bondsman or surety.

becomes due, a commission becomes due according to the past practice used by the principal and the independent sales representative.

(c) If it cannot be determined under par. (a) or (b) when a commission becomes due, a commission becomes due according to the custom and usage prevalent in this state for the particular industry of the principal and independent sales representative.

(3) NOTICE OF TERMINATION OR CHANGE IN CONTRACT. Unless otherwise provided in a written contract between a principal and an independent sales representative, a principal shall provide an independent sales representative with at least 90 days' prior written notice of any termination, cancellation, nonrenewal or substantial change in the competitive circumstances of the contract between the principal and the independent sales representative.

(4) COMMISSIONS DUE; PAYMENT ON TERMINATION OF CONTRACT. A principal shall pay an independent sales representative all commissions that are due to the independent sales representative at the time of termination, cancellation or nonrenewal of the contract between the principal and the independent sales representative as required under sub. (2).

(5) CIVIL LIABILITY. Any principal that violates sub. (2) by failing to pay a commission due to an independent sales representative as required under sub. (2) is liable to the independent sales representative for the amount of the commission due and for exemplary damages of not more than 200 percent of the amount of the commissions due. In addition, the principal shall pay to the independent sales representative, notwithstanding the limitations specified in s. 799.25 or 814.04, all actual costs, including reasonable actual attorney fees, incurred by the independent sales representative in bringing an action, obtaining a judgment and collecting on a judgment under this subsection.

**History:** 1997 a. 71.

"Person" in this section is subject to the definition in s. 990.01 (26), which includes not only natural persons, but also partnerships, associations, and bodies corporate and politic. *Industry to Industry, Inc. v. Hillsman Modular Molding, Inc.* 2002 WI 51, 252 Wis. 2d 544, 644 N.W.2d 236, 00–2180.

### 134.95 Violations against elderly or disabled persons.

(1) DEFINITIONS. In this section:

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

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

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

(2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71, 134.72, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that chapter, the person shall be subject to a supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the defendant, for which the fine or forfeiture was imposed, was perpetrated against an elderly person or disabled person and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

(3) PRIORITY FOR RESTITUTION. If the court orders restitution under s. 100.171 (8), 100.173 (4) (a), 100.174 (7), 100.175 (7), 100.177 (15) or 134.87 (6) for a pecuniary or monetary loss suffered by a person, the court shall require that the restitution be paid by the defendant before the defendant pays any forfeiture imposed under this section.

**History:** 1995 a. 382; 1997 a. 111; 2001 a. 16.

134.96 Use of lodging establishments. (1) In this section:

(a) "Alcohol beverages" has the meaning given in s. 125.02 (1).

(b) "Controlled substance" has the meaning given in s. 961.01 (4).

(bd) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(c) "Lodging establishment" has the meaning given in s. 106.52 (1) (d).

(d) "Underage person" has the meaning given in s. 125.02 (20m).

(2) Any person who procures lodging in a lodging establishment and permits or fails to take action to prevent any of the following activities from occurring in the lodging establishment is subject to the penalties provided in sub. (5):

(a) Consumption of an alcohol beverage by any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

(b) Illegal use of a controlled substance or controlled substance analog.

(3) An owner or employee of a lodging establishment may deny lodging to an adult if the owner or employee reasonably believes that consumption of an alcohol beverage by an underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age, or illegal use of a controlled substance or controlled substance analog, may occur in the area of the lodging establishment procured.

(4) An owner or employee of a lodging establishment may require a cash deposit or use of a credit card at the time of application for lodging.

(5) A person who violates sub. (2) or a local ordinance which strictly conforms to sub. (2) shall forfeit:

(a) Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or

(b) Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.

**History:** 1989 a. 94; 1991 a. 295; 1995 a. 27, 448; 1999 a. 82; 2005 a. 155 s. 41; Stats. 2005 s. 134.96.

### 134.97 Disposal of records containing personal information. (1) DEFINITIONS. In this section:

(a) "Credit card" has the meaning given in s. 421.301 (15).

(am) "Dispose" does not include a sale of a record or the transfer of a record for value.

(b) "Financial institution" means any bank, savings bank, savings and loan association or credit union that is authorized to do business under state or federal laws relating to financial institutions, any issuer of a credit card or any investment company.

