tute a sale below cost in violation of 100.30. 44 Atty. Gen. 352.

For discussion of 100.30 (2) and (6), Stats. 1963, relative to dealers doing business below cost see 53 Atty. Gen. 1.

**100.31 History:** 1947 c. 580, 614; Stats. 1947 s. 100.31; 1951 c. 261 s. 10; 1965 c. 252; 1969 c. 276.

**100.35 History:** 1949 c. 404; Stats. 1949 s. 100.35; 1951 c. 223 s. 19.

**100.36 History:** 1923 c. 147; Stats. 1923 s. 4607d-4; 1925 c. 4; Stats. 1925 s. 352.41; 1931 c. 113; Stats. 1931 s. 352.41 (1); 1935 c. 159 s. 34; 1935 c. 550 s. 245; Stats. 1935 s. 97.46 (1); 1963 c. 119; 1967 c. 100; 1969 c. 286 s. 33; 1969 c.392 s. 44; Stats. 1969 s. 100.36.

**Editor's Note:** In an opinion published in 27 Atty. Gen. 303, the attorney general ruled that a product known as "honee butur," designed to be used, among other things, as a substitute for butter, was subject to the provisions of 97.46 (1) and 97.44, Stats. 1937.

**100.37 History:** 1965 c. 320; Stats. 1965 s. 97.71; 1969 c. 266; 1969 c. 286 s. 45; Stats. 1969 s. 100.37.

**100.38 History:** 1949 c. 17 s. 23; 1949 c. 302; Stats. 1949 s. 97.73; 1955 c. 10; 1969 c. 276 s. 590 (1); 1969 c. 286 s. 48; 1969 c. 459; Stats. 1969 s. 100.38.

## CHAPTER 101.

### Industrial Commission.

**101.01 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—41; 1913 c. 588; 1917 c. 133; 1923 c. 291 s. 3; Stats. 1923 s. 101.01; 1931 c. 161; 1941 c. 273; 1955 c. 425; 1957 c. 342; 1961 c. 387; 1969 c. 276.

**Editor's Note:** This section, containing definitions of terms used in secs. 101.01—101.-29, is cited in various notes under 101.06. The definition of the term "farming" is based on amendatory legislation of 1955 (ch. 425, Laws 1955), which incorporated by reference the provisions of sec. 102.04 (3). Cases involving application of the superseded statutory definition are Vandre v. Trachte, 244 W 233, 12 NW (2d) 48, and Maus v. Bloss, 265 W 627, 62 NW (2d) 708.

**101.02 History:** 1911 c. 485; Stats. 1911 s. 2394-41 (6) to (9); 1917 c. 133; 1923 c. 291 s. 3; Stats. 1923 s. 101.01 (6) to (9); 1969 c. 276 ss. 372, 374; Stats. 1969 s. 101.02.

**101.06 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—48; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.06; 1957 c. 120.

1. General.
2. Employer; employe; owner; tenant; frequenter; trespasser.
3. Place of employment; public building; structure.
4. Safe places of employment.
5. Safe employment.
6. Safe public buildings.
7. Liability of owner of leased premises.
8. Liability of owner to contractor's employes.
9. Notice of defects.

*1. General.*

On exercises of police power see notes to sec. 1, art. I; and on safeguards for persons and property see notes to various sections of ch. 167.

The safe-place statute is not to be extended so as to impose any duty beyond that imposed by the common law unless the statute clearly and beyond any reasonable doubt expresses such purpose by language that is clear, unambiguous, and peremptory. Delaney v. Supreme Inv. Co. 251 W 374, 29 NW (2d) 754.

The problem of indemnity under the safe-place statute. Boden, 40 MLR 349.

"Public building" and "place of employment" as defined under Wisconsin safe-place statute. Choinski, 42 MLR 84.

A survey of the safe-place doctrine. McKinnon, 46 MLR 130.

Non-third-party safe-place cases. Goldberg, 46 MLR 154.

A descriptive word index of safe-place statute law. Boyle, 31 WBB, No. 4, and 34 WBB, No. 2.

Wisconsin safe-place statute. Wilcox, 32 WBB, No. 5.

Safe-place statute-indemnity. Young, 36 WBB, No. 5.

Slip, trip and fall cases under the Wisconsin safe-place statute. Boyle, 36 WBB, No. 5.

Thirty years of the safe-place statute. Reuss, 1940 WLR 335.

Safe-place statute up to date. Laun, 1953 WLR 311.

*2. Employer; Employe; Owner; Tenant; Frequenter; Trespasser.*

Contractors who were erecting an addition to a manufacturing plant deposited on the margin of an alley (adjacent to the plant) some heavy timbers, the top one of which fell into the alley and injured an employe of the owner of the plant. The injured employe, although not an employe of the contractors, was a "frequenter" of the place and might maintain an action under sec. 2394-48, Stats. 1915. Peschel v. Klug, 170 W 519, 175 NW 805.

An employe of a contractor doing work on an outside wall of a boiler room of a mill, who during the noon hour, for pleasure, wandered through the mill and was injured in using an elevator having no safety device, was a trespasser, and not a licensee for whom sec. 2394-48, Stats. 1919, requires an employer to make the place of employment safe. Klemens v. Morrow M. Co. 171 W 614, 171 NW 903.

A child attending a public school and participating in a manual training program is not an "employe" or a "frequenter" within the meaning of secs. 2394-48 and 2394-49, Stats. 1921. Sullivan v. School District, 179 W 502, 191 NW 1020.

To charge one as "owner" with liability for the defective condition of a public building, there must exist in such person the right to present possession, control or dominion over such building, so that he may lawfully enter and perform the duties fixed by the statute. A vendor who has no present right of supervision, control or possession of a building

which he had contracted to convey is not chargeable under the safe-place statute as owner for defects in the premises, notwithstanding he holds the legal title. Friemann v. Cumming, 185 W 88, 200 NW 662.

General contractors for the erection of a building who let a subcontract for the interior marble work and, pursuant to the subcontract, furnished an elevator hoist were "employers" within the meaning of 101.01, 101.06 and 101.07, Stats. 1923, and should have furnished those employed under the subcontract a safe place of employment. Lang v. Findorff, 185 W 545, 201 NW 727.

A member of a partnership which employed a subcontractor to dig and fill a trench was an "employer" within the meaning of 101.01 (3), Stats. 1923, whose duty it was to make the place of employment for his employe safe. United States F. & G. Co. v. Christiansen & Bernett, 193 W 1, 212 NW 660.

A boy who had been permitted by one of the owners to enter a public garage, resorted to by hunters with guns, to wait for a garage patron to return a loaded gun to him, was not a "trespasser" but a "frequenter" within the meaning of 101.01 (5), Stats. 1927. Calvetti v. Industrial Comm. 201 W 297, 230 NW 130.

The employes of an independent contractor doing work upon the premises of another are "frequenters" within the safe-place statute. Neitzke v. Kraft-Phenix Dairies, Inc. 214 W 441, 253 NW 579.

An employe of a lessee of part of a warehouse, whose work required him to use the unleased part of the warehouse, and which use was known to the owner of the warehouse, was a "frequenter" of the unleased part, within the safe-place statute, so as to render the owner liable for an injury received by such employe when he struck his head against a bracket or shelf supporting a fire extinguisher fastened to a steel beam 5 feet 6¼ inches above the floor of the warehouse. Tomlin v. Chicago, M. St. P. & P. R. Co. 220 W 325, 265 NW 72.

Where a paving machine obstructed a sidewalk on a street under construction but not closed to traffic, and projected on to abutting land being used by the contractor, with the permission of the owner, a pedestrian who, in walking around the machine, entered the abutting land and was hit by the descending skip of the machine was a "frequenter", not a trespasser, within the safe-place statute. Powers v. Churney Construction Co. 223 W 586, 270 NW 41.

The term "tenant" as used in the safe-place statute does not mean simply "tenant" as used in the phrase "landlord and tenant" but has the more general meaning of one in possession of premises, whether as owner or otherwise. Skrzypczak v. Konieczka, 224 W 455, 272 NW 659.

Under the safe-place statute, defining the term "owner" as including every city and school district, the legislature intended that cities and school districts as owners of public buildings should be subject to the statute whether acting in a proprietary or in a governmental capacity, and hence they may be liable to a frequenter who is injured in one of their public buildings, when such injury is proximately caused by a lack of safety, as defined in the statute. Heiden v. Milwaukee, 226 W 92, 275 NW 922.

Where the operations of a railroad company in switching freight cars on a dock owned by a dock company were under the control of the latter company, and the plaintiff, a car cooper employed by the dock company, was injured in the course of the switching operations, the safe-place statutes (101.01, 101.06, and 101.07, Stats. 1935) were inapplicable to his action against the railroad company. Sikora v. Great Northern R. Co. 230 W 283, 282 NW 588.

Where a stairway leading to the basement in the defendant's store, and the areaway off which the stairway opened, located in a rear corner, were separated from the store premises proper by a wooden partition, and the only way of getting to the stairway was by going through the doorway in the partition and passing the door, on which there was a conspicuous sign "Employes Only," and the plaintiff, without notice to or knowledge on the part of a clerk, walked over to and into the areaway and fell down the stairs, the plaintiff was not a "frequenter" but a "trespasser," to whom the defendant owed no duty to maintain a safe place, and for whose injuries the defendant therefore was not liable, under the safe-place statute. Newell v. Schultz Brothers Co. 239 W 415, 1 NW (2d) 769.

Under a written agreement whereby the owner of a barn sold it for a consideration paid on execution of the agreement, and the buyer agreed to remove completely the barn from the seller's farm within 2 weeks and to assume complete charge and control of the razing and removing, title to the barn passed to the buyer as of the date of the agreement, the buyer was not an employe of the seller and the seller had no right of control over the buyer or the work in relation to razing and removing the barn, and the seller was not an "employer" nor was he an "owner" in control of a place of employment, within the safe-place statute. Mahar v. Uihlein, 240 W 469, 3 NW (2d) 683.

Under a complaint showing merely that the plaintiff, while in the defendant's tavern as a patron and customer, was injured when his hand came into contact with the blades of an electric fan located on the top of a cupboard 7⅔ feet from the floor, and not alleging any reason or excuse for coming into contact with a fan so located, the plaintiff was a "trespasser" to whom the defendant owed no duty to maintain a safe place, and for whose injuries the defendant was not liable under the safe-place statute. Ryan v. O'Hara, 241 W 389, 6 NW (2d) 209.

A trespasser is a person who enters or remains on land in the possession of another without a privilege to do so created by the possessor's consent or otherwise. One who is not an employe, and who is a trespasser, is not protected by the provisions of the safe-place statute. Harder v. Maloney, 250 W 233, 26 NW (2d) 830.

A person receiving instruction in a public school, whether the person is a minor or an adult, is not an employe and the place where he receives instruction is not a "place of employment" within the meaning of 101.01 (1).

Kirchoff v. Janesville, 255 W 202, 38 NW (2d) 698.

The plaintiff, a welder who was severely burned when an inflammable liquid which the defendant painting contractor was using in the plant of the plaintiff's employer became ignited, was not a trespasser when he carried on his own work in the area which the defendant was using as a paint shop, and in respect to that area and in respect to the defendant the plaintiff was a frequenter entitled to the protection of the safe-place statute, and the defendant was charged with the duty of keeping that area safe for frequenters within the provisions of the statute, so far as the defendant's own operations were concerned, although its control over the area was not exclusive. Johannsen v. Peter P. Woburil, Inc. 260 W 341, 51 NW (2d) 53.

If there is adequate notice to a frequenter that he should not go into a part of a public building and, in spite of such notice, he enters the forbidden area he becomes a trespasser so as not to be entitled to damages for injuries sustained in the forbidden area, since no duty is owed to a trespasser. Wannmacher v. Baldauf, 262 W 523, 55 NW (2d) 895.

A guest at a resort, who put his hand into an ice-cutting machine, was not a trespasser by reason of his being in the workshop near the machine at the time of his injury, since he entered and was present pursuant to the actual or implied permission of the defendant's employe in charge of the premises. Mahnke v. Ahles, 268 W 430, 67 NW (2d) 874.

A complaint which alleged that the defendant owners of the premises, on which a mixer machine was being operated by an independent contractor, were engaged in the business of selling and repairing farm implements on the premises, and that their premises constituted a place of employment under the safe-place statute, was sufficient as alleging that such defendants were the owners of a place of employment within the safe-place statute. Nechodomn v. Lindstrom, 269 W 455, 69 NW (2d) 608.

An employe of an independent contractor working on the premises of an owner is a "frequenter." Frankovis v. Klug & Smith Co. 275 W 156, 81 NW (2d) 495.

When the plaintiff employe of a contractor, engaged by the owner to repair a leaking roof which had been reported to the owner by tenants, entered the store from the back and proceeded by a direct route to the front of the store to consult one of the tenants, the plaintiff may have been a "frequenter" within the safe-place statute; but when, on retracing his steps, he deviated from the direct route by mistakenly turning aside into a dark vestibule at the end of the basement stairs, he became a trespasser as a matter of law, and he was a trespasser when hurt in falling down the stairs, since nothing connected with his work required or justified his presence there. McNally v. Goodenough, 5 W (2d) 293, 92 NW (2d) 890.

