

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION

TOMMY G. THOMPSON  
GOVERNOR

GEORGE LIGHTBOURN  
ACTING SECRETARY

F. SCOTT SCEPANIAK  
DIVISION ADMINISTRATOR



54-3  
JAN 04 2000

DEC 1999

DIVISION OF GAMING

30

2005 W. Beltline Hwy., Suite 201  
Post Office Box 8979  
Madison, WI 53708-8979  
Voice (608) 270-2555  
Fax (608) 270-2564

January 3, 2000

Legislators  
Wisconsin State Assembly and Senate  
State Capitol  
Madison, Wisconsin

Re: Fiscal Estimate for Game ch. 27

Dear Legislator:

Per the instructions contained in the *Administrative Rules Procedure Manual*, which requires the agency to prepare a fiscal estimate of a proposed rule, attached is a copy of the fiscal estimate for Game Chapter 27, which relates to pari-mutuel snowmobile racing. Game Chapter 27, was adopted by the Department of Administration on December 23, 1999. A copy of the rules was forwarded to your attention on December 27, 1999.

If you should have any questions, please do not hesitate to contact me directly at (608) 270-2539.

Sincerely,

A handwritten signature in cursive script that reads "Daniel J. Subach".

Daniel J. Subach  
Chief Steward

Enclosure

### Fiscal Estimate — 1999 Session

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Game Chapter 27

**Subject**  
 The promulgation of rules related to pari-mutuel snowmobile racing.

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes       No

Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive       Mandatory  
 2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
 4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:

- Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

Fund Sources Affected

- GPR       FED       PRO       PRS       SEG       SEG-S

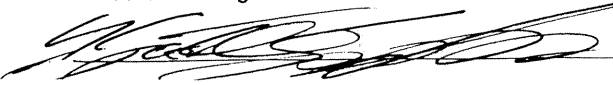
Affected Chapter 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

The Division of Gaming estimates that pari-mutuel snowmobile racing will generate between \$7,000 and \$10,000 in new revenues from license fees, unclaimed prizes and an assessment on the amount wagered. Because this is the first time that wagering will be offered on a motor sport or mechanical event, it is difficult to estimate the amount that will be wagered. New revenues will be offset by some start-up costs (clothing, training) and travel expenses of imbedded staff.

**Long-Range Fiscal Implications**

Unknown

Prepared By: Daniel J. Subach	Telephone No. 270-2539	Agency DOA - Gaming
Authorized Signature 	Telephone No. 270-2534	Date (mm/dd/ccyy) 01/03/2000



WISCONSIN STATE ASSEMBLY

**MARTY REYNOLDS**  
STATE REPRESENTATIVE

January 10, 2000

Representative Glenn Grothman, Co-chair  
Joint Committee for the Review of  
Administrative Rules  
Room 15 North, State Capitol  
Madison, WI 53707

Senator Judy Robson, Co-chair  
Joint Committee for the Review of  
Administrative Rules  
Room 15 South, State Capitol  
Madison, WI 53707

Dear Representative Grothman and Senator Robson:

As co-chairs of the Joint Committee for the Review of Administrative Rules, I ask that your committee take action to address the creation of emergency rules to permit pari-mutuel snowmobile racing in Wisconsin, Game 27.

While Wisconsin state statutes do allow for pari-mutuel snowmobile racing in our state, I strongly oppose the use of emergency rules to speed the creation of rules to enforce these statutes. I find it hard to believe that administrators in the Division of Gaming truly believe that these rules are "necessary for the immediate preservation of the public peace, health, safety or welfare."

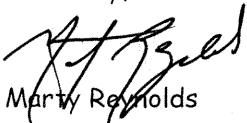
Although I understand that this use of the emergency rule procedure has become common place in recent years, I think this is one instance when we need to put our legislative foot down and put a halt to this procedure.

The adoption of Game 27, rules to regulate pari-mutuel snowmobiling, should be allowed to follow the normal administrative rule process. Both the legislature and the public have a right to review and comment on these rules before they are enforced and have the affect of law.

No other state or nation (with the exception of Japan and motorcycle racing) allows for pari-mutuel wagering on motor vehicle racing. I think that we need to closely review this issue and these rules, taking into consideration the affect this move will have on snowmobile racing in Wisconsin. As one stop in the snowmobile racing circuit, the move to pari-mutuel betting could affect the willingness of racers to participate in Wisconsin events.

I ask that your committee take immediate action to suspend these emergency rules. If we are to have pari-mutuel snowmobile racing in Wisconsin, the normal rule making process should be followed.

Sincerely,

  
Marty Reynolds

OFFICE: P.O. BOX 8953, MADISON WISCONSIN 53708 • 608-266-7506  
TOLL-FREE: 1-888-534-0087 • E-MAIL: Rep.Reynolds@legis.state.wi.us

HOME: 219 WEST 2ND STREET NORTH, LADYSMITH, WISCONSIN 54848 • 715-532-7798

# State Representative Spencer Black



State Capitol  
P.O. Box 8952  
Madison, WI 53708  
(608) 266-7521

January 11, 2000

Senator Judy Robson  
Representative Glenn Grothman  
Co-Chairs  
Joint Committee for the Review of Administrative Rules  
State Capitol  
Hand delivered

Dear Senator Robson and Representative Grothman:

As a member of the Joint Committee for the Review of Administrative Rules, I am writing to you to ask for a vote of the emergency rules recently issued by Wisconsin Division of Gaming regarding snowmobile betting.

These emergency rules are an abuse of the rules process because there is no emergency. By issuing 'emergency rules', the Division of Gaming has avoided the normal rules process which requires a state agency to give notice and hold hearings before the rules are issued.

There is no emergency. The state of Wisconsin has somehow survived for 151 years without betting on snowmobiles. If the Thompson administration wants rules to allow betting on snowmobiles, they should follow the law which requires public notice, public hearings, and legislative review. There is no excuse for ignoring the legal protections afforded the public against surprise rules.

Section 227.24 of the statutes provides that an agency may avoid complying with the 'notice, hearing and publication requirements' of the law only if the "preservation of the public peace, health, safety or welfare necessitates" ignoring the normal rules procedure.

Even the most imaginative gambler would have a hard time claiming that the public's 'peace, health, safety or welfare' is threatened if there is no betting on snowmobiles this month.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Black".

Spencer Black  
State Representative

**FACSIMILE COVER SHEET**  
**DEPARTMENT OF ADMINISTRATION**

**STATE OF WISCONSIN**  
**DIVISION OF GAMING**  
P.O. Box 8979  
Madison, WI 53708-8979  
(608) 270-2555  
FAX (608) 270-2564

DATE: January 13, 2000  
TO: David Austin  
FROM: Dan Subach  
RE: Snowmobile Rules --- Repeal

Number of Pages INCLUDING COVER SHEET: 3

**COMMENTS:**

Thank you for your help in this matter.

If you experience problems with this transmission, call 270-2555.

**ORDER OF THE  
DEPARTMENT OF ADMINISTRATION**

The Department of Administration proposes to repeal Game 27, relating to the conduct of pari-mutuel snowmobile racing, which was created by emergency rule on December 23, 1999.

**Analysis prepared by the Department of Administration:**

**Statutory Authority:** ss. 562.02(1) and 562.124, Stats.

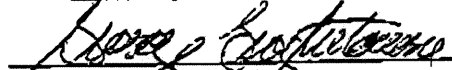
**Statutes Interpreted:** ss. 562.02(1)(am) and 562.124, Stats.