(c) "Investment company" has the meaning given in s. 180.0103 (11e).

(d) "Medical business" means any organization or enterprise operated for profit or not for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company or association, that possesses information, other than personnel records, relating to a person's physical or mental health, medical history or medical treatment.

(e) "Personal information" means any of the following:

1. Personally identifiable data about an individual's medical condition, if the data are not generally considered to be public knowledge.

2. Personally identifiable data that contain an individual's account or customer number, account balance, balance owing, credit balance or credit limit, if the data relate to an individual's account or transaction with a financial institution.

3. Personally identifiable data provided by an individual to a financial institution upon opening an account or applying for a loan or credit.

4. Personally identifiable data about an individual's federal, state or local tax returns.

(f) "Personally identifiable" means capable of being associated with a particular individual through one or more identifiers or other information or circumstances.

(g) “Record” means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(h) “Tax preparation business” means any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company or association, that for a fee prepares an individual’s federal, state or local tax returns or counsels an individual regarding the individual’s federal, state or local tax returns.

**(2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION.** A financial institution, medical business or tax preparation business may not dispose of a record containing personal information unless the financial institution, medical business, tax preparation business or other person under contract with the financial institution, medical business or tax preparation business does any of the following:

- (a) Shreds the record before the disposal of the record.
- (b) Erases the personal information contained in the record before the disposal of the record.
- (c) Modifies the record to make the personal information unreadable before the disposal of the record.
- (d) Takes actions that it reasonably believes will ensure that no unauthorized person will have access to the personal information contained in the record for the period between the record’s disposal and the record’s destruction.

**(3) CIVIL LIABILITY; DISPOSAL AND USE.** (a) A financial institution, medical business or tax preparation business is liable to a person whose personal information is disposed of in violation of **(2)** for the amount of damages resulting from the violation.

(b) Any person who, for any purpose, uses personal information contained in a record that was disposed of by a financial institution, medical business or tax preparation business is liable to an individual who is the subject of the information and to the financial institution, medical business or tax preparation business that disposed of the record for the amount of damages resulting from the person’s use of the information. This paragraph does not apply to a person who uses personal information with the authorization or consent of the individual who is the subject of the information.

**(4) PENALTIES; DISPOSAL AND USE.** (a) A financial institution, medical business or tax preparation business that violates sub. **(2)** may be required to forfeit not more than \$1,000. Acts arising out of the same incident or occurrence shall be a single violation.

(b) Any person who possesses a record that was disposed of by a financial institution, medical business or tax preparation business and who intends to use, for any purpose, personal information contained in the record may be fined not more than \$1,000 or imprisoned for not more than 90 days or both. This paragraph does not apply to a person who possesses a record with the authorization or consent of the individual whose personal information is contained in the record.

**History:** 1999 a. 9; 2005 a. 155 s. 52; Stats. 2005 s. 134.97. Disposing Medical, Financial Records. Franklin. Wis.Law. Dec. 1999.

**134.98 Notice of unauthorized acquisition of personal information. (1) DEFINITIONS.** In this section:

- (a) 1. “Entity” means a person, other than an individual, that does any of the following:
  - a. Conducts business in this state and maintains personal information in the ordinary course of business.
  - b. Licenses personal information in this state.
  - c. Maintains for a resident of this state a depository account as defined in s. 815.18 (2) (e).
  - d. Lends money to a resident of this state.
2. “Entity” includes all of the following:
  - a. The state and any office, department, independent agency, authority, institution, association, society, or other body in state

government created or authorized to be created by the constitution or any law, including the legislature and the courts.

b. A city, village, town, or county.

(am) “Name” means an individual’s last name combined with the individual’s first name or first initial.

(b) “Personal information” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in a manner that renders the element unreadable:

1. The individual’s social security number.
2. The individual’s driver’s license number or state identification number.
3. The number of the individual’s financial account number, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account.
4. The individual’s deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a).
5. The individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.

(c) “Publicly available information” means any information that an entity reasonably believes is one of the following:

1. Lawfully made widely available through any media.
2. Lawfully made available to the general public from federal, state, or local government records or disclosures to the general public that are required to be made by federal, state, or local law.