The definition of "employer" in 101.01 (3) indicates a legislative intent that the duties imposed on a proprietor by 101.06 are also imposed on a person to whom the proprietor has delegated control of its employes. Eau Claire Elec. Co-op. v. Industrial Comm. 10 W (2d) 209, 102 NW (2d) 274.

A complaint by a student seeking to recover damages against an architect for his alleged negligence in constructing and designing a window of the school with which she collided when she fell from a railing upon which she was walking outside of the building did not state a cause of action under the safe-place statute, since the child was not a frequenter, for the statute placed no duty on the owner of a public building with respect to one who was neither in the building nor in the process of entering. The term "frequenter" is applicable to students who may go in or be in public school premises under circumstances which do not make them trespassers. Mlynarski v. St. Rita's Congregation, 31 W (2d) 54, 142 NW (2d) 207.

Where a city owned an athletic field and had full control over the placing and repair of the movable bleachers, a school district did not become an "owner" of the bleachers by virtue of a rental agreement. Mere possession is not the equivalent of control or custody. Novak v. Delavan, 31 W (2d) 200, 143 NW (2d) 6.

The general rule is that an employe of an independent contractor working upon the premises of an owner is a frequenter working in a place of employment. Young v. Anaconda American Brass Co. 43 W (2d) 36, 168 NW (2d) 112.

*3. Place of Employment; Public Building; Structure.*

To constitute a building leased for dwelling purposes a "public building" must be arranged for or used by 3 or more tenants. Gobar v. Val Blatz B. Co. 179 W 256, 191 NW 509.

An uncompleted building owned by a corporation, the construction of which had been piecemeal by various independent contractors, none of whom had complete control and custody, was a "place of employment", and the corporation was liable as "owner" for injuries to one falling down an insufficiently guarded elevator shaft, although it had not commenced to occupy the building permanently for its business. Waskow v. Robert L. Reisinger & Co. 180 W 537, 193 NW 357.

The owner of a platform and derrick did not furnish a "place of employment" to a contractor's employes; where the plaintiff's employer had been forbidden to use the derrick and was a trespasser in using it, the owner was not liable to plaintiff for an injury sustained by defects therein. Sheban v. A. M. Castle & Co. 185 W 282, 201 NW 379.

Where a partner had not, as an employer, exercised his judgment regarding the shoring up of the walls of a trench, and had not directed any employe to work in or near the trench in which an employe of an independent contractor was killed while attempting to rescue such partner, it was not a "place of employment" within the meaning of 101.01 (1), Stats. 1923. United States F. & G. Co. v. Christiansen & Bernett, 193 W 1, 212 NW 660.

A "place of employment" within the safe-place statute means a place where active work, either temporary or permanent, is being conducted in connection with a business for profit, where some process or operation

related to such industry, trade or business is carried on, and where any person is directly or indirectly employed by another. A village street, being used merely as a place of travel, is not a "place of employment" within the safe-place statute so as to subject the village to liability thereunder for injuries sustained by a pedestrian. Padley v. Lodi, 223 W 661, 290 NW 136.

The rooms where a charitable institution conducts its activities are not a "place of employment" within the safe-place statute. Waldman v. Y.M.C.A. 227 W 43, 277 NW 632.

A public highway is not a "place of employment" within the safe-place statute. Herrick v. Luberts, 230 W 387, 284 NW 27.

A toboggan slide maintained on a hillside by a city for the amusement and benefit of the public, and not for gain or profit, was not a "place of employment" within the safe-place statute. Cegelski v. Green Bay, 231 W 89, 285 NW 343.

A slide for the entertainment of children in a public park maintained by a city was not a "public building" within the safe-place statute. (Bent v. Jonet, 213 W 635, distinguished.) Grinde v. Watertown, 232 W 551, 288 NW 196.

A flagstaff located on the school grounds, but entirely apart from the school building, did not constitute a "public building" within the safe-place statute so as to render the school district liable for injuries sustained by a frequenter of the premises when a portion of the flagstaff fell. Lawver v. Joint Dist. 232 W 608, 288 NW 192.

Bleachers erected on city school grounds by a photographer and his servants, pursuant to an agreement made by a representative of the high school senior class with the photographer, for the sole purpose of taking a class picture, did not, as against the city, constitute a "public building" within the safe-place statute. (Bent v. Jonet, 213 W 635, distinguished.) Connor v. Meuer, 232 W 656, 288 NW 272.

The evidence warranted the jury's findings that a building, the front portion of which was leased to a tenant as a dress shop and the rear portion used by the owner as a warehouse, was a "public building" within the safe-place statute. Kezar v. Northern States P. Co. 246 W 19, 16 NW (2d) 364.

A platform, furnished by a businessmen's association for the use of a professional entertainer engaged by the association to perform acrobatic acts at a harvest fair conducted by the association for advertising purposes, was a "place of employment" within the safe-place statute, so that the association was liable thereunder to the entertainer for injuries sustained by the entertainer because the platform was not as safe as required by 101.01 (11) and 101.06, Stats. 1943. (Waldman v. Y.M.C.A. 227 W 43, distinguished.) Mennetti v. West Side Businessmen's Asso. 246 W 586, 18 NW (2d) 487.

Under the safe-place statute, an employer, who owned and operated a farm, and who sent his farm hand to exchange labor with a neighboring farmer, was exempt from liability for injuries sustained by the farm hand while feeding a corn shredder on the neighboring farm at the direction of the neighboring farmer. Redman v. Hobart, 248 W 508, 22 NW (2d) 532.

The exemption of farmers and farm labor from the requirements of the safe-place statute does not relieve farmers from the duties imposed on them as employers by the common law. Welch v. Corrigan, 255 W 58, 38 NW (2d) 148.

A person receiving instruction in a public school, whether the person is a minor or an adult, is not an employe, and the place where he receives instruction is not a "place of employment" within the meaning of 101.01 (1), Stats. 1947. Kirchoff v. Janesville, 255 W 202, 38 NW (2d) 698.

An electrician's "place of employment" in running some electrical conduits for an aluminum company was the aluminum company's premises, and the duty to maintain it according to the standards of the safe-place statute was on that company, so that the safe-place statute did not apply as a basis for liability of a power company for injuries sustained by such electrician when he placed a ladder against and came in contact with a transformer-supporting pole of the power company located on the aluminum company premises. LaDuke v. Northern States P. Co. 256 W 286, 41 NW (2d) 274.

A city is not liable for injuries sustained on a defective walk leading to the street, since the sidewalk is not part of the building and is not a "structure" as defined in 101.01 (12). Mistele v. Board of Education, 267 W 28, 64 NW 428.

Under 101.01 (1), defining the term "place of employment" as including every place "where either temporarily or permanently any industry, trade or business is carried on," "and" "where any person is, directly or indirectly, employed by another for direct or indirect gain or profit," the last-quoted phrase, preceded by the conjunctive "and," cannot stand by itself but must be considered jointly with the quoted phrase preceding it. A complaint which alleged only that the defendants owned and operated the apartment house where the injuries were sustained on an outside step, without further particularizing, was insufficient, as against a general demurrer, to establish that the operation of the apartment house was a "business," since such ownership and operation may have constituted merely an investment. Cross v. Leuenberger, 267 W 232, 65 NW (2d) 35, 66 NW (2d) 168.

Where a concrete stairway and concourse were constructed as an approach to the church and served the purpose of a sidewalk only, such stairway and concourse did not constitute a "public building" or "structure" within 101.01 (12), and hence the church corporation was not liable for fatal injuries sustained by a person who fell on the first step of the stairway because of ice thereon. Meyers v. St. Bernard's Congregation, 268 W 285, 67 NW (2d) 302.

A wooden stairway on the side of a bluff in a public park, leading from a public sidewalk to a public beach below, was not a "structure" within the meaning of 101.01 (12), and neither a city nor a county, as owner of the premises, was liable for injuries sustained by a frequenter when he fell because of a missing

tread near the bottom of the stairway. Weiss v. Milwaukee, 268 W 377, 68 NW (2d) 13.

Under the facts pleaded, the defendant's apartment building and its surrounding walk and grounds did not constitute a "place of employment" or a "public building" within the safe-place statute. Davis v. Lindau, 270 W 218, 70 NW (2d) 686.

Where the 6-step flight of steps on which the plaintiff fell was not only physically attached to a building but all except the bottom step were enclosed by the pilasters on either side, such steps were part of a "public building" within the meaning of the safe-place statute so as to subject the church corporation, as owner, to liability for the injuries sustained. Harnett v. St. Mary's Congregation, 271 W 603, 74 NW (2d) 382.

A public sidewalk adjacent to the defendant's theater in a city, which sidewalk was used by theater patrons in order to obtain tickets at the ticket window and to gain entrance to the theater, was not a "place of employment" and hence the defendant was not subject to liability for injuries sustained by a theater patron in falling because of an alleged defect in such sidewalk. Miller v. Welworth Theatres, 272 W 355, 75 NW (2d) 386.

An inclined ramp located on city school grounds, but outside the lines of the school building and leading up to a paved area adjacent to the school building, was not a "public building" or "structure". Hemmingway v. Janesville, 275 W 304, 81 NW (2d) 492.

A toboggan slide operated by a city without charge in a public park, and consisting of a raised wooden platform to which was connected a wooden slide enclosed by wooden railings sloping toward ground level, in which blocks of ice formed the sliding surface, was not a "public building". Ball v. Madison, 1 W (2d) 62, 82 NW (2d) 894.

Allegations of a complaint, in an action based on the safe-place statute, for injuries sustained when a vehicle was struck by a train while permissibly using a private crossing constructed by defendant for the purpose of moving back and forth between parts of defendant's business premises, bisected by railroad tracks, are sufficient to state a cause of action as against a general demurrer thereto. Bembinster v. Aero Auto Parts, 7 W (2d) 54, 95 NW (2d) 778.

A corporation organized to own, operate and lease real estate, which leased a building to a city for governmental purposes, was engaged in business and the building, so far as the corporation is concerned, was a "place of employment". The corporation was liable under 101.06 for failure to provide safety devices for window washers. Gupton v. Wauwatosa, 9 W (2d) 217, 101 NW (2d) 104.

The fact that a janitor used an outside balcony in cleaning windows would not make it a "place of employment" as to the plaintiff resident of the building. Frion v. Coren, 13 W (2d) 300, 108 NW (2d) 563.

A semicircular driveway open at both ends to the street, located on land owned by the city between the public sidewalk and the curb line of the street in front of a hotel and used and maintained by the hotel company and a cab company but not used for general vehicular or pedestrian traffic nor maintained by the city, was a "place of employment" of both the hotel company and the cab company within the meaning of the safe-place statute, so that both defendants could be subject to liability for injuries sustained by a woman who came across the street in front of the hotel to take a cab parked in the driveway, and who tripped on a rutted accumulation of snow and ice in the driveway. Schwenn v. Loraine Hotel Co. 14 W (2d) 601, 111 NW (2d) 495.

The safe-place statute does not, by its terms, require an employer to own the premises in order to maintain a place of employment, and control and custody of the premises need not be exclusive, nor is it necessary to have control for all purposes, as a requisite of liability for injuries sustained by employes or frequenters. Schwenn v. Loraine Hotel Co. 14 W (2d) 601, 111 NW (2d) 495.

It is not necessary that 3 or more tenants must actually use or have the right to use part of a building where an accident happens in order to constitute that location a "public building". Lealiou v. Quatsoe, 15 W (2d) 128, 112 NW (2d) 193.

A private walk from a building to the public walk is a "place of employment". Filipiak v. Plombon, 15 W (2d) 484, 113 NW (2d) 365.

Allegations of a complaint against a city for injuries sustained by the plaintiff in diving into shallow water at a public bathing beach, to the effect that a bathhouse, concession building, pier, and lifeguard stands were connected in the form of an integral physical unit, sufficiently alleged that these facilities constituted a "public building" or structure within the definition in 101.01 (12) so as to withstand attack by general demurrer by the city. Rogers v. Oconomowoc, 16 W (2d) 621, 115 NW (2d) 635.

In an action against a city for injuries sustained in diving into shallow water at a public bathing beach operated and maintained by the city as part of a public park and bathing area, the park and beach facilities consisting of a bathhouse, concession building, seawall dividing the land from the adjacent water, an attached pier, a floating pier, lifeguard stands, and artificial beaches on each side of the wall, did not constitute a "place of employment" within the definition in 101.01 (1). Rogers v. Oconomowoc, 16 W (2d) 621, 115 NW (2d) 635.

A defendant is not liable under the safe-place statute where the plaintiff fell on an apron leading to defendant's parking lot, where the apron was entirely within the street and did not appear to be constructed for pedestrian use. (Schwenn v. Loraine Hotel Co. 14 W (2d) 601, distinguished.) Hansen v. Schmidman Properties, 16 W (2d) 639, 115 NW (2d) 495.

A school gymnasium, not being operated in whole or in part for profit, is not a "place of employment" and a frequenter cannot recover for injuries caused by a condition not associated with the structure. Haerter v. West Allis, 23 W (2d) 567, 127 NW (2d) 768.