Based upon the public opposition to this emergency rule, the Department has reconsidered its creation of Game 27 as an emergency rule. The Department will instead pursue creation of the proposed rule under the permanent rulemaking procedures.

**SECTION 1:** Chapter Game 27 as created by emergency rule is repealed.

This order shall take effect upon publication in the official state newspaper pursuant to s. 227.24, Stats.

Adopted at Madison, Wisconsin  
this 15<sup>th</sup> day of January, 2000.

  
George Lightbourn, Secretary  
Department of Administration

**RULES CERTIFICATE**

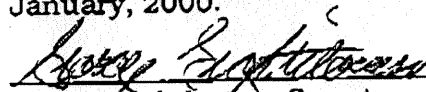
State of Wisconsin

Department of Administration

I, George Lightbourn, Secretary of the Wisconsin Department of Administration, and custodian of the official records, certify that the attached Order repealing Game 27, created by emergency rule on December 23, 1999, was adopted by the Department of Administration on January 15, 2000.

I further certify that this copy has been compared by me with the original on file with this Department and that it is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the City of Madison, Wisconsin this 15<sup>th</sup> day of January, 2000.

  
George Lightbourn, Secretary  
Department of Administration

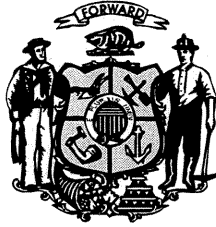
JAN 21 2000

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION

TOMMY G. THOMPSON  
GOVERNOR

GEORGE LIGHTBOURN  
SECRETARY

F. SCOTT SCEPANIAK  
DIVISION ADMINISTRATOR



DIVISION OF GAMING

2005 W. Beltline Hwy., Suite 201  
Post Office Box 8979  
Madison, WI 53708-8979  
Voice (608) 270-2555  
Fax (608) 270-2564

January 19, 2000

Legislators  
Wisconsin Senate and Assembly  
State Capitol  
Madison, Wisconsin

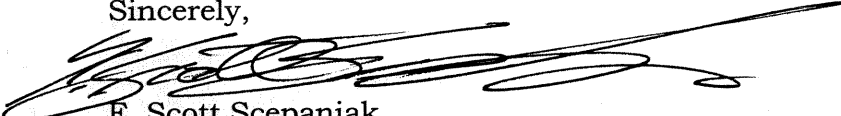
RE: Repeal of Chapter Game 27

Dear Legislator:

Enclosed is a certified copy of the emergency rule repealing Chapter Game 27 relating to pari-mutuel snowmobile racing in Wisconsin. This repeal was published in the Wisconsin State Journal on January 15, 2000. A certified copy was filed with the Revisor of Statutes and Secretary of State.

If you have any questions, please do not hesitate to contact me directly at (608) 270-2534.

Sincerely,

  
F. Scott Scepaniak  
Administrator

Enclosure



**RULES CERTIFICATE**

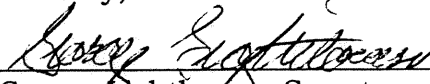
State of Wisconsin

Department of Administration

I, George Lightbourn, Secretary of the Wisconsin Department of Administration, and custodian of the official records, certify that the attached Order repealing Game 27, created by emergency rule on December 23, 1999, was adopted by the Department of Administration on January 15, 2000.

I further certify that this copy has been compared by me with the original on file with this Department and that it is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the City of Madison, Wisconsin this 15<sup>th</sup> day of January, 2000.

  
\_\_\_\_\_  
George Lightbourn, Secretary  
Department of Administration

**ORDER OF THE  
DEPARTMENT OF ADMINISTRATION**

The Department of Administration proposes to repeal Game 27, relating to the conduct of pari-mutuel snowmobile racing, which was created by emergency rule on December 23, 1999.

**Analysis prepared by the Department of Administration:**

**Statutory Authority:** ss. 562.02(1) and 562.124, Stats.

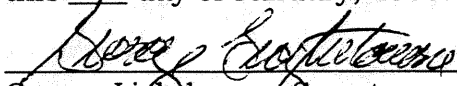
**Statutes Interpreted:** ss. 562.02(1)(am) and 562.124, Stats.

Based upon the public opposition to this emergency rule, the Department has reconsidered its creation of Game 27 as an emergency rule. The Department will instead pursue creation of the proposed rule under the permanent rulemaking procedures.

**SECTION 1:** Chapter Game 27 as created by emergency rule is repealed.

This order shall take effect upon publication in the official state newspaper pursuant to s. 227.24, Stats.

Adopted at Madison, Wisconsin  
this 15th day of January, 2000.

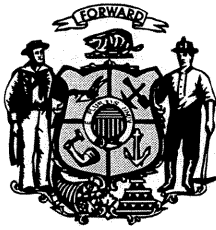
  
George Lighbourn, Secretary  
Department of Administration

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION

TOMMY G. THOMPSON  
GOVERNOR

GEORGE LIGHTBOURN  
ACTING SECRETARY

F. SCOTT SCEPANIAK  
DIVISION ADMINISTRATOR



DEC 28 1999  
DIVISION OF GAMING

2005 W. Beltline Hwy., Suite 201  
Post Office Box 8979  
Madison, WI 53708-8979  
Voice (608) 270-2555  
Fax (608) 270-2564

December 23, 1999

Legislators  
Wisconsin Senate and Assembly  
State Capitol  
Madison, Wisconsin

RE: GAME ch 27

Dear Legislator:

Enclosed is a certified copy of the emergency rules relating to parimutuel snowmobile racing in Wisconsin, which were adopted by the Department of Administration on December 23, 1999 and published in the Wisconsin State Journal on December 23, 1999. A certified copy was filed with the Revisor of Statutes and Secretary of State.

If you have any questions, please do not hesitate to contact me directly at (608) 270-2539.

Sincerely,

A handwritten signature in cursive script that reads "Daniel J. Subach".

Daniel J. Subach  
Chief Steward

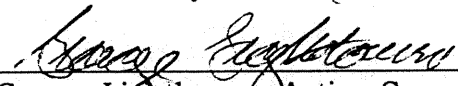
Enclosure

**ORDER OF ADOPTION**

Pursuant to authority vested in the Department of Administration by ss. 16.004(1), 562.02(1)(a) and 562.124(2), Stats., the Department of Administration adopts the rule creating Game 27, of the Wisconsin Administrative Code, relating to the conduct of pari-mutuel snowmobile racing.

The attached rule shall take effect upon publication in the official state newspaper pursuant to s. 227.24, Stats.

Adopted at Madison, Wisconsin  
this 23rd day of December, 1999.

  
\_\_\_\_\_  
George Lightbourn, Acting Secretary  
Department of Administration

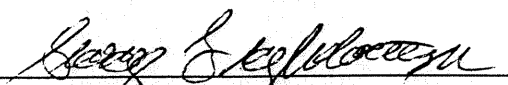
**RULES CERTIFICATE**

State of Wisconsin )  
 ) ss.  
Department of Administration )

I, George Lightbourn, Acting Secretary of the Wisconsin Department of Administration, and custodian of the official records, certify that the attached emergency rule relating to the conduct of pari-mutuel snowmobile racing, was duly approved and adopted by the Department of Administration on December 23, 1999.

I further certify that this copy has been compared by me with the original on file with this Department and that it is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the City of Madison, Wisconsin this 23rd day of December, 1999.