**(2) NOTICE REQUIRED.** (a) If an entity whose principal place of business is located in this state or an entity that maintains or licenses personal information in this state knows that personal information in the entity’s possession has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity shall make reasonable efforts to notify each subject of the personal information. The notice shall indicate that the entity knows of the unauthorized acquisition of personal information pertaining to the subject of the personal information.

(b) If an entity whose principal place of business is not located in this state knows that personal information pertaining to a resident of this state has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity shall make reasonable efforts to notify each resident of this state who is the subject of the personal information. The notice shall indicate that the entity knows of the unauthorized acquisition of personal information pertaining to the resident of this state who is the subject of the personal information.

(bm) If a person, other than an individual, that stores personal information pertaining to a resident of this state, but does not own or license the personal information, knows that the personal information has been acquired by a person whom the person storing the personal information has not authorized to acquire the personal information, and the person storing the personal information has not entered into a contract with the person that owns or licenses the personal information, the person storing the personal information shall notify the person that owns or licenses the personal information of the acquisition as soon as practicable.

(br) If, as the result of a single incident, an entity is required under par. (a) or (b) to notify 1,000 or more individuals that personal information pertaining to the individuals has been acquired, the entity shall without unreasonable delay notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 USC 1681a(p), of the timing, distribution, and content of the notices sent to the individuals.

(cm) Notwithstanding pars. (a), (b), (bm), and (br), an entity is not required to provide notice of the acquisition of personal information if any of the following applies:

1. The acquisition of personal information does not create a material risk of identity theft or fraud to the subject of the personal information.

2. The personal information was acquired in good faith by an employee or agent of the entity, if the personal information is used for a lawful purpose of the entity.

**(3) TIMING AND MANNER OF NOTICE; OTHER REQUIREMENTS.** (a) Subject to sub. (5), an entity shall provide the notice required under sub. (2) within a reasonable time, not to exceed 45 days after the entity learns of the acquisition of personal information. A determination as to reasonableness under this paragraph shall include consideration of the number of notices that an entity must provide and the methods of communication available to the entity.

(b) An entity shall provide the notice required under sub. (2) by mail or by a method the entity has previously employed to communicate with the subject of the personal information. If an entity cannot with reasonable diligence determine the mailing address of the subject of the personal information, and if the entity has not previously communicated with the subject of the personal information, the entity shall provide notice by a method reasonably calculated to provide actual notice to the subject of the personal information.

(c) Upon written request by a person who has received a notice under sub. (2) (a) or (b), the entity that provided the notice shall identify the personal information that was acquired.

**(3m) REGULATED ENTITIES EXEMPT.** This section does not apply to any of the following:

(a) An entity that is subject to, and in compliance with, the privacy and security requirements of 15 USC 6801 to 6827, or a person that has a contractual obligation to such an entity, if the entity or person has in effect a policy concerning breaches of information security.

(b) An entity that is described in 45 CFR 164.104 (a), if the entity complies with the requirements of 45 CFR part 164.

**(4) EFFECT ON CIVIL CLAIMS.** Failure to comply with this section is not negligence or a breach of any duty, but may be evidence of negligence or a breach of a legal duty.

**(5) REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY.** A law enforcement agency may, in order to protect an investigation or homeland security, ask an entity not to provide a notice that is otherwise required under sub. (2) for any period of time and the notification process required under sub. (2) shall begin at the end of that time period. Notwithstanding subs. (2) and (3), if an entity receives such a request, the entity may not provide notice of or publicize an unauthorized acquisition of personal information, except as authorized by the law enforcement agency that made the request.

**(6m) LOCAL ORDINANCES OR REGULATIONS PROHIBITED.** No city, village, town, or county may enact or enforce an ordinance or regulation that relates to notice or disclosure of the unauthorized acquisition of personal information.

**(7m) EFFECT OF FEDERAL LEGISLATION.** If the joint committee on administrative rules determines that the federal government has enacted legislation that imposes notice requirements substantially similar to the requirements of this section and determines that the legislation does not preempt this section, the joint committee on administrative rules shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice of its determination. This section does not apply after publication of a notice under this subsection.

**History:** 2005 a. 138; 2007 a. 20; 2007 a. 97 s. 238.

**134.99 Parties to a violation.** (1) Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

**History:** 1975 c. 365; 1979 c. 62; 1997 a. 111.