A pupil at a public school is not a "frequenter" and a classroom is not a "place of employment". Niedfelt v. Joint School Dist. 23 W (2d) 641, 127 NW (2d) 800.

A public swimming and beach area along the shore of a lake do not constitute a "structure" nor a "public building" even though artificially developed by constructing a retaining wall at the water's edge and by dumping sand behind the wall and on the lake bottom in front of it. To constitute a "place of employment" the place must be operated for profit. Rogers v. Oconomowoc, 24 W (2d) 308, 128 NW (2d) 640.

The statutory definition of a "place of employment" requires not only the conduct of a trade or business but also the employment of one person by another. Schoenfeldt v. Babcock, 26 W (2d) 569, 133 NW (2d) 262.

A plant where there were no employes for a few months, during which time the accident occurred, was still a "place of employment". Bellart v. Martell, 28 W (2d) 686, 137 NW (2d) 729, 139 NW (2d) 473.

Where all contract work on a street project had terminated, it no longer was a "place of employment" within the safe-place statute. Rausch v. Buisse, 33 W (2d) 154, 146 NW (2d) 801. Compare Skybrock v. Concrete Construction Co. 42 W (2d) 480, 167 NW (2d) 209.

A parking lot owned and maintained by a nonprofit hospital for the benefit of its employes, patients and visitors is not a public building or structure within the intendment of the safe-place statute. Voeltzke v. Kenosha Memorial Hospital, Inc. 45 W (2d) 271, 172 NW (2d) 673.

The U. S. post office in Madison furnishing the usual services of a post office and with 1100 post office boxes and 75 employes and rooms for the department of justice and the federal district court is a "place of employment" under the state safe-place statute, and violation of the general safety order of the industrial commission regarding handrails should be considered in determining the U. S. government's liability under the federal tort claims act for negligence in violating such order. (Williams v. United States, 145 F Supp. 4, reversed.) American Exch. Bank v. United States, 257 F (2d) 938. See also Bean v. United States, 219 F Supp. 8.

*4. Safe Places of Employment.*

Where an employe in a beet sugar factory slipped on the floor of a well lighted room through which the pulp was carried by a conveyor, there was no violation of the safe-place statute. Tallman v. Chippewa S. Co. 155 W 36, 143 NW 1054.

The duty to provide a safe place is an absolute one and failure in this respect is followed by liability as a matter of course, in the absence of contributory negligence. But places which cannot be made safe, or which cannot be made safe without seriously interfering with the work, must be made as free from danger as the nature of the employment will reasonably permit. Ch. 485, Laws 1911, effected a radical change of the common-law rule requiring only that the place should be reasonably safe; and a finding by a jury that a place did not comply with the statutory rule may be sustained upon evidence that would not sustain such a finding under the common-law rule. Rosholt v. Worden-Allen Co. 155 W 168, 144 NW 650.

An employer is not liable as for a failure to provide a safe working place where 2 employes, without his knowledge and without any necessity therefor so far as the duties of either were concerned, of their own motion assembled and used an appliance that proved to be dangerous and inflicted an injury on one of them. Priebe v. Hirsch, 155 W 181, 144 NW 287.

Sec. 2394-48, Stats. 1911, has no application to the injury of a person riding upon a motor car by a collision in a tunnel between such car and the rear end of a railway train, the operation of the motor car and the train being each independent of the other and by different companies. Wood v. General R. S. Co. 161 W 71, 151 NW 269.

Where there was no structural defect in a vessel when turned over to the consignee of the cargo for unloading, the owner was not bound to anticipate that the unloading would be done in so unusual a manner as to cause injury to the crew. La Coco v. Massey S. Co. 174 W 545, 183 NW 677.

In an action for the death of an employe occasioned by gas escaping into a boiler in which he was working, the evidence was insufficient to show that the employer furnished an unsafe place for work, in the absence of proof of a better method of controlling gas than that employed. Maryland C. Co. v. Thomas F. Co. 185 W 98, 201 NW 263.

In the safe-place statute requiring an employer to furnish a safe place of employment and to do "every other thing" reasonably necessary to protect employes, the quoted phrase relates to things of the same kind that the employer must necessarily do in making the place safe, and does not forbid the use of the premises, though such use may give rise to a temporary hazard. Northwestern C. & S. Co. v. Industrial Comm. 194 W 337, 216 NW 485.

The lack of a railing on a storage platform could be considered with the lack of a stairway railing in determining whether the safe-place statute was violated. In this case the question was for the jury. A frequenter is entitled to the benefit of the safe-place statute to the same extent as an employe, and does not assume the risk. Contributory negligence is a jury question. Washburn v. Skogg, 204 W 29, 233 NW 764, 235 NW 437.

An allegation that a place is unsafe is a conclusion of law. A complaint which alleges that the plaintiff was injured when struck by a speeding automobile while changing a street car trolley at a terminal, does not charge a violation of the safe-place statute. Baker v. Janesville T. Co. 204 W 452, 234 NW 912.

An employer not protecting a rope of a hanging scaffold from splashing acid used by employes cleaning brick, failed to furnish a "safe place of employment", hence an employe's death from a fall when a rope broke was compensable. Builders' M. C. Co. v. Industrial Comm. 210 W 311, 246 NW 313.

Under the safe-place statute the power company owed a duty to warn the deceased of the danger of electrocution from overhead wires, even though the deceased were merely frequenters of the premises and not employes of the company. The safe-place statute makes no distinction between employes and frequenters as respects the duty of an employer to fur-

nish a safe place of employment. Sandeen v. Willow River P. Co. 214 W 166, 252 NW 706.

"It is well established that it is the duty of an employer to furnish a safe place of employment and that that duty is an absolute and nondelegable one. * * * * It is also well established that the duty to furnish a safe place of employment includes the duty to warn employes of dangers known to the employer and not apparent or known to his employes." American Mut. L. Ins. Co. v. Chain Belt Co. 224 W 155, 162, 271 NW 828, 831.

The safe-place statutes are just as mandatory in relation to frequenters as to employes, and their purpose is to provide the same protection to frequenters as to employes. Sweitzer v. Fox, 226 W 26, 275 NW 546.

Where a foundry company had on its premises a quantity of scrap iron and another company as an accommodation sent its employes with the necessary apparatus for breaking the scrap, the foundry company, whose superintendent knew that the breaking was a dangerous operation, furnished the place of employment and had the duty of seeing that the place was reasonably safe. Kuske v. Miller Brothers Co. 227 W 300, 277 NW 619.

The owner of the premises, continuing in possession and control thereof while a building was being constructed for it thereon, could not delegate, either to the general contractor or to a subcontractor, so as to absolve itself therefrom, its duty and obligation to furnish for employes and frequenters the safe place of employment required. Criswell v. Seaman Body Corp. 233 W 606, 290 NW 177.

Under the safe-place statute, a place of employment must not only be reasonably safe, as it was required to be at common law, but it must be as free from danger as the nature of the place will reasonably permit, and the duty thus created by the statute is nondelegable, and the employer cannot defeat recovery by an injured employe by showing that the employer furnished appliances in common use. Tiemann v. May, 235 W 100, 292 NW 612.

The owner of a place of employment could not delegate its duty under the safe-place statute to make the place reasonably safe. Mickelson v. Cities Service Oil Co. 250 W 1, 26 NW (2d) 264.

One engaged to erect structural steel beams in the construction of a garage had a duty, under the safe-place statute, to furnish an employe of another, engaged to assist in the erection of the building, with a safe place to work, since the statute requires every employer to furnish a place of employment safe for frequenters thereof as well as for employes. Morrison v. Steinfort, 254 W 89, 35 NW (2d) 335.

"Under the safe-place statute an employer must furnish a place of work which is as free from danger as the nature of the employment will reasonably permit, and not merely a 'reasonably' safe place, as at common law." Haefner v. Batz Seed Farms, Inc. 255 W 438, 441, 39 NW (2d) 386, 387.

In an action under the safe-place statute against a dairy company for injuries sustained by a patron of its soda fountain when she fell on a floor covered with asphalt tile, evidence that there was a slight general unevenness in the floor without any showing that the floor did not comply with the building code or that it was reasonably possible to make the floor more level, and evidence as to slipperiness and lighting were insufficient to raise a jury issue on whether the floor was as free from danger as the nature of the employment or the building would reasonably permit. Thoni v. Bancroft Dairy Co. 255 W 577, 39 NW (2d) 690.

A hardware company was not negligent in omitting a guardrail and toeboards from the outside or loading edge of a shipping platform at its warehouse, from which platform a customer fell when a dolly which he was using in loading some articles onto his truck lurched forward and caused him to lose his balance. Stellmacher v. Wisco Hardware Co. 259 W 310, 48 NW (2d) 492.

When one owing a duty to make a place or an employment safe fails to do so and an accident occurs which the performance of the duty was designed to prevent, the law presumes that the damage was caused by such failure; and if such presumption is not rebutted by evidence, the plaintiff has met his burden of proof. Where no one saw the contractor's deceased employe and his wheelbarrow fall into an unguarded opening in the flat roof, the plaintiff's burden of proof of causation was met when she showed to the jury's satisfaction the duty of the defendant owner of the building to fence the opening, the failure to do so, and the entry of the employe into the opening in a manner such as an efficient rail was designed to prevent. (Wm. Esser & Co. v. Industrial Comm. 191 W 473, distinguished.) Umnus v. Wisconsin P.S. Corp. 260 W 433, 51 NW (2d) 42.

The safe-place statute does not make the owner of a building or an employer an insurer, and the possibility that a safe structure or instrument might be made more safe does not require the conclusion that there has been a violation of the safe-place statute. Hipke v. Industrial Comm. 261 W 226, 52 NW (2d) 401.

With reference to a contention that the defendant owners of premises cannot be held liable for any negligence of the independent contractor who was operating the mixer machine involved in the accident, in the absence of a showing that such defendants had the right to exercise any control over the machine, it cannot be said that such defendants, who occupied the premises at all times according to the complaint, relinquished control over them merely by contracting with the contractor for certain work to be executed by him on the outside of the building. Nechodomu v. Lindstrom, 269 W 455, 69 NW (2d) 608.

Although temporary conditions wholly disassociated from the structure of the building do not constitute a violation of the safe-place statute by the owner of a public building, they may constitute a violation if permitted by an employer in a place of employment, and the rendering unsafe of a place of employment due to a natural accumulation of snow and ice may be the basis of holding an employer liable. Sturm v. Simpson's Garment Co. 271 W 587, 74 NW (2d) 137.

The burden of proving all of the elements of liability is on the plaintiff seeking recovery

of damages for personal injuries. The safe-place statutes lay down a standard of care, and if those to whom it applies violate its provisions they are guilty of negligence. Contributory negligence is a defense in a safe-place case, subject, however, to application of the comparative-negligence statute. Failure to comply with a general safety order promulgated by the industrial commission, and applying to places of employment, constitutes a violation of the safe-place statutes. Paluch v. Baldwin P. & V. Co. 1 W (2d) 427, 85 NW (2d) 373.

When a purchaser of veneer at a factory backed his car up to the loading dock and slipped and fell on the dock while attempting to climb from the rear bumper of his car to the dock, the evidence failed to establish a violation of a safety order of the commission requiring steps or ladders, since the purchaser could have reached the dock safely through the factory. Paluch v. Baldwin P. & V. Co. 1 W (2d) 427, 85 NW (2d) 373.

With reference to liability for injuries to frequenters, the owner of premises is generally held to more diligence in guarding against faulty performance of his own requests or instructions to his employes, or to others, than in detecting wrongful acts of unauthorized third persons. Leaving 2 heavy wooden ramps leaning against a loading dock in such a way that they fell over and upon a truck driver who was properly near them, and who did nothing to cause them to fall was a violation of the safe-place statute. The owner is charged with constructive notice of the condition since the ramps were so placed at the instruction of the dock employes. Uhrman v. Cutler-Hammer, Inc. 2 W (2d) 71, 85 NW (2d) 772.

In an action based on safe-place statute the burden of proof was on the injured plaintiff to show that defendant failed to provide a place of employment as free from danger to frequenters and employes as the nature thereof then reasonably permitted, which is the standard prescribed in 101.01 (11), defining the term "safe." Krause v. Menzer L. & S. Co. 6 W (2d) 615, 95 NW (2d) 374.

The safe-place statute requires the employer, and imposes a duty on him, to anticipate what the premises will be used for and to inspect them to make sure that they are safe. An employer is chargeable with knowledge of conditions created at the place of employment by workmen from crews other than that of an injured employe of such employer. Wisconsin B. & I. Co. v. Industrial Comm. 8 W (2d) 612, 99 NW (2d) 612.

Under the safe-place statute, the duty of the owner of a public building to construct or maintain the building in safe condition extends only to such parts of the building as are used by the public or by 3 or more tenants in common, but as a place of employment other parts of the building may be subject to the statute. Gupton v. Wauwatosa, 9 W (2d) 217, 101 NW (2d) 104.