  
George Lightbourn, Acting Secretary  
Department of Administration

## **PROPOSED ORDER OF THE DEPARTMENT OF ADMINISTRATION**

The Wisconsin Department of Administration proposes an order to create chapter Game 27 of the Wisconsin Administrative Code, relating to the conduct of pari-mutuel snowmobile racing.

Analysis Prepared by the Department of Administration:

**Statutory Authority:** ss. 562.02 (1) and 562.124, Stats.

**Statutes Interpreted:** ss. 562.02 (1) (am) and 562.124, Stats.

### **FINDING OF EMERGENCY**

The Department of Administration's Division of Gaming finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

In January of 2000 a snowmobile promoter proposes to offer pari-mutuel wagering on snowmobile races conducted in Wisconsin. Section 562.124, Stats., allows for pari-mutuel snowmobile racing with the requirement that the Division of Gaming regulate the racing and promulgate all rules necessary to administer the statutory provision in the statutes.

Since this will be the first occasion within the United States that there will be pari-mutuel wagering on a motor sport or mechanical event, the Division of Gaming took extra time in preparing and reviewing the proposed rules with emphasis and attention directed toward the health, welfare and safety of the participants, workers and the public. Additionally, the Division of Gaming is incorporating standards by reference, specifically the Oval Sprint Racing Rules; Sno-Cross Racing Rules; and the General Competition Rules, excluding Enforcement, Discipline and Violation, of International Snowmobile Racing, Incorporated as identified in the *1999-2000 ISR Snowmobile Racing Yearbook*. These rules, which were made public in October of 1999 were reviewed extensively, once again with an emphasis on the health, welfare and safety of the prior noted individuals.

The conduct of pari-mutuel snowmobile racing will create additional jobs, increase tourism within the State of Wisconsin and generate revenues for the Division of Gaming.

#### **Initial Regulatory Flexibility Analysis:**

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

**TEXT OF RULE:**

**SECTION 1:** Game 27 is created to read.

**Chapter Game 27**

**SNOWMOBILE WAGERING**

Subchapter I  
Definitions

**Game 27.01 Purpose.** The purpose of this chapter is to govern procedures relative to the conduct of snowmobile racing and the conduct of wagering on snowmobile races that will be regulated by the department of administration's division of gaming.

**Game 27.02 Definitions.** In this chapter:

- (1) "Department" means the department of administration.
- (2) "Division" means the division of gaming within the department of administration.
- (3) "Driver's License" means the regulatory license issued by the division to snowmobile drivers which permits them to compete in a pari-mutuel snowmobile race and not an endorsement as to the qualifications or competence of the individual driving the snowmobile.
- (4) "Driver's Licensee" means the individual licensed pursuant to Game 27.20.
- (5) "International Snowmobile Racing, Incorporated" is a service organization whose role is to compile, publish and enforce snowmobile competition rules.
- (6) "Licensee" means the holder of the pari-mutuel snowmobile racing license issued pursuant to Game 27.03.
- (7) "Occupational License" means the regulatory licenses issued by the division pursuant to Game 27.21.
- (8) "Occupational Licensee" means the individual licensed pursuant to Game 27.21.
- (9) "Organization" means the sanctioning affiliate of International Snowmobile Racing, Incorporated that has the authority to ensure that the snowmobile races are conducted in accordance with the rules addressed in their annual yearbook.

(10) "Organization Official" means certain individuals that have the authority of the organization to carry out the rules addressed in their annual yearbook. These individuals include but are not limited to: Race Director, Technical Director, Technical Inspector, Starter, Spotter, Scorer and any other individual with defined duties which may affect the outcome of a race.

(11) "Racecourse" means the racing surface and the layout on which the snowmobiles race.

(12) "Snowmobile" means an engine powered, track driven, ski steering vehicle.

(13) "Support Team" means any individual that provides any type of mechanical or technical assistance to a snowmobile or driver that is qualifying or has qualified for a race in which pari-mutuel wagering shall be conducted.

## Subchapter II Application

**Game 27.03 Criteria for pari-mutuel snowmobile racing license.** The department may grant a pari-mutuel snowmobile racing license if it determines all of the following criteria are met:

- (1) The license will not adversely affect the public health, safety or welfare.
- (2) The races and wagering thereon will be conducted in accordance with applicable laws, and not in a manner which would pose a threat to the public interest or to the effective regulation and control of racing and wagering, or create or enhance the dangers of unfair, unsuitable or illegal practices in the conduct of racing and wagering or the carrying on of the business and financial arrangements incidental thereto.
- (3) The applicant has conducted International Snowmobile Racing, Incorporated sanctioned Oval Sprint or Sno-Cross snowmobile racing for at least five years.

**Game 27.04 Application for snowmobile wagering license and fees.** (1) An applicant for a pari-mutuel snowmobile racing license under s. 562.124, Stats., shall file with the division, during the month of December or at a time determined by the division, an application in the form and manner prescribed by the division, and any exhibits required by the division.

*Note: The forms may be obtained at the division's office at 2005 West Beltline Highway, Suite 201, Madison WI 53713.*

(2) The applicant shall submit with the application a cashier's check or certified check in the amount as set forth in sub. (3), payable to the division, as a non-refundable application fee.

(3) The initial application fee for a pari-mutuel snowmobile racing license shall be \$1,000. For any renewal of the application, the fee shall be \$500.



(4) A license fee of \$750 shall be assessed annually in conjunction with the granting of the pari-mutuel snowmobile racing license and shall be paid within 10 days after receipt of approval by the division.

(5) The division may require a performance regulation fee to be paid by the licensee under s.562.124, Stats. This fee shall supplement fundings received to accomplish the statutorily mandated regulatory responsibilities of the division. This fee shall be determined by the division on an annual basis. All monies received pursuant to the rule shall be paid to the division, as designated by the division.

**Game 27.05 Conduct of pari-mutuel snowmobile racing.** (1) No person may conduct pari-mutuel snowmobile racing without a license issued by the department.

(2) In addition to any other requirements of this chapter, the following provisions shall be applicable to the conduct of pari-mutuel snowmobile racing: ss.562.04(1), 562.06(4), 562.06(5), 562.11, and 562.12(2), Stats.

**Game 27.06 Change of ownership.** Pari-mutuel snowmobile wagering licenses are personal in nature and may not be sold or otherwise transferred unless the division has granted prior written approval for such a change of ownership or transfer.

**Game 27.07 Termination of license.** Any license issued under this chapter shall terminate if the holder of the license is no longer licensed in conjunction with s. 562.124, Stats.

**Game 27.08 Duration.** Pari-mutuel snowmobile wagering licenses shall expire on the last date for which permission to conduct snowmobile wagering has been approved by the division.

**Game 27.09 Exclusivity.** This license is exclusive to live snowmobile racing and shall not be construed as a pari-mutuel license to conduct wagering on live animal racing or simulcast wagering.

**Game 27.10 Validity of application information.** False or misleading information, omission of required information, or substantial deviation from representations in the application for licensure under s.562.124, Stats., is cause for denial, revocation or suspension of a license or imposition of a forfeiture or both.

**Game 27.11 Enforcement of rules.** Each licensee under s.562.124, Stats., has a duty to comply with the rules of the division at all times and acknowledge that compliance with such rules are a condition under which the license is granted.