An owner who acts as general contractor in building houses has a duty to see that a house under construction is safe when he invites prospective buyers to enter, and he cannot delegate this responsibility to a subcontractor. Singleton v. Kubiak & Schmitt, Inc. 9 W (2d) 472, 101 NW (2d) 619.

A complaint in an action for injuries sustained by a 4-year old boy, when his clothing became ignited by warning flares placed in the street by the defendant contractor engaged in the construction of a sewer which necessitated the making of excavations and the deposit of piles of earth adjacent thereto, sufficiently pleaded a violation of the safe-place statute. Thiel v. Bahr Construction Co. 13 W (2d) 196, 108 NW (2d) 573.

A jury finding that a garage floor was not unsafe because it was very smooth, had been coated with a sealer and was wet with rain will not be overturned. De Marco v. Braund, 30 W (2d) 675, 142 NW (2d) 165.

In a personal injury action by a city resident who, in daylight hours, crossing a street under construction where new sidewalks, curbs and gutters were being installed, tripped on a tie rod protruding into the street from a curb and gutter, the contractor was not required to guarantee the safety of frequenters of the area, but was only required to maintain the area as safe as the nature of the place would reasonably permit. The contractor complied with its duty under the safe-place statute when it set up barricades and warning devices clearly revealing, as could be readily observed, that construction was in progress and that there might be hazards within the area. Skybrock v. Concrete Construction Co. 42 W (2d) 480, 167 NW (2d) 209.

*5. Safe Employment.*

The defendant employer is liable to an employe injured in the work of unloading logs from a car, in consequence of an improper plan or method of placing and securing them when loaded, although the defendant bought them from a vendor who loaded them by contract 40 miles away. Sparrow v. Menasha P. Co. 154 W 459, 143 NW 317.

The duty imposed upon employers by secs. 2394—41 to 2394—71, Stats. 1911, is that the place and method of carrying on his business shall be as safe as the nature thereof will reasonably permit, and be provided with the necessary safeguards to insure that condition; also to neither require, permit or suffer an employe to go or be in any employment or place of employment not so safeguarded. The legislative purpose was to impose upon the employer a liability for all injuries resulting from hazards of the business, however obvious or open such hazards might be to the employe. Besnys v. Herman Zohrlaut L. Co. 157 W 203, 147 NW 37.

Secs. 2394—41 to 2394—71, Stats. 1913, are a part of a new system relative to industrial accidents, intended to substitute in place of the ordinary rule requiring the master to come up to the standard of reasonable safety as to working place and conditions, the absolute duty to make the employment and place as safe as their nature will reasonably permit. The rule that legislation in derogation of the common law will be strictly construed against a purpose to change it, will not be applied to such creation of a new system, the legislative purpose being clear to approach the ideal of affording compensation for loss in substan-

tially all cases of accidental injury. Sadowski v. Thomas F. Co. 157 W 443, 146 NW 770.

The evidence was not sufficient to justify a finding in the verdict that a clothes wringer was not as free from danger as the nature of the work reasonably permitted. Hahn v. Rothstein, 174 W 381, 182 NW 983.

A general order of the industrial commission providing that safe and appropriate scaffolds shall be provided for workmen in exposed places is but a reiteration of the general rule declared in 101.06, Stats. 1927, except that the order of the commission left out of consideration the question of reasonableness, and was an attempt at legislation. Bentley Brothers v. Industrial Comm. 194 W 610, 217 NW 316.

The statute imposes on an employer the duty to rescue an employe from a position of imminent danger in an emergency. Conveyors' Corp. v. Industrial Comm. 200 W 512, 228 NW 118.

The statutory requirement as to "safe employment" requires not only a place of employment safe in the physical sense but also an employment that is safe. The statute imposes a duty on the employer to warn employes of danger incident to their employment when it is "reasonably necessary to protect the life, health, safety and welfare of such employes." An instruction that it was the duty of the employer to warn employes of danger known to the employer or reasonably to be apprehended by the employer was erroneous. Whether the employer owed an employe the duty of warning the latter of the danger of doors being brushed off of top of trucks pushed by an employe was a jury question. Miller v. Paine L. Co. 202 W 77, 230 NW 702.

Where an employe was killed when a heavy machine which was being moved by a rope sling slipped and jerked and broke the rope, ordering the payment of 15% increased compensation because of violation of the safe-place statute, in using a rope sling to move the machinery instead of chain or cable, was justified. Combustion Eng. Co. v. Industrial Comm. 254 W 167, 35 NW (2d) 317.

The evidence in a workmen's compensation proceeding supported a finding of the commission that an injury which an employe suffered to his hand while operating a power brake press was attributable to the machine not being in good working order, constituting a violation of the safe-place statute, and warranting an award of 15% increased compensation to the employe under 102.57, Stats. 1951. Northern Light Co. v. Industrial Comm. 264 W 313, 58 NW (2d) 653.

In an action for injuries sustained when the plaintiff went over to a power shovel and by means of his hands guided the bucket thereof as it was lowered into a trench, the submission of the defendant's negligence to the jury on the theory of a possible violation of the safe-place statute was prejudicial error, in that such statute, as applied to a "place of employment," has reference to an unsafe condition rather than to an act in the process of taking place. The alleged acts of the defendant's crane operator as to the manner of dropping the bucket, and failing to warn the plaintiff before so dropping it, related to acts of operation as distinguished from the condition of the machine, so that the issue of the crane operator's negligence should have been submitted on the basis of common-law negligence. Deaton v. Unit C.&S. Corp. 265 W 349, 61 NW (2d) 552.

For the comparison of negligence, there should be applied in a safe-place case a test different from that to be applied in a common-law negligence case, since 101.01 (1) imposes a higher duty on an employer than does the law respecting common-law negligence. Maus v. Bloss, 265 W 627, 62 NW (2d) 708.

A safety order of the industrial commission which provides that no workman may be permitted to work on a slippery surface unless the surface is made nonslippery in an effective way is invalid as imposing a greater duty than the statute requires. Wisconsin B.&I. Co. v. Industrial Comm. 268 W 314, 67 NW (2d) 378.

The standard of care required to be followed by a frequenter is not that of the highest degree of caution, for all that is required is the exercise of ordinary care. While an employer has no duty to furnish devices to insure the safety of a frequenter, a jury may determine whether the employer might not have supplied devices that would have made the place as safe as its nature would reasonably permit. Presti v. O'Donahue, 25 W (2d) 594, 131 NW (2d) 273.

Where there is a place of employment to which the safe-place statute applies, a duty is placed upon the employer to make timely and adequate periodic inspections of any safety devices to ascertain whether they are properly functioning, and this duty under the statutes inures to the benefit of frequenters as well as employes. Karis v. Kroger Co. 26 W (2d) 277, 132 NW (2d) 595.

In a safe-place action by a night watchman in a manufacturing plant, who, during his tour of duty, entered a room through a window when he found the door lock had jammed, and stepping onto a desk, fell when the desk blotter slipped out from under him—the trial court did not err in ruling that plaintiff's negligence was equal to that of defendant as a matter of law, contrary to the jury's finding of less, where it appeared that he unnecessarily exposed himself to danger in that alternative courses of action were open to plaintiff which were safer and more reasonable, and that in crawling through the window he violated the rules of his employer. Rewolinski v. Harley-Davidson Motor Co. 32 W (2d) 680, 146 NW (2d) 485.

*6. Safe Public Buildings.*

Under sec. 2394-48, Stats. 1917, the owner of an apartment house was liable to a tenant for injuries resulting from the unsafe condition of a passageway. Zeininger v. Preble, 173 W 243, 180 NW 844.

The fact that part of a building which is intended to accommodate more than 4 families is temporarily vacant does not excuse the landlord from lighting the stairways, as required by the rules of the commission; and the tenant's use of the unlighted stairway was not contributory negligence. The use of the unlighted stairway by the tenant was an assumption of risk as distinguished from con-

tributory negligence; an assumption of risk was no defense. Kelenic v. Berndt, 185 W 240, 201 NW 250.

The duties of the owner of a "public building" to his tenant and that of an employer to an employe are not measured by the same standards and are vastly different in fact and in law. A building is safe within the meaning of this section if composed of proper materials and structurally safe. The statute does not apply to temporary conditions which have no relation to the structure or to the materials. Where a public building was constructed "safe" and so maintained, the duty of the landlord to his tenant is satisfied, except as to portions reserved for common use and the landlord is not liable to the tenant for an injury resulting from slipping on an icy platform. Holcomb v. Szymczyk, 186 W 99, 202 NW 188.

Even under 101.06, Stats. 1925, made applicable to premises used by 3 or more tenants by 101.01 (12), there is no liability on the landlord for an injury sustained by a tenant falling on basement steps upon which ice had accumulated. Rosenthau v. First Bohemian B. & L. Asso. 192 W 326, 212 NW 526.

The statute requiring public buildings to be kept safe is applicable to religious corporations. A person attending a church luncheon, injured on an unlighted stairway, was a "frequenter" or one of the public within the statute requiring a church, as a public building owner, to keep premises "safe." Wilson v. Evangelical L. Church, 202 W 111, 230 NW 708.

The safe-place statute does not require a landlord whose apartment building is so constructed that no part is used in common to keep a rail or outside barrier in repairs. Bewley v. Kipp, 202 W 411, 233 NW 71.

In an action for injuries to a customer from falling on basement stairs in a department store, the evidence presented a question for the jury as to whether failure to provide a hand-rail for the lower steps caused the injury. Allison v. Wm. Doerflinger Co. 208 W 206, 242 NW 558.

When the industrial commission, pursuant to 101.09, makes a lawful order for the safety of employes and frequenters of a public building, and the order is complied with, the safety of the place involved is conclusively established, at least so far as the subject matter of the order is concerned; and when such an order of the commission is claimed to be applicable, the sole question is whether the structure conforms to the order. Where there is no proper evidence of an order of the commission applicable to the situation, the question whether a building was a safe place within the safe-place statute is for the jury, and unless the matter is one involving skill and science, opinion evidence is not admissible. Bent v. Jonet, 213 W 635, 252 NW 290.

A temporary wooden bleacher erected for use at games of professional football was a "public building," within 101.01 (12). In an action for personal injuries sustained by a pay spectator at a football game through a fall from the top of the temporary wooden bleacher, the bleacher being a public building within the safe-place statute, and the spectator occupying a bleacher seat as a member of the general public even though he had a right to occupy the particular seat and to exclude others from it, the doctrine of assumption of risk on his part was inapplicable. Bent v. Jonet, 213 W 635, 252 NW 290.

Where the only thing required to render a place safe is the turning on or continuous maintenance of an electric light, and the premises are occupied by a tenant whose business therein makes the place a public building within the safe-place statute, the performance of such duty rests upon the tenant, and the tenant alone was liable for injuries to a customer caused by failure to have an electric light turned on. Kinney v. Luebkeman, 214 W 1, 252 NW 282.

The duty of the owner of a public building to maintain the building in a safe condition extends only to such parts as are used by the public or by tenants in common. Grossenbach v. Devonshire Realty Co. 218 W 633, 261 NW 742.

A religious corporation, owning a church building, was not liable under the safe-place statute for injuries sustained by a hostess of the ladies' aid society when a pile of folding chairs in the building fell as she was removing one, since the defective piling of the chairs had nothing to do with the structure, either by way of construction or maintenance. Jaeger v. Evangelical L. H. G. Cong. 219 W 209, 262 NW 585.

Failure to light a school building or the part thereof subject to the safe-place statute is a failure to maintain the building in a safe condition, and consequently a violation of such statute regarding maintenance. Heiden v. Milwaukee, 226 W 92, 275 NW 922.

Where the rubber mat placed at the slightly sloping tile entrance to prevent slipperiness was in good condition and repair and extended only one-third of an inch above the surface of the tile the storekeeper was not liable for the injury to a customer who stubbed her toe on the end of the mat and fell. Erbe v. Maes, 226 W 484, 277 NW 111.

The mere fact that an accident happened does not prove that the place was not safe. Heckel v. Standard Gateway Theatre, 229 W 80, 281 NW 640.

A company operating a store in a building of which it was the owner was not liable under the safe-place statute for injuries sustained by the plaintiff in falling when her foot came in contact with a lecture platform while she was attending a lecture given in the store, where the platform, 4½ feet square and rising 8 inches above the floor, was in a well-lighted room and plainly visible, and was set apart from the other furniture and articles displayed, none of which were placed nearer to the platform than 4 feet, and the plaintiff during the lecture was seated not more than 10 feet from the platform; there being no violation of the safe-place statute by the company in the circumstances stated. Prehn v. C. Niss & Sons, Inc. 233 W 155, 288 NW 736.

By the safe-place statute the state has not made itself liable for personal injuries sustained by a frequenter of its buildings and has not consented to be sued therefor under 285.01, Stats. 1939, since the safe-place statute does not create a cause of action in favor of

or against anyone but merely lays down a standard of care, the violation of which constitutes negligence, and there is no language used in such statute which indicates any intention on the part of the legislature to change the rule with respect to nonliability of the state for the negligent acts of its officers and agents. Holzworth v. State, 238 W 63, 298 NW 163.

The scrubbing or mopping of the hallways in a public building is an indispensable act in the maintenance of the building and the mere temporary wetting of the floor in the process of scrubbing or mopping, even though such a wet condition may tend to make the floor slippery for the time being, cannot be made the basis of liability against the owner of the building under the safe-place statutes. Cronce v. Schuetz, 239 W 425, 1 NW (2d) 789.

The obligation of an owner of a public building as "owner," to furnish a safe place under the safe-place statute is limited to structural defects. A coin-operated electric washing machine, installed and maintained in the laundry room of an apartment building by the owner of the machine and attached to the building only by a cord plugged into a wall socket, was not a fixture and was not structurally a part of the building so as to render the owner of the building liable, under the safe-place statute, as an "owner" of a building, for injuries sustained by a tenant as a result of using the machine when it was in a defective condition. Gokey v. Electric H. U. Corp. 241 W 385, 6 NW (2d) 189.

A shuffleboard, on summer resort premises, made with a smooth surface and located flush with the surface of the ground, was not structurally defective, and a slippery condition of the surface of the shuffleboard from leaves and dirt naturally collected on it was not a structural defect, so as to render the owner-lessor of the premises liable, under the safe-place statute as "owner," for injuries sustained by a cottage guest when she slipped on the shuffleboard while using it as a sidewalk. Kuhlman v. Vandercook, 241 W 418, 6 NW (2d) 235.

To facilitate the usual, proper use of a ballroom floor for dancing it is necessary and customary to have the floor slippery by waxing it, and the facts merely that a ballroom floor was waxed and slippery, when a frequenter fell thereon and sustained injuries, did not constitute a violation of the safe-place statute. Brown v. Appleton Masonic Temple Asso. 243 W 147, 9 NW (2d) 637.

In view of the definition of "owner" in 101.01 (13), a county may be liable for injuries sustained by a person in a public building of which the county is the owner. The duty of an owner of a public building, under the safe-place statute, to maintain the building in a safe condition, extends only to such portions of the building as are used by the public or by tenants in common, and only such portions constitute a "public building," hence a county is not liable thereunder as the owner of a public building, for injuries sustained by a prisoner in the county jail in falling down a stairway in a furnace room, not maintained for the use of the public nor even for the use of prisoners. (Heiden v. Milwaukee, 226 W 92, applied; Holzworth v. State, 238 W 63, distinguished.) Flynn v. Chippewa County, 244 W 455, 12 NW (2d) 683.

An owner was not liable, under the safe-place statute, for injuries sustained by a tenant's husband in slipping on ice formed on an outer stairway platform from water falling from the eaves, even if the owner of the building did not maintain an adequate eave trough over the doorway and should have known of the icy condition in time to have remedied it before the accident occurred. Kezar v. Northern States P. Co. 246 W 19, 16 NW (2d) 364.

The legislative language, where open to construction, should be read liberally in favor of the purpose of the safe-place statute, but such statute is not to be extended so as to impose any duty beyond that imposed by the common law unless it expresses such purpose by language that is clear, unambiguous, and peremptory. The statute did not apply to a person who was walking along a street in front of a store building and was injured by a glass block which formed a part of and which fell from the front of the building. Delaney v. Supreme Inv. Co. 251 W 374, 29 NW (2d) 754.

Testimony of architects was sufficient to sustain jury's finding that omission of a lower light near the step and failure to have a warning sign were failures to have the place as safe as its nature permitted. Even though not concealed, a step may be dangerous if in a place where its presence would not reasonably be anticipated. Helms v. F. B. Theatres Co. 253 W 113, 33 NW (2d) 210.

A swimming pier consisting of a boardwalk and a board platform, supported by wooden posts, with a wooden bench, diving board, and an observation tower on the platform, constructed and maintained by a village as a place of resort and assemblage for occupancy and use by the public, and so used by the public, was a "structure" and "public building." A complaint based on the safe-place statute for injuries sustained by the plaintiff in falling on the board platform of a swimming pier of the defendant village, alleging that the defendant failed to treat the boards with paint or similar treatment so as to prevent the same from becoming water soaked and slippery, and permitted the same to be water soaked and slippery, and likewise failed to provide the surface with a matting of rubber or similar covering so as to prevent the same from becoming slippery, was good as against a demurrer based on the contention that the court should judicially notice that such platform would become wet only from water dripping from bathers and from rain, and that the boards would dry out again from the wind and sun, so that any wetness or slipperiness would be merely such a temporary condition of a nonstructural nature as not to constitute a violation of the safe-place statute. Feirn v. Shorewood Hills, 253 W 418, 34 NW (2d) 107.

A complaint for injuries sustained when the plaintiff slipped and fell on ice on the sidewalk in front of a church did not state a cause of action based on the safe-place statute, in that the liability of the defendant, if any, un-

der the statute would be limited to its duty as the owner of a "public building," defined in 101.01 (12) as a "structure," and a sidewalk is not a structure. Bauhs v. St. James Congregation, 255 W 108, 37 NW (2d) 842.

Under evidence as to the position of a wire strung by pranksters from the lower hinge of the door of the lavatory to a stall post, and as to the person injured having entered the unlighted lavatory from a dark hall and having then turned on the lavatory light so that the lavatory was suddenly lighted up just before he tripped over the wire, the question whether there was causal connection between the defendant's failure to have the lavatory lighted and the injuries sustained was for the jury. Zimmers v. St. Sebastian's Congregation 258 W 496, 46 NW (2d) 820.

By itself, the presence of a step or steps in any public place is not a potential breach of the duty owed by the custodian or owner of the premises to an employe, frequenter, or member of the public under the safe-place statute. Bradstrom v. Lasker Jewelers, 259 W 366, 48 NW (2d) 490.

Although a trap door when closed presents no hazards to patrons of a store or other establishment, the situation resulting from the door being left open in a floor area to which frequenters are permitted access is highly dangerous and renders the premises unsafe, so that a tenant in possession may be held liable if a frequenter falls into the unguarded opening. Wannmacher v. Baldauf, 262 W 523, 55 NW (2d) 895.

In an action for injuries sustained by a customer of the defendant's store in a fall at night on the icy and rutted surface of a parking lot provided by the defendant for its customers, the jury's findings, supported by credible evidence, of the defendant's failure to maintain a safe surface on its parking lot, as well as of a failure to have the surface adequately lighted at the time of the accident, were sufficient to warrant a judgment for the plaintiff, although the rutty condition of the surface of the parking lot, alone, might not have been sufficient to entitle the plaintiff to recover. The safe-place statute imposes on an employer an absolute duty to make the place as free from danger to employes and frequenters as the nature of the employment will reasonably permit, and not merely a reasonably safe place as at common law. Paepcke v. Sears, Roebuck & Co. 263 W 290, 57 NW (2d) 352.

Where defendant's salesman had unrolled woven-wire fencing on the floor of defendant's store, and was measuring it for sale to a customer, and the plaintiff, a prospective customer, saw the wire on the floor and could have walked around it but decided to walk across it, and was injured when he tripped on it and fell, there was no breach of defendant's duty to maintain its salesroom as free from danger to its patrons as the nature of its business would reasonably permit. The negligence of the plaintiff in going on the wire, when he could have walked around it, was at least equal, as a matter of law, to the negligence, if any, of the defendant. Klein v. Montgomery Ward & Co. 263 W 317, 57 NW (2d) 188.

Failure to light a part of a building subject to the safe-place statute may be a failure to maintain the building in a safe condition and, therefore, a violation of such statute regarding maintenance. Perry v. Labor Temple Asso. 264 W 36, 58 NW (2d) 293.

The safe-place statute applies to cities regardless of whether at a given time they are acting in a proprietary or in a governmental capacity, and a swimming pool is a "public building" within the meaning of such term as defined in 101.01 (12). Flesch v. Lancaster, 264 W 234, 58 NW (2d) 710.

A retaining wall constructed at the side of a driveway leading to a garage on the premises of a religious seminary was not an essential or integral part of the garage necessary to its construction, and such retaining wall itself was not a "public building" within the meaning of 101.01 (12); hence the seminary was not liable for injuries sustained by a deputy sheriff in falling from the retaining wall while patrolling the premises. Hanlon v. St. Francis Seminary, 264 W 603, 60 NW (2d) 381.

A ball field owned and operated by a city without income or profit therefrom was neither a "place of employment" nor a "public building"; hence the city was not liable for injuries sustained by the plaintiff when his shoe caught in an imbedded strand of wire while he was playing a game of softball. Hoepner v. Eau Claire, 264 W 608, 60 NW (2d) 392.

The duty of the owner of a public building so to construct, repair and maintain the building as to render the same safe relates to the building and not to temporary conditions which may negligently be permitted to exist within the building, or to other temporary conditions, which have no relation to the structure of the building or the materials of which it is composed. Baldwin v. St. Peter's Congregation, 264 W 626, 60 NW (2d) 349.

In an action for injuries sustained by a person invited by a company to a picnic of its employes at an amusement park not owned or operated by it, and who was struck by a baseball while walking near a baseball diamond which the company was using for a game with the consent of the owner of the park, the complaint did not state a cause of action against the company in that it did not allege that the company or its employes were using the park for any purposes rendering it a "place of employment" and in that the portion of the park which was being used was not a public "building." Paykel v. Rose, 265 W 471, 61 NW (2d) 909.

In an action against a charitable hospital for injuries sustained by a 4-year-old child patient, who climbed from a radiator onto the sill of a partly opened window in his room, leaned against the allegedly insecurely fastened window screen, and fell through the open window to the ground when the screen gave way, the complaint as a whole stated a cause of action. Wright v. St. Mary's Hospital, 265 W 502, 61 NW (2d) 900.

A charitable hospital corporation is not liable as an employer nor as operator of a place of employment, but may be as owner of a public building. As such there is no liability for injuries resulting from slipping on a tile floor temporarily wet from rain, unless insufficient lighting is shown. Grabinski v. St. Francis Hospital, 266 W 339, 63 NW (2d) 693.

The obligation of the owner of a public building to furnish a safe place is limited to structural defects; but an employer has a duty not only with respect to the structure, which constitutes the place of employment, but with reference to the devices and other property installed in such place. Williams v. International Oil Co. 267 W 227, 64 NW (2d) 817.

An instruction given to the jury in a safe-place action which correctly stated that the jury was to determine whether the ground adjacent to a step was as safe for frequenters as the nature of the place would reasonably permit, but which further stated that "the question is not whether a cement apron would make it safer, because a gravel parking lot or private driveway is perfectly legal," was objectionable, in that there was no issue as to whether defendant should have placed a new asphalt or concrete surfacing on his entire parking lot or driveway but only whether a firmer surface than loose dirt or gravel should have been provided at the point where patrons leaving the tavern stepped off the concrete step onto the ground. An instruction requiring the jury to pass on whether a "substantial defect" was present, and that the jury in determining the question "should consider it as it applies to an ordinarily prudent and intelligent person under the same circumstances," was objectionable as applying a different and lower standard of care than imposed by 101.01 (11). Bobrowski v. Henne, 270 W 173, 70 NW (2d) 666.

The placing of curtain racks in rows in the defendant's drapery department so as to leave an aisleway only 3 feet wide, into which the feet of the racks projected approximately 11 inches on each side, was a violation of the safe-place statute. Blong v. Ed. Schuster & Co. 274 W 237, 79 NW (2d) 820.

A charitable corporation, as the owner of a public building operated as a home for the aged, was not liable for injuries suffered by a frequenter who slipped on a pool of wax on the floor of a hall, while the janitor, who was rewaxing the floor and had poured a quantity of wax on the floor, was gone to get more wax before rubbing it down, leaving the place unguarded. Watry v. Carmelite Sisters, 274 W 415, 80 NW (2d) 397.

No order of the industrial commission requires a canopy over outside stairways or steps; and the safe-place statute does not require protection of exterior portions of premises from the elements. Candell v. Skaar, 3 W (2d) 544, 89 NW (2d) 274.

Under 101.06 and 101.01 (11), a sports arena used for baseball should be as safe as a structure used for baseball purposes reasonably can be. Where plaintiff spectator, hit by a foul ball while attending a baseball game, knew in advance that balls are frequently batted into the stands, voluntarily went to a game, sat in an unprotected area of the stands 234 feet from home plate although she could have sat in a protected section, ignored the fact that a batter was at bat, ignored noise and excitement after hearing a report of the bat hitting the ball, and failed to take any precaution for her own safety, she was at least as causally negligent as a matter of law as defendant owners of the baseball stadium and baseball club, assuming that defendants were negligent under the safe-place statute. Powless v. Milwaukee County, 6 W (2d) 78, 94 NW (2d) 187.

Where an accident has taken place at a place required to be made safe, there is a presumption that lack of safety measures was a cause of the accident or injury; but there is no such presumption where the accident or injury did not occur at the place where the defect existed and safeguards or elimination of the defect would have had no effect in preventing the accident. Ruplinger v. Theiler, 6 W (2d) 493, 95 NW (2d) 254.

Orders of the industrial commission, contained in the state building code, constitute safety orders, and any violation thereof is a violation of the safe-place statute. Although situated in a recessed entranceway, exterior steps of the defendant's store building were not "within a building or structure" within the meaning of the building code; hence the manner in which such steps were constructed did not constitute a violation of the safe-place statute. Pindor v. Faust, 9 W (2d) 51, 100 NW (2d) 698.