**Game 27.12 Bond requirements for licensing.** The division may require the licensee under s.562.124, Stats., to file with the division, as a condition of licensure, a bond payable to the division in an amount as determined by the division. The bond shall be executed by the licensee and a surety company or companies authorized to do business in this state, and conditioned on the payment by the licensee under s.562.124, Stats., of all fees, pay-outs on winning wagers or other amounts payable pursuant to the provisions of ch.562 Stats., and all rules promulgated by the division.

Subchapter III  
Snowmobile Licensee's Responsibilities

**Game 27.13 Duties of a pari-mutuel snowmobile licensee in conducting snowmobile wagering.** (1) GENERAL The pari-mutuel snowmobile licensee under s.562.124, Stats., shall do all of the following:

(a) Conduct wagering via ticket issuing machine (TIM) to tote with a totalizator system or other process approved by the division. All other totalizator operations must be consistent with requirements of Game chapter 10.

(b) Provide an audiovisual signal for every race with wagering on monitors throughout the wagering areas on the grounds. The audiovisual signal shall contain the following in its video content:

1. The date;
2. A digital display of the actual time of day;
3. The name of the racetrack from which it emanates;
4. The minutes to post for each race;
5. The number of the race being displayed; and
6. An indication that a race being shown is a replay of a previously run race, if it is a replay.

(c) Conduct wagering on pari-mutuel pools in accordance with the provisions of Game chapter 9, excluding s. Game 9.16 and Game 9.17. The division shall interpret any reference to animal in Game chapter 9 to mean snowmobile or wagering interest.

(d) Operate the mutuel department in accordance with the provisions of Game chapter 8, excluding s. Game 8.05 and Game 8.12. The division shall interpret any reference to animal in Game chapter 8 to mean snowmobile or wagering interest.

(e) Ensure that children under the age of eighteen are not allowed to be in areas designated for wagering unless accompanied by a parent or guardian.

(2) SECURITY AND FIRST AID REQUIREMENTS. (a) The licensee shall equip and maintain adequate first-aid facilities and have in attendance during the conduct of all races, both pari-mutuel and non-pari-mutuel races, a physician, licensed nurse or an ambulance attendant licensed pursuant to s. 146.50, Stats., or emergency medical technician licensed pursuant to s.146.35, Stats.

(b) The licensee shall provide a video monitoring system approved by the division that allows monitoring of wagering areas as deemed necessary by the division.

(c) For the safety of the patrons, officials and participants, the division may require the licensee to install certain safety equipment in designated locations to protect the health, welfare and safety of all individuals. The location and equipment shall include but not be limited to the following:

1. Technical inspection area - fire extinguisher, fire blanket, eyewash, and first aid kit.
2. Licensing office - fire extinguisher.
3. Stewards box - fire extinguisher.

**Game 27.14 Racing programs.** (1) REQUIRED INFORMATION FOR DAILY PROGRAMS. The licensee under s. 562.124, Stats., shall cause all daily racing programs to contain the following information:

(a) This race meeting is conducted under the authority of a license issued by the Wisconsin division of gaming and pursuant to the rules and regulations adopted by the division;

(b) The Honorable \_\_\_\_\_, Governor;

(c) Wisconsin Department of Administration, Division of Gaming, 2005 W. Beltline Highway, Suite 201, Madison, Wisconsin 53713, (608) 270-2555;

(d) Department of administration secretary;

(e) Wisconsin division of gaming administrator;

(f) Names and titles of;

1. Track officers,
2. Track officials,
3. Wisconsin division of gaming officials.

(g) The address and telephone number of the track facility;

(h) A prominent notice that there is an information window where complaints may be made by the public. Such notice shall specify the exact location of such windows;

- (i) The location of facilities for handicapped patrons;
- (j) The location of the division's office at the track facility;
- (k) The location of photo finish pictures or images or other devices approved by the division;
- (l) The approximate payouts on different pari-mutuel odds.

(2) PROGRAM TO SUPPLY PARI-MUTUEL INFORMATION FOR PATRONS. Each licensee under s. 562.124, Stats., shall include in the program sufficient information to advise the public and new track patrons about the pari-mutuel system. This information shall include but not be limited to the following:

- (a) Wagers are to be made by program number and not the snowmobile competition number;
- (b) Tickets shall be retained until the stewards have declared the race official;
- (c) Payouts are not permitted until the stewards have notified the pari-mutuel department of the official order of finish and the race is declared official;
- (d) The division has adopted detailed rules for occurrences such as dead heats or the failure of patrons to select the snowmobiles or combinations of finishing snowmobiles. Such rules are available for public inspection at the information windows and the division's office at the track;
- (e) The period of time and procedures for uncashed tickets to be redeemed;
- (f) The licensee is responsible for the accuracy of all information contained in the program. The licensee shall obtain prior approval of the proposed program from the division;
- (g) The licensee shall be responsible for providing past performance information on the snowmobiles and drivers to enable the betting public to make an educated decision on the outcome of the race. The past performance information may include qualifying times, purse money won, and top-ten finishes in similar events. The division shall approve the past performance information provided by the licensee to the public.

**Game 27.15 Sale of pari-mutuel tickets.** (1) TIME OF SALE. Pari-mutuel tickets may not be sold on any race performance more than one hour before post time of the first pari-mutuel race of each performance unless prior approval is obtained from the division. All wagering shall be conducted only within the racetrack enclosure in which authorized racing takes place.

(2) TICKET WINDOWS. No pari-mutuel tickets may be issued except through clerk windows clearly designated by number or a method approved by the division. The licensee shall prominently display this number to the wagering public. At mutuel windows where special or limited mutuel services are offered, the licensee shall properly designate those windows by signs. The licensee shall obtain prior division approval for any alternative method of selling pari-mutuel tickets.

(3) MUTUEL PLAN. No method or manner of selling pari-mutuel tickets shall be used unless approved by the division. Such approval shall include but not be limited to number of races, types of pools, race cards, the number of mutuel windows, distribution of windows, the manner of denomination in which pari-mutuel tickets shall be sold, deduction rates, and the mutuel staffing plan. The latter shall be filed by the licensee with the division 15 days prior to the opening of each race meet.

(4) IDENTIFICATION. Mutuel department and totalizator licensee employes shall be clearly identified as such, so that easy identification can be made by the public.

(5) EXPIRATION. Pari-mutuel tickets purchased for snowmobile racing must be redeemed in person or by mail within 90 days after the day of the last pari-mutuel snowmobile race authorized by the division. On the first business day after the 90<sup>th</sup> day, the pari-mutuel snowmobile racing licensee shall pay the division an amount equal to the uncashed pari-mutuel tickets.

**Game 27.16 Authorized deductions.** From the total amount wagered on all entries selected to win, place or show in a race, a pari-mutuel snowmobile racing licensee shall deduct 17% or an amount approved by the division up to 20% and pay the balance, minus breakage, to winning ticket holders, except that for a multiple pool, the licensee shall deduct 23% or an amount approved by the division up to 25% and pay the balance, minus breakage, to winning ticket holders. Nothing in this paragraph prohibits the licensee from retaining amounts wagered in multiple pools which are required to be paid to winning ticket holders if there are no winning ticket holders, for the sole purpose of paying these amounts to winning ticket holders of subsequent races. The licensee shall specify the deductions in the mutuel plan submitted to the division for approval pursuant to 27.15(3).

#### Subchapter IV Races

**Game 27.17 Conduct of races.** The snowmobile races shall be conducted as specified in the Oval Sprint Racing Rules; Sno-Cross Racing Rules; and the General Competition Rules, excluding Enforcement, Discipline and Violation, of International Snowmobile Racing, Incorporated as identified in the *1999-2000 ISR Snowmobile Racing Yearbook*. Any violation of the incorporated rules may be considered grounds for disqualification from a race, denial or suspension of an occupational or driver's license, imposition of a forfeiture or all. In addition to the rules provided by International Snowmobile Racing, Inc., the following rules shall apply:

*Note: The rules may be obtained at the division's office at 2005 West Beltline Highway, Suite 201, Madison WI 53713.*

(1) For pari-mutuel purposes, the stewards shall determine the order of finish, which may differ from the order of finish posted by the racing promoter or the organization sanctioning the race.

(2) The division shall make the final determination if pari-mutuel wagering shall be allowed to be conducted on a snowmobile race. The division may cancel pari-mutuel wagering on any or all races if it determines that it is necessary to protect the integrity of wagering.

(3) For pari-mutuel purposes, once a snowmobile reaches the starting line after the starter has officially called the racers to the starting line, it will be considered a starter. If a snowmobile is unable to make it to the starting line the snowmobile will be considered a non-starter and refunds will be provided to all wagers including the scratched starter. If during the conduct of the race a snowmobile is interfered with by a patron or unexpected source, the stewards at their own discretion, may refund all wagers from all pools on that snowmobile. There shall be no partial refunds.

(4) The licensee is responsible for identifying what snowmobiles shall be grouped together to form one betting interest to accommodate any limitations of the totalizator system, subject to approval by the division.

(5) The licensee is responsible for the installation of a photo finish image system or a lap counter/timer system or any other system approved by the division. Any identified system shall be installed as an aid to the stewards to determine the order of finish. However, in all cases, such equipment is merely an aid and the decision of the stewards shall be final.

(6) In the event an incorporated rule identified in *the 1999-2000 ISR Snowmobile Racing Yearbook* conflicts with a rule of this chapter, then the stewards shall determine which rule shall control.

**Game 27.18 Racing Officials.** (1) GENERAL. (a) The following are designated officials of a race meeting:

1. Division stewards and licensee steward.
2. Mutuel manager.
3. General manager.
4. Timer/photo finish operator.
5. Division of gaming staff.
6. Organization officials.

(b) No racing official shall accept anything of value from any driver's licensee, occupational licensee or individual associated in any manner with a driver's support team.

(c) Racing officials shall report to the stewards all observed violations of the rules.

(d) All racing officials shall be at least 18 years of age.

(e) Any grievance or complaint against a racing official, an occupational or driver's licensee or an employe of the pari-mutuel snowmobile racing licensee shall be made in writing to the stewards. The stewards shall consider the matter, take whatever action is deemed appropriate, and make a full report to the division administrator. Complaints against the stewards or employes of the division shall be made in writing to the division administrator.

(f) The pari-mutuel snowmobile racing licensee shall submit to the division the names of all racing officials not less than 10 days prior to the first day of the race meeting, with biographical data relating to the expertise and qualifications of the individuals. No person shall serve in more than one racing official position without the prior approval of the division.

(g) No racing official may participate as a member of a driver's support team in any manner.

(h) No occupational or driver's licensee shall use profane or indecent language to a racing official or otherwise disturb the peace of any race meet, nor act in a manner which causes any disturbance or disruption of the racing or the operations of the licensee, or the acts of any racing officials or employes of the licensee, or in any manner detrimental to the best interests of racing.

(2) STEWARDS. (a) The stewards shall supervise the race meeting to which they are assigned including the actions and decisions of all racing officials in carrying out their duties. In all cases of a conflict the decisions of the stewards shall control. The stewards shall be responsible for enforcing ch. 562, Stats., and the division's rules.

(b) There shall be 3 stewards for each race meeting, 2 of whom shall be appointed by the division and one who shall be nominated by the licensee for approval by the division.

(c) Should any situation occur which may not be covered by the rules of racing, it shall be determined by the stewards in conformity with custom and usage in the industry and in the best interest of racing.

(d) The stewards shall have the power at anytime to order a mechanical inspection of a snowmobile.

(e) In an emergency, when a vacancy occurs among the racing officials other than the stewards, the stewards in consultation with the licensee shall immediately fill the vacancy.

(f) In an emergency when a vacancy occurs for a steward of the licensee, the division stewards in consultation with the licensee shall appoint an individual to fill the vacancy.

(g) The stewards shall display the numbers of the first 3 snowmobiles, or 4 if necessary, in each race in order of their finish. If the stewards differ in their placing, the majority shall prevail. Nothing in these rules shall be construed to prevent the stewards from correcting an error before the display of the sign "official."

(h) The stewards shall have the authority to inspect any and all areas of the racetrack, grounds, racetrack facility or parking lot. The stewards shall have access to any books, records, or equipment, in the racetrack facility, on the grounds or in the parking lot.

(i) The stewards may order the teardown and inspection of any snowmobile entered in a pari-mutuel or qualifying race to determine if it conforms to applicable specifications.

(3) **TIMER/PHOTO FINISH OPERATOR.** The timer/photo finish operator shall maintain all timing and photo finish equipment in proper working order.

**Game 27.19 Driver's and occupational licensee requirements.** Each occupational licensee and any snowmobile driver desiring to participate in a pari-mutuel snowmobile race or qualifying for a pari-mutuel snowmobile race shall be required to do the following:

(1) **LICENSE TO PARTICIPATE.** (a) No person required to be licensed shall participate in a race meeting unless such person has been granted a license. A suspension or revocation of an occupational or driver's license, by the division or any other racing jurisdiction or snowmobile sponsoring organization, shall apply equally to, and shall make the person subject to such suspension or revocation, ineligible for any category of license.

(b) Licensure is granted only by the division subject to compliance with the rules of the division and the Wisconsin statutes. Acceptance of a license shall be construed as consent and agreement to the rules. Failure to comply with any law relating to racing may be grounds for immediate revocation of license.

(2) **SUBMISSION OF LICENSE APPLICATION.** (a) Any person desiring an occupational or driver's license shall apply on forms provided by the division. If additional information is requested for the purpose of determining an applicant's eligibility or qualifications, the division shall notify the applicant that he or she shall provide supplemental information.



(b) Applications shall be obtained from the division's license office at the racetrack at which pari-mutuel snowmobile racing is being conducted or from the division's central administrative office.

*Note: The forms may be obtained at the division's office at 2005 West Beltline Highway, Suite 201, Madison WI 53713.*

(3) COMPLETE APPLICATION. An application shall not be considered complete until the application form has been filled out and executed completely, all information requested by the division has been supplied and the appropriate license fee has been paid.

4) DURATION OF LICENSES AND EXTENT OF OCCUPATIONAL LICENSES. (a) Each driver's and occupational license shall expire at midnight of the last date for which permission to conduct pari-mutuel snowmobile racing has been approved by the division.

(b) Any license issued in conjunction with a snowmobile race meeting is valid only at a race meeting conducting pari-mutuel snowmobile racing, with the exception of a mutuels or totalizator license.

(c) Persons applying for more than one license shall pay the prescribed fee and fill out the forms for each license to be obtained.

(d) All application fees shall be non-refundable.