It cannot be said as a matter of law that the placing of a weighing scale in the defendant's store with a platform 2 feet long and 6 to 8 inches above the floor and leaving a clearance of 2½ feet to 3 feet in front of the greeting-card section where customers expected to go was maintaining the premises in as safe a condition as the nature of the defendant's business would reasonably permit; hence a jury question was presented thereon. Zehren v. F. W. Woolworth Co. 11 W (2d) 539, 105 NW (2d) 563.

Under the safe-place statute the duty of the owner of a public building to maintain the building in a safe condition extends only to such portions as are used or held out to be used by the public or tenants in common or to such other portions of the building as are under his control; but where a defect is structural in character rather than a condition resulting from want of repair or maintenance, even though it exists in a portion of the building not put to public use, the owner may be liable under the safe-place statute for injuries resulting from the structural defect. Frion v. Coren, 13 W (2d) 300, 108 NW (2d) 563.

Where a glass door was broken when run into by a child, and the evidence showed that 98% of such doors in the area were of ordinary plate glass, the safe-place statute was not violated as a matter of law. The fact that the owner subsequently installed shatter-proof glass is not controlling. Raim v. Ventura, 16 W (2d) 67, 113 NW (2d) 827.

The duty of an owner of a parking lot to make it safe under icy conditions is discussed in Zernia v. Capitol Court Corp. 21 W (2d) 164, 124 NW (2d) 86.

It is a jury question whether a place is safe when a "view panel" in a swinging library door broke when a student pushed on the panel rather than on the push plate on the door. Anderson v. Joint School Dist. 24 W (2d) 580, 129 NW (2d) 545, 130 NW (2d) 105.

In an action for injuries sustained by a parishioner who emerging from church fell while descending the exterior front steps, the jury

was warranted in inferring causal negligence of the church with respect to the accident in failing to maintain the steps as safe as the nature of the place reasonably permitted, where it was conceded that the church had violated a general order of the industrial commission in failing to provide handrails extending the full length of the stairway along its sides, and the parishioner's fall could have been attributed to her unsuccessful attempt to seek support from one of two handrails which divided the stairway, but did not extend to the building. Parchem v. St. Cecilia's Congregation, 28 W (2d) 227, 137 NW (2d) 90.

The mere maintenance of swinging doors is in itself not an act of negligence, and in order to establish liability it is necessary to show some dangerous condition in the construction or position of the doors or in the doorstops or retarding devices. Heckendorf v. J. C. Penney Co. 31 W (2d) 346, 142 NW (2d) 801.

In an action against the owner of a supermarket for injuries sustained by a customer who slipped on a prune which had fallen from a self-service display table located in the aisle of the store, the jury finding that the proprietor was chargeable with constructive notice of the condition of the aisle which rendered it not as safe as its nature would reasonably permit would not be disturbed, where the evidence disclosed that the prunes were piled on the table in such a way as to permit handling by customers and being dropped or knocked to the floor. Conducting business in such a manner imposed a duty on the proprietor to use reasonable measures to discover and remove the debris; hence the constructive notice would be implied, and no proof was required that such condition existed for an extended period of time. Strack v. Great A.&P. Tea Co. 35 W (2d) 51, 150 NW (2d) 361.

In an action for injuries by a patron who, when leaving a store, fell on an outdoor concrete platform when she stepped off a jagged broken area thereof, undisputed evidence of violation of the safe-place statute and credible evidence that the accident took place at the unsafe place gave rise to a presumption of causation. Erdmann v. Frazin, 39 W (2d) 1, 158 NW (2d) 281.

There is no presumption of causation in a safe-place action when the accident does not occur at the spot or place where the defect exists or when the presence of safeguards or the elimination of the defeat would have had no effect in preventing the accident. Baker v. Bracker, 39 W (2d) 142, 158 NW (2d) 285.

A bowling alley proprietor is not liable under the safe-place statute for injuries to a bowler as a result of catching his foot in 2-inch space between the floor of the alley and the bottom of the return trough when he slipped and fell on the alley, as such proprietor is not an insurer of a bowler's safety, and the mere fact that such accident happened does not prove that the place was not safe. Sykes v. Bensinger Recreation Corp. 117 F (2d) 964.

Where a county has title to 20 acres of county fairgrounds and a fair association, a nonprofit corporation, has title to the remaining 6 acres and also custody and control of the entire fairgrounds, the county board having no connection therewith except to make an annual appropriation for maintenance under 59.86, the county would not be liable for injuries to members of the public, employes of lessees or other frequenters of the fairgrounds during either the annual fair or the rest of the year, caused by defects of repair or maintenance of the fair buildings. Neither would the county be liable for injuries caused by defective original construction of such buildings on the 6 acres belonging to the fair association nor of buildings belonging to the fair association although standing on the county's 20 acres, the latter buildings being in the nature of trade fixtures under 59.69 (2). But as to buildings owned by the county and standing on its own 20 acres, it may well be that the county would be liable for injuries caused by defects of original construction. 32 Atty. Gen. 35.

Governmental tort liability and immunity in Wisconsin. Bernstein, 1961 WLR 486.

*7. Liability of Owner of Leased Premises.*

The owner-lessor of summer resort premises, no part of which was reserved for his use, was liable as "owner" under the safe-place statute for injuries sustained by a cottage guest when she slipped and fell on a shuffleboard while using it as a sidewalk in cutting across the premises. Kuhlman v. Vandercook, 241 W 418, 6 NW (2d) 235.

The safe-place statute applies to buildings which existed when the statute was adopted, and where an owner leases his building as a place of employment, he must make the place safe for employment. Saxhaug v. Forsyth Leather Co. 252 W 376, 31 NW (2d) 589.

A complaint by the subrogated liability insurer of the owner of a building occupied as a drugstore by the defendant tenant, alleging that a customer in the drugstore had been injured in a fall in the rear entranceway thereof, that the building and entranceway were not constructed and maintained in safe condition in certain respects, that the injuries were the proximate result of such unsafe conditions, and that the plaintiff had made a fair settlement with the injured customer, and alleging facts sufficient to show that it was likewise the duty of the defendant tenant, under the safe-place statute, to furnish a place safe for customers and other frequenters thereof as well as safe for employes, stated a cause of action for contribution. Hardware Mut. Cas. Co. v. Rasmussen Drug Co. 261 W 1, 51 N (2d) 551.

A landlord at common law is under no obligation to enter and make repairs or alterations unless the duty is imposed on him by the provisions of the lease, and the safe-place statute does not effect a change in this common-law rule so as to impose a duty on a landlord to make repairs or alterations, in premises which were structurally safe at the time of leasing, where the landlord has no duty under the leasing arrangement to make repairs, and no right of entry to the premises. In requiring an "owner" to so "maintain" the premises as to render the same safe, the safe-place statute does not apply in the case of a

landlord-owner to temporary conditions having no relation to the structure of the building or the materials of which it is composed, and over which temporary conditions the landlord has no control, and hence, where a tenant left a trap door open, thereby creating a temporary condition, and the opening and closing of the trap door was entirely within the exclusive control of the tenant, the tenant alone would be liable for injuries sustained by a patron of his in falling through the unguarded opening, unless there existed some safety order or ordinance which required the landlord to construct a railing or other guard around the trap door. Wannmacher v. Baldauf Corp. 262 W 523, 55 NW (2d) 895.

Where an owner, although retaining the right to enter, examine, repair, etc., has delivered to a tenant premises which are structurally safe in a public building and which thereafter are rendered structurally unsafe by the tenant without the owner's knowledge, then, until the owner has actual or constructive notice of what his tenant has done, the owner's duty under 101.06, Stats. 1949, does not arise in respect to structural defects which the tenant has produced. Sheehan v. 535 North Water Street, 268 W 325, 67 NW (2d) 273.

Where the owner of a building had leased all portions here involved and the owner retained no control or possession thereof, the owner's liability for injuries sustained by a third person therein, was limited to liability for structural defects. The absence of a handrail on the upper part of the steps may have been a structural defect attributable to the landlord, but it was not a contributing cause of the plaintiff's injuries, since the plaintiff, moving ahead in the dark, stepped off the top step without knowing that there was a stairway, and would not have seen or used the rail if one had been there. McNally v. Goodenough, 5 W (2d) 293, 92 NW (2d) 890.

Where an operator of a leased filling station allowed an inexperienced person to inflate a tire by using a hose without a pressure regulator, and the tire blew up, the lessor-owner was not liable, since it could not reasonably expect the operator to allow the equipment to be used by inexperienced persons. Tryba v. Petcoff, 10 W (2d) 308, 103 NW (2d) 14.

*8. Liability of Owner to Contractor's Employes.*

The party furnishing the place to work is liable to an employe injured because the place is not reasonably safe, notwithstanding the fact that the immediate employer of the person injured was an independent contractor. Engel v. T. L. Smith Co. 164 W 515, 159 NW 728.

A railroad company which has furnished a reasonably safe place to work, to employes of independent contractors, is not required to see that an independent contractor is not negligent in the management of the apparatus supplied. Carlson v. Chicago & Northwestern R. Co. 185 W 365, 200 NW 669.

Where a frequenter, who is an employe of an independent contractor, is injured as the result of an unsafe condition of the place to work against which the owner of such place could reasonably have protected him, the owner is liable if the injured person exercised ordinary care. The duty of the owner to provide the employes of an independent contractor a safe place to work upon the premises cannot be delegated to the contractor. Neitzke v. Kraft-Phenix Dairies, Inc. 214 W 441, 253 NW 579.

Where the elevator company's contract was expressly to make a monthly examination of the elevator in a store building, and the elevator company's mechanic was the very person charged with this duty, and he was injured in falling through the top of the elevator because of his own failure to examine the top to ascertain whether bolts securing the grille were in place, before using the top as a platform, he was not entitled to recover for his injuries from the owner of the store on the theory that the latter had failed to furnish him with a safe place of employment. Barrows v. Leath & Co. 258 W 154, 44 NW (2d) 918.

Although it was the duty of the contractor-employer of the deceased employe, as well as the duty of the defendant owner of a building under construction, to make the place of employment safe, such employe was not employed for that purpose or engaged in it, and the lack of a guardrail as to him was a violation of the safe-place statute. (Barrows v. Leath & Co. 258 W 154, distinguished.) Umnus v. Wisconsin P.S. Corp. 260 W 433, 51 NW (2d) 42.

Where a street was safe when turned over to a contractor to install a sewer, and the city retained no control except a right to inspect the work, the city was not liable for the death of the contractor's employe who was killed in the cave-in of an unshored trench. (Waskow v. Robert L. Reisinger & Co. 180 W 537, distinguished.) Potter v. Kenosha, 268 W 361, 68 NW (2d) 4.

The owner or custodian of premises is not liable, under the safe-place statute, to an employe of a contractor or to the contractor, when the contractor to whom control of the premises has been given, brings about a change in the premises, and the employe, or the contractor, is injured as a result thereof. Burmeister v. Damrow, 273 W 568, 79 NW (2d) 87.

Under the terms of a lease, and other evidence adduced in an action for the death of the plaintiff's decedent, who was an employe of a heating contractor, who was making some repairs to equipment installed by such contractor in a building and located in an area under the roof, and who was killed when he fell through a false ceiling, the defendant tenant was directly liable for failure to furnish a safe place of employment. Bellmann v. National Container Corp. 5 W (2d) 318, 92 NW (2d) 762.

Where an advertising sign was constructed with a portion jutting out, attached to the rest of the sign only by struts, the jutting portion was not a platform although a painter was injured while standing on it. The sign being safe structurally, the duty of providing safe employment was that of the painter's employer, not the owner's. Asen

v. Jos. Schlitz Brew. Co. 11 W (2d) 594, 106 NW (2d) 269.

Defendant violated the safe-place statute in not lighting a high platform within a building where an electrician was expected to lay a cable without warning him that the platform did not extend all the way to a wall. Burmek v. Miller Brew. Co. 12 W (2d) 405, 107 NW (2d) 583.

An employe of a contractor, injured when the rung of a ladder broke, cannot recover against the owner of the premises under 101.06 in the absence of evidence that the latter owned or controlled the ladder or knew of the defect. Nor can he recover against a contractor other than his employer, assuming that the contractor was responsible for the ladder, in the absence of evidence that the defect was obvious and the contractor should have discovered it. Sposito v. Zeitz, 23 W (2d) 159, 127 NW (2d) 43.

A bricklayer, the employe of an independent contractor engaged in constructing a wall which was to enclose an open area between 2 buildings belonging to defendant, the owner of the buildings, could not prevail in a safe-place action for personal injuries, where the proof revealed that danger, if any, existed because a protruding beam was not attributable to any unsoundness of the structure, which was as safe as the nature of the premises would permit. Paaske v. Perfex Corp. 24 W (2d) 485, 129 NW (2d) 198.

A painter who was injured while working for an independent contractor in painting steel towers carrying live high voltage wires is not guilty of assumption of risk. The owner of the towers cannot delegate his duty under the safe-place statute without giving up complete control to the contractor. The owner was liable under the safe-place statute even though it was not asked to turn off the current. Hrabak v. Madison G. & E. Co. 240 F (2d) 472.

Where a contractor's employe was injured when a garage door was opened while he was on a ladder inside it, the owner was liable for violating the safe-place statute where he refused to allow the employe to use his truck to barricade the door and assured him he would not be interfered with. Balchuck v. Sears, Roebuck & Co. 324 F (2d) 142.

*9. Notice of Defects.*

An owner of a building is not liable under the safe-place statute for a condition of maintenance that renders a place of work unsafe, unless he has actual or constructive notice of such condition. The owners of the building under construction in this case were not liable under the safe-place statute or on common-law grounds to the employe of the electric company for the injuries sustained by him in using the elevator because of improper connections made by the elevator company in installing it, since the defect was latent and one of maintenance, the owners had no knowledge thereof, and sufficient time had not elapsed or events occurred to support a finding of constructive notice. Kaczmarski v. F. Rosenberg E. Co. 216 W 553, 257 NW 598.

An employer is not liable to a frequenter unless the employer has actual or constructive notice of conditions that render a place of work unsafe. Dierkes v. White Paving Co. 229 W 660, 283 NW 446.

A club, owning a clubhouse, was not chargeable with failure of duty under the safe-place statute, in respect to removal of a soapy condition of the floor of a steam room where a frequenter slipped, where the club did not know of the presence of such condition and the condition had not existed long enough to give constructive notice thereof. Shumway v. Milwaukee Athletic Club, 247 W 393, 20 NW (2d) 123.

101.01 (11) and 101.06, Stats. 1951, do not distinguish between obvious dangers and hidden dangers. Umnus v. Wisconsin P.S. Corp. 260 W 433, 51 NW (2d) 42.

In an action for injuries sustained by a patron when he sat down in an unoccupied theater seat from which the cushion was missing, the evidence of inadequate inspection, although it might be sufficient to prove that the defendant would not have discovered seasonably an existing defect, did not create proof of how long the defect had existed, and particularly that it has existed so long that the defendant's failure to act was negligence; and without such proof the statute imposed no liability on the defendant whether inattentive or not. The safe-place statute, together with 101.01 (11), does not make an owner or employer the insurer of the safety of a frequenter, and his duty to repair or maintain does not arise until he has at least constructive notice of the defect. Boutin v. Cardinal Theatre Co. 267 W 199, 64 NW (2d) 848.

In an action for injuries sustained by an employe of an independent contractor, who weighed 200 pounds and was painting a floodlight pole at a filling station while standing on a ladder which he had placed against the top of the pole, when the pole broke off near the base and he fell to the ground, the evidence would not have supported a finding that the employer-owner of the premises had either actual or constructive notice of the defect, if any. (Saxhaug v. Forsyth Leather Co. 252 W 376, distinguished.) Williams v. International Oil Co. 267 W 227, 64 NW (2d) 817.

Actual or constructive notice of an unsafe condition is an essential element of liability to a frequenter. Uhrman v. Cutler-Hammer, Inc. 2 W (2d) 71, 85 NW (2d) 772.

The evidence was sufficient to sustain the jury's finding to the effect that the defendant tenant had actual or constructive knowledge or notice of unsafe conditions in the area under the roof where the decedent workman fell through a false ceiling. Bellman v. National Container Corp. 5 W (2d) 318, 92 NW (2d) 762.

Usually, in the absence of statute, a proprietor may not be held negligent for a defective or hazardous condition when he or his agent did not create the condition or know of its presence or should have known; but it is otherwise when the hazardous condition has been created by the proprietor himself, since a person who is thus actively negligent is deemed to have knowledge of the facts. Kosnar v. J. C. Penney Co. 6 W (2d) 238, 94 NW (2d) 642.

**101.07 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—49; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.07.

This section does not eliminate the defense of contributory negligence, but the public and frequenters of a public building are under an obligation to exercise ordinary care for their own safety. Du Rocher v. Teutonia M. C. Co. 188 W 208, 205 NW 921.

**101.08 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—50; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.08; 1969 c. 276 s. 584 (1) (a).

**101.085 History:** 1963 c. 460; Stats. 1963 s. 101.085.

**101.09 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—51; 1913 c. 588; 1923 c. 234; 1923 c. 291 s. 3; Stats. 1923 s. 101.09; 1969 c. 276 s. 584 (1) (a).

A building in which lodgings are furnished for one or 2 transient persons is a "public building" within sec. 2394—41 (12), Stats. 1915, and subject to the authority of the industrial commission. 6 Atty. Gen. 99.

A rough stone stairway, in a privately owned park to which the public is invited, being an artificial creation used by the public, must be considered to be a "public building" as defined in 101.01 (12), and hence subject to the safety orders promulgated by the industrial commission. 26 Atty. Gen. 397.

A building owned by a religious order and occupied by 3 or more sisters of that order who teach in a parochial school is a "public building" within 101.01 (12), and the state building code promulgated by the industrial commission is applicable. 31 Atty. Gen. 91.

The department of industry, labor and human relations has authority under 101.09 and 101.10, Stats. 1967, to inspect building plans submitted to determine whether certain safety and construction standards have been met. The competency of architects submitting plans is determined by the board of architects and engineers under 101.31. 57 Atty. Gen. 15.

A foster home in which 3 or more delinquent, dependent or neglected children are placed by a licensed welfare agency under the provisions of ch. 48 is not a "public building" within the meaning of 101.01 (12) unless there are other factors involved which would effect that result. 38 Atty. Gen. 31; 57 Atty. Gen. 86.

**101.10 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—52; 1913 c. 462, 584, 587, 588; 1913 c. 772 s. 70; 1917 c. 133 s. 2; 1917 c. 501 s. 3; 1917 c. 513; 1919 c. 631 s. 1; 1921 c. 35 s. 2; 1921 c. 225; 1923 c. 291 s. 3; Stats. 1923 s. 101.10; 1927 c. 308; 1931 c. 262 s. 2; 1931 c. 403 s. 18a; Spl. S. 1931 c. 20 s. 5; 1935 c. 95; 1937 c. 322; 1947 c. 7, 395; 1949 c. 152, 513; 1951 c. 434; 1953 c. 489; 1955 c. 221 s. 38; 1959 c. 135, 468; 1963 c. 6; 1965 c. 433 s. 121; 1967 c. 43; 1967 c. 92 s. 22; 1967 c. 192; 1967 c. 291 s. 14; 1969 c. 154, 182; 1969 c. 276 s. 584 (1) (a), (b); 1969 c. 392 s. 87 (28), (36).

On delegation of power see notes to sec. 1, art. IV.

If an employer has complied with the terms of a safety appliance order of the industrial commission so that he was not subject to the penalty of 101.10, Stats. 1923, he is not subject to the increased compensation penalty of 102.09 (5) (h). Cream City F. Co. v. Industrial Comm. 188 W 648, 206 NW 875.

The industrial commission may prescribe standards and require the adoption of safety equipment, but it has no power to issue orders with respect to the actual operation of the physical plant. The statute does not empower the industrial commission to order that "the landing doors" of passenger elevators "must be closed and locked." Saxe O. Corp. v. Industrial Comm. 197 W 552, 222 NW 781.

The industrial commission's order requiring excavations to be "securely shored up" was an attempt at legislation beyond its powers. Before a penalty should be imposed for violation of the commission's orders, the employer should be reasonably informed regarding the safety devices or safeguards required in the order. Wenzel & Henoch C. Co. v. Industrial Comm. 202 W 595, 233 NW 777.

The powers of the industrial commission are derived exclusively from the statutes, and no statute confers authority upon it to reform or cancel written instruments properly before it for consideration. Kelley v. Tomahawk M. Co. 206 W 568, 240 NW 141.

When the industrial commission has stated the necessary elements of safety applicable to a particular place it is not for the court or the jury to establish others. Waterman v. Heinemann Bros. Co. 229 W 209, 282 NW 29.

Although the industrial commission may adopt its own rules of administrative procedure, it cannot enact substantive law, and its rule that if the commission fails to take action within 10 days on a petition to review an order of an examiner, the order shall be deemed that of the entire commission as a body, is ineffectual as contrary to the provisions of 102.18 (3), which expressly require the commission to take action. State v. Industrial Comm. 233 W 461, 289 NW 769.

A safety order providing that the floor or ground surrounding machines shall be reasonably even, kept in good repair, free from obstruction over which persons may trip, and means provided to insure secure footing so far as the nature of the work "will permit," instead of "will reasonably permit," is invalid and beyond the commission's powers as legislative in character for prescribing a "safe" standard beyond that prescribed or authorized by 101.01 (11) and 101.10. Robert A. Johnston Co. v. Industrial Comm. 242 W 299, 7 NW (2d) 854.

An order of the state building code, entitled "trap doors and floor openings" and requiring that "every opening through any floor shall be guarded by a substantial enclosure or rail at least 3 feet high" is a safety order, the violation of which is a violation of the safe-place statute. The words "every opening through any floor" include trap-door floor openings, and the order, as so construed is not so unreasonable as to be void. "Enclosure" construed. A trap door is not an enclosure. Expert testimony as to the feasibility of a removable guard or gate at the stairway end of the opening would make a jury question as to whether the failure to provide the same constituted a violation of the safe-place statute. Wannmacher v. Baldauf, 262 W 523, 55 NW (2d) 895.

That portion of a safety order of the industrial commission providing that no workman

shall be permitted to work on the surface of any structural member, floor, or other working platform which becomes slippery from ice, snow, frost, painting, or other cause, unless such surface is cleaned, sprinkled with sand, or made nonslippery in some other effective way, is invalid as imposing on an employer a greater duty than that imposed by statute. Wisconsin B. & I. Co. v. Industrial Comm. 268 W 314, 69 NW (2d) 492.

The safe-place statute is applicable to religious corporations. The violation of a general safety order issued by the industrial commission pursuant to 101.10 (5) by an owner of a public building may subject such owner to liability under 101.06. Harnett v. St. Mary's Congregation, 271 W 603, 74 NW (2d) 382.

A safety order requiring an employer to attach every counterweight with a safety chain that "will prevent" the weight from falling is held invalid for unreasonableness in requiring a greater degree of safety than is required by the general statute on which it is promulgated, and for vagueness and indefiniteness in merely directing that the counterweight shall be inclosed or attached with a safety chain that will prevent the weight from falling to a distance of less than 7 feet from the floor or working level. Manitowoc Co. v. Industrial Comm. 273 W 293, 77 NW (2d) 693.

Failure of the industrial commission's employes to notice violations of safety orders does not constitute legal authorization to ignore such orders, and neither the commission nor any of its employes has any statutory power to waive such violation. Connor L.&L. Co. v. Industrial Comm. 6 W (2d) 171, 94 NW (2d) 145.

The state is not estopped to enforce the building code by reason of the fact that a former Milwaukee building inspector, who was delegated plan approval authority, issued a building permit with knowledge that the plan incorporated a code violation. Park Bldg. Corp. v. Industrial Comm. 9 W (2d) 78, 100 NW (2d) 571.

The industrial commission should not refuse to approve plans submitted merely because they were not signed or submitted by a registered architect. 7 Atty. Gen. 344.

An employe of the industrial commission at the Milwaukee office is entitled to be reimbursed for his expenses while at Madison for temporary service. 8 Atty. Gen. 324.

The industrial commission is authorized to pay for drinking water, drinking cups and ice in employment offices. 8 Atty. Gen. 631.

Members of the industrial commission's advisory committee are entitled to traveling expenses. 9 Atty. Gen. 32.

Plans for rural school buildings must be submitted to the industrial commission; rural school buildings are still subject to rules and regulations of the industrial commission. 12 Atty. Gen. 336.

The industrial commission has power and it is its duty to enforce the provisions of 351.50, Stats. 1925. 15 Atty. Gen. 396.

The caboose of a freight train is a "place of employment" within the meaning of ch. 101, Stats. 1935. The industrial commission may regulate "working" conditions therein unless such regulation constitutes interference with interstate commerce. 24 Atty. Gen. 418.

The industrial commission may maintain a checking account in its name as trustee pending payment to claimants under 101.10 (14) and may authorize an employe to sign checks. 24 Atty. Gen. 481.

In collecting claims under 101.10 (14), no reduction should be made because no services were performed on a legal holiday when a contract for labor was by the week. 24 Atty. Gen. 637.

101.10 (16) authorizes the industrial commission to regulate with respect to existing electric fences; and any reasonable regulation made pursuant thereto is constitutional. 27 Atty. Gen. 569.

The industrial commission has authority under 101.10 (5a) to regulate the storage of flammable liquids on farms. 34 Atty. Gen. 220.

Under 101.09 and 101.10, the industrial commission has power to regulate the maximum width of private roadways leading to outdoor theater entrance gates where such roadways and structures are places of employment as defined by 101.01 (1) and (12). The commission may not establish zoning regulations governing the location of outdoor theaters. 41 Atty. Gen. 122.