(5) PROBATIONARY NATURE OF LICENSES. (a) All licenses granted by the division shall be subject to suspension or revocation due to: violations of the rules of the division, another racing jurisdiction or snowmobile sponsoring organization; violation of ch. 562, Stats.; or any reason which would have supported denial of a license for good cause.

(b) An applicant who receives a license shall be admonished by division personnel at the time the license is granted that severe sanctions such as license revocation or suspension or imposition of forfeiture or both shall be imposed if the holder of a license violates the act or rules of the division.

(6) FALSIFYING ANSWERS OR OMITTING FACTS. (a) The division may deny a license application or suspend or revoke a license already granted, or the imposition of a forfeiture or both if the applicant:

1. Gives false answers to questions during the course of a steward's inquiry;
2. Gives false answers in a hearing by the division, or
3. Withholds or misstates information in the application.

(b) Applicants shall read the application carefully and take care in providing their social security numbers and dates of birth. If the applicant has a question about the application, the applicant may seek assistance from the division's licensing personnel or the division stewards. However, the applicant shall be solely responsible for the truth and correctness of all information furnished in the application.

(7) UNQUALIFIED TO PERFORM THE DUTIES. The division may refuse a license application or suspend or revoke a license previously granted if the applicant:

(a) Fails to meet the specific criteria set forth in this chapter; or

(b) Has an apparent or actual conflict of interest as set forth in this chapter.

(8) DUAL LICENSING. All requests for dual licensing must be approved by the stewards, however, the following kinds of dual licensing shall be prohibited;

(a) A person licensed as a totalizator employe shall not be licensed in any other capacity;

(b) A person licensed as a racing official shall not be licensed as anything other than a racing official;

(c) No division employe shall be licensed in any other capacity.

(9) GENERAL CONFLICT PROVISIONS. When an applicant applies for a license in more than one category, the division shall consider whether the holding of such multiple licenses creates the appearance of a conflict of interest. If such appearance is created, one or both licenses may be suspended or denied.

**Game 27.20 Driver's license.** Each snowmobile driver participating in or qualifying for a pari-mutuel snowmobile race shall be required to do the following:

(1) A driver shall not participate in a pari-mutuel snowmobile race or qualifying race of a pari-mutuel race, unless the division has received a license application and has been deemed eligible by the division to compete in pari-mutuel races. The licensee under s.562.124, Stats., shall pay the division an application fee, as determined by the division, not to exceed \$50 per application, for each driver entered into a qualifying race.

(2) An applicant for a snowmobile driver's license shall be at least 16 years of age.

(3) An applicant for a snowmobile driver's license that qualifies for a pari-mutuel race, shall furnish with the license application 2 sets of classifiable fingerprints on the law enforcement agency cards provided by the division or department of justice.

(4) Each applicant for a snowmobile driver's license shall fulfill this fingerprint requirement at either the licensing office of the racetrack or at a law enforcement agency. The licensee under s.562.124, Stats., shall reimburse the division's cost, for submitting fingerprint cards for each driver, 16 years or older, entered into a pari-mutuel race.

(5) Each pari-mutuel snowmobile driver is responsible for the behavior and conduct of their support team. Any conduct by a driver or their support team that is considered detrimental to pari-mutuel racing may be cause for disqualification, denial or suspension of a driver's license or imposition of a forfeiture or all. As stated in the driver's license application, the driver shall identify to the division all individuals associated with their support team.

(6) Each driver licensed by the division shall permit unrestricted access by the division or designated representatives to the driver's snowmobile and any areas in which the snowmobile is stored or undergoes maintenance or repairs.

(7) Any driver disqualified from a race may be disqualified by the stewards from all races within that class or series.

**Game 27.21 Occupational licenses.** (1) All individuals identified below, except division employees that are racing officials, shall be required to be licensed by the division and file an application on forms provided by the division at the license office at the snowmobile racetrack:

Mutuels	\$25.00
Totalizator	\$25.00
Administrative	\$25.00
Racing Officials	\$25.00
Program Provider	\$25.00
Photo Finish	\$25.00

(2) An applicant for an occupational license shall furnish with the license application 2 sets of classifiable fingerprints on the law enforcement agency cards provided by the division or department of justice.

(3) Each applicant shall fulfill this fingerprint requirement at either the licensing office of the racetrack or at a law enforcement agency.

(4) The occupational licensee shall reimburse the division's cost, for submitting fingerprint cards to federal and state law enforcement agencies.

**Game 27.22 Denial of license.** If the stewards recommend to the division that a driver's license application be denied, they shall issue a ruling. No person whom the stewards have recommended be denied shall receive a license until granted by the division. If the applicant does not exhaust administrative remedies by requesting a hearing within the time specified in s. Game 3.03, the stewards' ruling shall become a final decision of the division and the applicant shall be ineligible to re-apply for a license for the balance of the calendar year from the date of the stewards' ruling. The denial of a license by the division to any applicant will continue in effect until such time as the division approves a subsequent application for a license.

**Game 27.23 Persons prohibited from licensure.** No person to whom any of the following applies shall be granted a license by the division:

- (1) The person is in default on any payment required under ch. 562, Stats., or under any rule promulgated by the division or under any law of any other state related to pari-mutuel wagering or racing;
- (2) The person has been convicted of a felony within 20 years preceding the date of application in a state or federal court for which that person has not been pardoned and restored to full civil rights, or has been charged with the violation of a state or federal law which is a felony if that charge has not been dismissed or settled in any other way;
- (3) The person is or has been connected with or engaged in any business which is prohibited under the laws of this or another state or of the United States;
- (4) The person has been convicted of fraud or misrepresentation in connection with pari-mutuel racing or motor sports;
- (5) The person has been convicted of a violation of any law of this or another state or of the United States related to racing, pari-mutuel betting or any other form of gambling which is a serious violation;
- (6) The person has knowingly violated a rule or order of the division or any provision of this chapter or of ch. 27,182, 562 or 945, Stats.;
- (7) The person is the holder of a racing occupation license which is currently under suspension by another pari-mutuel racing jurisdiction, or whose license has been denied by another pari-mutuel racing jurisdiction and the person has not been licensed by that jurisdiction subsequent to denial;
- (8) The person is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s.59.53(5), Stats., and relating to paternity or child support proceedings, as provided in a memorandum of understanding entered into under 49.857, Wis. Stats.;

(9) The person is liable for delinquent taxes, as certified by the department of revenue under s.73.0301 Stats. Any person for whom a license is not issued under this paragraph for delinquent taxes is entitled to a notice under and a hearing under s. 73.0301(2)(b)1.b., Stats., and a hearing under s. 73.0301(5)(a), Stats., but is not entitled to any other notice or hearing under this section.

**Game 27.24 Prohibited activities by licensees.** Violation of the following shall be considered grounds for denial or suspension of an occupational or driver's license or imposition of a forfeiture or both:

(1) No licensed person shall allow another person use of their license badge for the purpose of transferring any of its benefits. No license is transferable and no duplicate license shall be issued except upon payment of a fee prescribed by the division.

(2) No person shall offer, promise, give, accept or solicit a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race.

(3) No person shall cause or attempt to cause, or participate in any way in any attempt to cause the pre-arrangement of a race result.

(4) No person shall fail to report knowledge of the offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race.

(5) No person shall fail to report knowledge of the causing or attempting to cause or participation in any way in any attempt to cause the pre-arrangement of a race result.

(6) No driver or member of their support team shall wager on a race in which the driver is competing.

(7) No racing official, driver or members of their support team shall engage in the illegal sale, possession, receipt or use of an intoxicant at any time during which they are required to perform duties relative to wagering or racing. No person shall perform any duty related to wagering or racing while under the influence of an intoxicant.

(8) No person shall engage in the illegal sale, possession, receipt or use of an illegal drug or substance on the racetrack grounds.

(9) No person shall have been convicted of illegal possession of firearms. No person other than security guards authorized by the division and any other applicable licensing authority who are on duty, and on-duty police personnel, shall be in possession of firearms on the grounds of the racetrack enclosure.

(10) No person shall operate a snowmobile in such a manner as to injure or endanger themselves or other individuals.

(11) No person shall threaten bodily harm or assault any official, driver, crew, etc., or use of profanity, fighting, or any conduct of a disorderly nature on the racetrack grounds.

(12) No person shall alter a snowmobile in an attempt to defraud race officials, other competitors or the public.

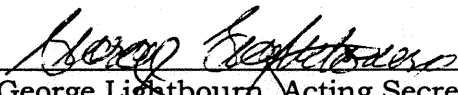
(13) No person shall provide false or misleading information to the division or division staff.

(14) No person shall fail to cooperate with the division or division staff in the course of a division investigation or steward's inquiry.

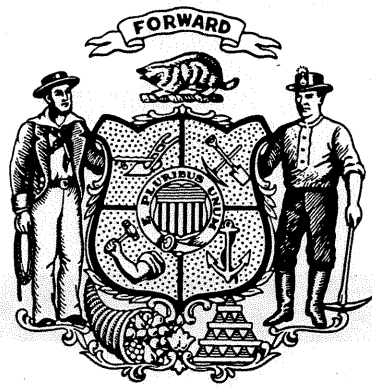
(15) No person shall by action or failure to act, create or contribute to a situation or circumstance which creates a threat to the public health, safety, or welfare, or the integrity of racing and pari-mutuel wagering or both.

(16) No person shall engage in any activity or practice which in the opinion of the division is detrimental to the best interests of racing in the state of Wisconsin.

December 23, 1999

  
George Lightbourn, Acting Secretary  
Department of Administration

*END*



*END*

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING AND RECREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since October 1, 1998, the Department has been implementing ss. 48.685 and 50.065, Stats., effective on that date, that require use of uniform procedures to check the backgrounds of persons who apply to the Department for regulatory approval, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child-placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non-client at the entity. The statutes direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction or finding, who have in their backgrounds a specified conviction or finding substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or from otherwise having contact with the clients of a service provider.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. On September 12, 1999, the Department issued another emergency order again modifying ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes was reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being crimes that permanently barred persons for all programs. The change to the ch. HFS 12 Crimes List was made at that time because the 1999-2001 Budget Bill, subsequently passed by the Legislature as 1999 Wisconsin Act 9, was expected to provide for a more modest list of crimes than the one that was appended to ch. HFS 12. The more modest crimes list published by an emergency rulemaking order on September 12, 1999 reflected the Legislature's intent that some persons who under the previous rules would lose their jobs effective October 1, 1999, were able to keep their jobs.

The 1999-2001 Biennial Budget Act, 1999 Wisconsin Act 9, made several changes to ss. 48.685 and 50.065, Stats., the Caregiver Law. These changes were effective on October 29, 1999. The Department's current rules, effective July 1, 1999, as amended on September 16, 1999, have been in large part made obsolete by those statutory changes. Consequently, the Department through this order is repealing and recreating ch. HFS 12 to bring its rules for operation of the Caregiver Law into conformity with the revised statutes. This is being done as quickly as possible by emergency order to remove public confusion resulting from administrative rules, which have been widely relied upon by the public for understanding the operation of the Caregiver Law, that are now in conflict with current statutes.

The revised rules minimize repetition of ss. 48.685 and 50.065, Stats., and are designed to supplement those statutes by providing guidance on:

- Sanctions associated with the acts committed under the Caregiver Law;



- Determining whether an offense is substantially related to client care;
- Reporting responsibilities; and
- The conduct of rehabilitation review.

## ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 48.685 (1) (ag), (2) (d), (4), (5), (6) (b) and (c) and 50.065 (1) (ag), (d) and (f), (2) (d), (4), (5) and (6) (b) and (c), Stats., as repealed and recreated by 1999 Wisconsin Act 9, and ss. 227.11 (2) and 227.24 (1), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 48.685 and 50.065, Stats., as repealed and recreated by 1999 Wisconsin Act 9, as follows:

SECTION 1. Chapter HFS 12 is repealed and recreated to read:

### CHAPTER 12

#### CAREGIVER BACKGROUND CHECKS

HFS 12.01	Authority and purpose.
HFS 12.02	Applicability.
HFS 12.03	Definitions.
HFS 12.04	Contracting for background checks.
HFS 12.05	Sanctions.
HFS 12.06	Determining whether an offense is substantially related to client care.
HFS 12.07	Reporting background changes and nonclient residency.
HFS 12.08	Armed forces background searches.
HFS 12.09	Transmittal of background check information.
HFS 12.10	Maintaining confidentiality of background information disclosure forms.
HFS 12.11	Supervision pending receipt of caregiver background checks.
HFS 12.12	Rehabilitation process for persons who have committed certain offenses.

#### SUBCHAPTER I – GENERAL PROVISIONS

**HFS 12.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), and (6) (b) and (c); and 50.065 (1) (ag) 1. a., (d) and (f), (2) (d), (4), (5) and (6) (b) and (c); and 227.11 (2), Stats., to protect from harm clients served by department-regulated programs, children placed in foster homes licensed by county departments of social or human services or private child-placing agencies or children who are being adopted and children served in day care programs contracted by local school boards under s. 120.13 (14), Stats., by requiring uniform background information screening of persons regulated and persons who are employees of or under contract to regulated entities or who are nonclient residents of regulated entities.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

**HFS 12.02 Applicability.** (1) SCOPE. (a) *Persons and agencies affected.* This chapter applies to the department; to applicants for regulatory approval from the department; to all persons,

agencies and entities that have received regulatory approval from the department; to county department and child-placing agencies that license foster homes and approve applications for adoption home studies; to foster home license applicants and licensees and applicants for an adoption home study; to school boards that establish or contract for daycare programs under s. 120.13 (14), Stats., and to applicants and persons under contract to a school board to operate a day care program under s. 120.13 (14), Stats.

(b) *Entities covered.* The entities subject to this chapter are those regulated under: chs. HFS or HSS 34, 38, 40, 45, 46, 52, 54, 55, 56, 57, 59, 61, 63, 82, 83, 88, 89, 110, 111, 112, 124, 127, 131, 132, 133 and 134, Wis. Adm. Code, and any other direct client care or treatment program that may be licensed or certified or registered by the department.

**HFS 12.03 Definitions.** In this chapter: (1) "Adoption home study" means an evaluation of a prospective adoptive family under ch. HFS 51 or 54.

(2) "Agency" means the department, a county department or a school board or a child welfare agency licensed under s. 48.60, Stats., as a child-placing agency.

(3) "Background information disclosure form" means the department's form, HFS 64, on which a person provides certain information concerning the person's background.

(4) "Bar" means, as a noun, that a person is not permitted to receive regulatory approval or be employed as a caregiver by or under contract with an entity or to reside as a nonclient at an entity.