The industrial commission has no authority under existing statutes to loan employes to, or to pay salaries of employes, of private corporations even though the corporation may serve a public purpose. 54 Atty. Gen. 177.

Contractors are responsible for the payment of inspection fees regardless of the fact that the building ownership will ultimately be in the state. 55 Atty. Gen. 122.

The industrial commission can require employers to observe the safe-place statute, but cannot enforce it to protect pupils in school shop courses. Pupils may be indirectly protected since schools would have to employ safety devices for teachers. 55 Atty. Gen. 173.

A three-bedroom house normally used as a rectory is not subject to the regulations of the industrial commission. 56 Atty. Gen. 37.

**101.101 History:** 1969 c. 154; Stats. 1969 s. 101.101.

**101.102 History:** 1969 c. 154, 381; Stats. 1969 s. 101.102.

**101.103 History:** 1947 c. 404; Stats. 1947 s. 101.103; 1957 c. 540; 1969 c. 276 s. 584 (1) (a).

**101.104 History:** 1947 c. 404; Stats. 1947 s. 101.104; 1969 c. 276 s. 584 (1) (a).

The industrial commission may delegate to its deputies authority to obtain enforcement of 101.104, Stats. 1961, through district attorneys under 101.24 (2) and 101.28. If an individual signs a complaint in good faith and without malice, believing that there is probable cause to believe that a crime has been committed and that the accused is the person involved, no liability would attach to the individual. 51 Atty. Gen. 28.

**101.105 History:** 1941 c. 235; Stats. 1941 s. 101.105; 1969 c. 276 ss. 376, 584 (1) (a).

101.105, Stats. 1959, authorizes the industrial commission to regulate all installations of liquefied petroleum gas for fuel purposes even in private trailers or residences. 49 Atty. Gen. 16.

**101.11 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—53; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.11; 1969 c. 276 s. 584 (1) (a).

**101.13 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—55; 1923 c. 291 s. 3; Stats. 1923 s. 101.13; 1943 c. 375 s. 32; 1945 c. 511; 1969 c. 276 s. 584 (1) (a).

Under 101.13, Stats. 1941, only such safety orders of the industrial commission as are "in conformity with law" are prima facie reasonable and lawful "until found otherwise in an action brought for that purpose." Robert A. Johnston Co. v. Industrial Comm. 242 W 299, 7 NW (2d) 854.

**101.14 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—56; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.14; 1955 c. 221 s. 39; 1969 c. 276 s. 584 (1) (a).

**101.15 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—57; 1923 c. 291 s. 3; Stats. 1923 s. 101.15; 1969 c. 276 s. 584 (1) (a).

As to a matter which the industrial commission has adequately considered, even though no record has been kept, the commission is not considering a "contested case" and need not hold a hearing as required by 227.07 or make written findings and conclusions as required by 227.13. Park Bldg. Corp. v. Industrial Comm. 9 W (2d) 78, 100 NW (2d) 571.

**101.16 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—58; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.16; 1969 c. 276 s. 584 (1) (a).

101.16 (1) does not mean that the state building code was not in effect until the state code was filed with the city clerk; the state code was effective in 1918 except that it did not override local conflicting orders until filed. Park Bldg. Corp. v. Industrial Comm. 9 W (2d) 78, 100 NW (2d) 571.

A building permit issued by a local building inspector which permits a violation of the state building code is not a "local order", and even the Milwaukee inspector who has been delegated plan approval authority cannot in effect amend the code by issuing a permit. Park Bldg. Corp. v. Industrial Comm. 9 W (2d) 78, 100 NW (2d) 571.

**101.17 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—59; 1923 c. 291 s. 3; Stats. 1923 s. 101.17; 1943 c. 375 s. 33; 1945 c. 511; 1969 c. 276 s. 584 (1) (a).

**101.18 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—60; 1923 c. 291 s. 3; Stats. 1923 s. 101.18; 1969 c. 276 s. 584 (1) (a).

**101.185 History:** 1943 c. 411; Stats. 1943 s. 101.185; 1969 c. 276 s. 584 (1) (a).

The mere failure of a contractor to obtain approval of the plans before the installation of a heating system on the defendant's premises, as required by an order of the industrial commission, did not bar the contractor from recovery, under 101.185, Stats. 1951, and limits the defense afforded thereunder in an action for payment so as to bar recovery only for any part of the "work" which fails to comply. Pflugradt v. Neth, 269 W 528, 69 NW (2d) 477.

**101.19 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—61; 1923 c. 291 s. 3; Stats. 1923 s. 101.19; 1927 c. 523 s. 33.

**101.20 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—62; 1913 c. 772 s. 70; 1923 c. 291 s. 3; Stats. 1923 s. 101.20; 1969 c. 392 s. 87 (29).

**101.21 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—63; 1913 c. 772 s. 70; 1923 c. 291 s. 3; Stats. 1923 s. 101.21; 1969 c. 276 s. 584 (1) (a).

**101.22 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—64; 1923 c. 291 s. 3; Stats. 1923 s. 101.22; 1969 c. 276 s. 584 (1) (a).

**101.23 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—65; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.23; 1969 c. 276.

**101.24 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—66; 1923 c. 291 s. 3; Stats. 1923 s. 101.24; 1969 c. 276.

**101.25 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—67; 1923 c. 291 s. 3; Stats. 1923 s. 101.25; 1969 c. 276 s. 584 (1) (a).

**101.26 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—68; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.26; 1943 c. 375 s. 34.

The action authorized by 101.26, Stats. 1941, to vacate an order of the industrial commission can be maintained only on the grounds that the order is "unlawful" or "unreasonable," and hence, the only issues therein are virtually the same as in certiorari proceedings to review official action and are only issues of law, and hence nothing is involved therein but a review of the record to determine whether the commission acted lawfully, i. e., within the scope of powers granted, and reasonably, i. e., whether there was evidence to support its findings. Kuehnel v. Registration Board of Architects, 243 W 188, 9NW (2d) 630.

**101.28 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394—70; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.28; 1969 c. 276 s. 584 (1) (a).

The court will take judicial notice of a building code adopted by the industrial commission, which has the force of criminal statutes in the sense that the violation of its provisions are penalized. Skrzypczak v. Konieczka, 224 W 455, 272 NW 659.

The industrial commission's powers do not include the power to impose forfeitures. Plans for places of employment and public buildings must be approved by the commission prior to commencement of construction regardless of the type of owner. 56 Atty. Gen. 60.

The state building code applies to public buildings constructed for the state, through building corporations, at the university of Wisconsin; and compliance with the code may be secured upon request by the department of industry, labor and human relations to the regents of the university. 57 Atty. Gen. 82.

**101.29 History:** 1917 c. 501 s. 3; Stats. 1917 s. 2394—71; 1923 c. 291 s. 3; Stats. 1923 s.

101.29; 1957 c. 172; 1965 c. 399; 1969 c. 276 ss. 379, 584 (1) (a).

101.29, Stats. 1955, is intended to require inspections to prevent fire hazards; it does not apply to flare pots set out in streets or on sidewalks to warn of surface defects. Smith v. Jefferson, 8 W (2d) 378, 99 NW (2d) 119.

The duty to make certain building inspections for discovering and protecting against fire hazards may not be delegated to any persons other than officers or members of the fire department. 42 Atty. Gen. 192.

Dwelling units of row houses are excepted by 101.10 (5b) from the inspections required by 101.29 (3), Stats. 1965. 56 Atty. Gen. 36.

**101.30 History:** 1921 c. 262; Stats. 1921 s. 2394—72; 1923 c. 291 s. 3; Stats. 1923 s. 101.30; 1969 c. 276 s. 584 (1) (a).

Under sec. 2394—72, Stats. 1921, the vendor of a machine who sells it f. o. b. factory, but who, at the request and expense of the purchaser, sends a person to install it, is not liable to the forfeiture therein provided for failing to comply with statutes and orders of industrial commission as to safety devices. Under such circumstances the purchaser is the one liable. 11 Atty. Gen. 744.

**101.305 History:** 1963 c. 139; Stats. 1963 s. 101.305; 1969 c. 207; 1969 c. 276 s. 584 (1) (a); 1969 c. 392.

**101.306 History:** 1963 c. 138; 1963 c. 429 s. 8; Stats. 1963 s. 101.306; 1969 c. 276 s. 584 (1) (a).

**101.37 History:** 1933 c. 360; Stats. 1933 s. 101.37; 1937 c. 95 s. 4; 1965 c. 433; 1969 c. 276 s. 584 (1) (b).

**101.40 History:** 1923 c. 76; Stats. 1923 s. 46.23; 1947 c. 268 s. 44; Stats. 1947 s. 101.40; 1969 c. 366 s. 117 (2) (b).

**101.41 History:** 1923 c. 76; Stats. 1923 s. 46.24; 1943 c. 229; 1947 c. 268 s. 44; Stats. 1947 s. 101.41; 1969 c. 276 ss. 583 (1), 584 (1) (b).

**101.42 History:** 1923 c. 76; Stats. 1923 s. 46.25; 1947 c. 268 s. 44; Stats. 1947 s. 101.42; 1969 c. 276 s. 584 (1) (b); 1969 c. 366 s. 117 (2) (c).

**101.43 History:** 1923 c. 76; Stats. 1923 s. 46.26; 1947 c. 268 s. 44; Stats. 1947 s. 101.43; 1969 c. 276 s. 584 (1) (b); 1969 c. 366 s. 117 (2) (b).

**101.55 History:** 1963 c. 264; Stats. 1963 s. 101.55.

**101.60 History:** 1965 c. 439, 625; Stats. 1965 s. 101.60; 1967 c. 269; 1969 c. 276 ss. 381, 584 (1) (a).

**Editor's Note:** Chapter 439, laws of 1965, contained the following provision:

"Section 9. If any provision of section 101.60 (1) of the statutes is declared invalid, such invalidity shall affect and render invalid all other provisions of this act."

On equality see notes to sec. 1, art. I; and on delegation of power see notes to sec. 1, art. IV.

Cities, villages and towns possess the power, irrespective of 101.60, Stats. 1965, to promulgate local regulations to prevent and remove all discrimination in housing, even though regulation of nondiscrimination in housing is a matter of state-wide concern. 55 Atty. Gen. 231.

**101.61 History:** 1947 c. 296; Stats. 1947 s. 15.85; 1953 c. 50; 1965 c. 66 s. 8; 1965 c. 439; 1967 c. 327; Stats. 1967 s. 101.61; 1969 c. 276 ss. 382, 383, 384.

**101.62 History:** 1951 c. 205; Stats. 1951 s. 15.855; 1965 c. 439 s. 2; Stats. 1965 ss. 15.85 (2) (b), (c), 15.855; 1967 c. 327 ss. 4, 5; Stats. 1967 ss. 101.61 (2) (b), (c), 101.62; 1969 c. 276 ss. 383, 385; Stats. 1969 s. 101.62.

**101.80 History:** 1969 c. 445; Stats. 1969 s. 101.80.

## CHAPTER 102.

### Workmen's Compensation.

**Revisor's Note, 1931:** * * * This revision of chapter 102 of the statutes is for the purpose of clarifying and simplifying the language, improving the arrangement, omitting unnecessary words, repealing expressly provisions which have been impliedly repealed by later enactments, and facilitating the finding and citing its various provisions. The meaning of the chapter remains the same as before. It is the intention to change the verbiage without changing the law. * * * (Bill 380-S, s. 2)

On equality, inherent rights, and exercises of police power see notes to sec. 1, art. I; on trial by jury see notes to sec. 5, art. I; on legislative power generally and on delegation of power see notes to sec. 1, art. IV; on judicial power generally see notes to sec. 2, art. VII; on the safe-place statute see notes to various sections of ch. 101; on employment regulations see notes to various sections of ch. 103; on workmen's compensation insurance see notes to various sections of ch. 205; and on administrative procedure and review see notes to various sections of ch. 227.

**102.01 History:** 1931 c. 403 s. 2; Stats. 1931 s. 102.01; 1933 c. 314 s. 2; 1933 c. 402 s. 2; 1943 c. 270; 1945 c. 537; 1951 c. 382; 1955 c. 281; 1957 c. 204; 1963 c. 281; 1969 c. 276.

**Revisor's Note, 1931:** The definition of "injury" is from 102.35, Stats. 1929, which is repealed by this bill. * * * (Bill 380-S, s. 2.)

**Editor's Note:** The term "injury" has been construed in various cases cited in notes under 102.03.

**102.03 History:** 1911 c. 50; 1911 c. 664 s. 4; Stats. 1911 s. 2394—4; 1913 c. 599; Stats. 1913 s. 2394—3; 1917 c. 624; 1923 c. 291 s. 3; Stats. 1923 s. 102.03; 1927 c. 482; 1931 c. 403 s. 5; 1933 c. 314 s. 1; 1933 c. 402 s. 2; 1943 c. 270; 1945 c. 537; 1947 c. 475; 1949 c. 107; 1953 c. 328 s. 2; 1961 c. 269, 323, 641; 1965 c. 346.

1. General.
2. Injury sustained by an employe.
3. Time of injury.
4. Covered employer and employe.
5. Service incidental to employment.
6. Premises of employer.
7. Injury arising out of the employment.