(5) "Caregiver" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ag), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (ag), Stats.

(6) "Client" means a person who receives direct care or treatment services from an entity. For the purposes of this chapter, "client" includes an adopted child for whom an adoption assistance payment under s. 48.975, Stats., is being made.

(7) "Contractor" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ar), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (bm), Stats.

(8) "County department" means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.21 (2m) or 46.23, Stats.

(9) "Department" means the Wisconsin department of health and family services.

(10) "Direct contact" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ar), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (br), Stats.

(11) "Entity" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (b), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (c), Stats.

(12) "Foster home" means any facility operated by a person required to be licensed under s. 48.62 (1) (a), Stats., in which care and maintenance are provided for no more than 4 foster children, unless all of the children are siblings, or if necessary to keep siblings together, for no more than 6 children, and also includes a treatment foster home that also provides structured professional treatment by trained individuals, and a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 49.975, Stats.

(13) "Hospital" means a facility approved as a hospital under s. 50.35, Stats.

(14) "Nonclient resident" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (bm), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (cn), Stats.

(15) "Personal care worker agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133 and certified as a personal care worker agency under s. HFS 105.17 (1).

(16) "Regular" means, in terms of direct contact with clients, contact that is scheduled, planned, expected, or otherwise periodic.

(17) "Regulatory approval" means: (a) For purposes of s. 48.685, Stats., any of the following:

1. Issuance by the department of a license or certification or the continuation or renewal of a license or certification, or approval of a prospective adoptive parent application for a home study.

2. Issuance or renewal by a county department or child-placing agency of a foster home or treatment foster home license under s. 48.62 or 48.75, Stats., including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes approval of pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

3. Approval by a school board under s. 120.13 (14), Stats., of day care services established by or contracted with a day care provider.

(b) For purposes of s. 50.065, Stats., issuance by the department of an entity license, certification, certificate of approval or registration, or approval by the department of the continuation of an entity license, certification, certificate of approval or registration.

(18) "Rehabilitation review" refers to an agency or tribal process where a person who is eligible under s. 48.685 (5) (a) or 50.065 (5), Stats., may seek the removal of a bar from regulatory approval, from employment as a caregiver at or contracting with an entity, or from residency at an entity.

(19) "School board" means the school board or board of school directors in charge of the schools of a school district.

(20) "Serious crime" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (c), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (e), Stats.

(21) "Supportive home care service agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133.

(22) (a) "Treatment foster home" means a family-oriented facility operated by a person or persons required to be licensed under s. 48.62 (1) (b), Stats., in which treatment, care and maintenance are provided for no more than 4 foster children.

(b) "Treatment foster home" includes a placement for adoption under s. 48.833 (1), Stats., of a child for whom adoption assistance will be provided under s. 48.975, Stats., after adoption is finalized.

(c) "Treatment foster home" does not include a shift-staffed facility, except as permitted under s. HSS 56.01 (4) (b).

(23) "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe.

(24) "Tribe" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (e), Stats.

(b) For purposes of s. 50.065 (1) (g), the meaning specified in s. 50.065 (1) (g), Stats.

(25) "Under the entity's control" means, under ss. 48.685 (1) and 50.065 (1), Stats., an entity does both of the following:

(a) Determines whether a person employed by or under contract with the entity who has direct, regular contact with clients served by the entity may provide care, treatment, or other similar support service functions to clients.

(b) Directs or oversees one or more of the following:

1. The policies or procedures the person must follow in performing his or her duties.
2. The conditions under which the person performs his or her duties.
3. The tasks the person performs.
4. The person's work schedule.
5. The supervision or evaluation of the person's work or job performance, including imposing discipline or awarding performance awards.
6. The compensation the person receives for performing his or her duties.

## SUBCHAPTER II - BACKGROUND CHECKS

**HFS 12.04 Contracting for background checks.** (1) An entity may enter into and shall retain on file an agreement or contract with any entity identified under s. 48.685 (1) (b) or 50.065 (1) (c), Stats., or with any college, or university, including any vocational or technical college or school, or temporary employment agency or other person, to have the entity, school, temporary employment agency, or other person retain required background information related to caregivers, contractors, or students, including temporary employees or students who, as part of their curriculum, must participate in clinical or practicum experiences at an entity.

(2) An entity that enters into an agreement or contract under sub. (1) shall obtain, at a minimum from the other entity, university, college or technical school, temporary employment agency, or other person contracted with, and shall retain so that it may be promptly retrieved for inspection by the agency, a letter indicating the name or names, and social security numbers if available, of the caregivers, temporary employees, contractors, or students, listing any convictions learned of during the course of the required background checks, along with any substantiated findings of misconduct, licensure denial or restriction or any other credential limitation found by either the department or the department of regulation and licensing.

**Note:** To obtain a master copy of the HFS – 64 Background Information Disclosure Form, in order to reproduce it, either download the form from the Department's internet web site at [www.dhfs.state.wi.us/caregiver/forms/index.htm](http://www.dhfs.state.wi.us/caregiver/forms/index.htm), or you may request a copy of the form from the agency that regulates your entity.

**Note:** The only persons who may access information maintained by a county department regarding a substantiated report of child abuse or neglect against a person are those identified in s. 49.981 (7), Stats.

**HFS 12.05 Sanctions.** (1) SANCTIONABLE ENTITY ACTIONS. An entity that commits any of the following acts may be subject to any of the sanctions specified in sub. (2):

(a) Hires, employs, or contracts with a caregiver, or permits to reside as a nonclient resident at the entity a person who has direct, regular contact with clients and who the entity knew or should have known is barred under s. 48.685 (4m) (b) or 50.065 (4m) (b), Stats.

(b) Violates any provision of initial background information gathering or periodic background information gathering required by s. 48.685 or 50.065, Stats.

(2) ENTITY SANCTIONS. All of the following sanctions may be imposed on any entity that commits any of the acts described in sub. (1):

(a) A forfeiture not to exceed \$1,000.

(b) A requirement that the entity submit to the agency a written corrective action plan specifying corrections that will be made to the identified personnel screening practices needing correction and that the entity implement the plan.

(c) At entity expense, attendance at agency-designated personnel screening training or other appropriate training.

(d) Specific conditions or limitations placed on the license, certification or registration or on a school board-issued contract, including denial, revocation, nonrenewal or suspension of regulatory approval issued by the department, or denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

(e) For a person licensed to operate a child welfare agency, shelter care facility, group foster home or day care facility, any sanction or penalty described in s. 48.715, Stats.

(f) A requirement that the entity use, at entity expense, a temporary employment agency for screening and hiring personnel.

(3) **SANCTIONABLE INDIVIDUAL ACTIONS.** Any person who is required to complete a background information disclosure form and who commits any of the following actions may be subject to any of the sanctions specified in sub. (4):

(a) Fails to complete and submit the background information disclosure form to the appropriate agency or entity.

(b) Knowingly gives false information on or knowingly omits information from the background information disclosure form submitted to an agency or entity.

(c) After submitting a background information disclosure form to an agency or entity, subsequently fails to report any information about a pending charge or conviction for a crime or other act or offense requested on the background information disclosure form.

(4) **INDIVIDUAL SANCTIONS.** All of the following sanctions may be imposed by an agency on any person who commits any of the acts described in sub. (3):

(a) A forfeiture not to exceed \$1,000.

(b) Denial or revocation of regulatory approval or the termination of a contract.

(c) Denial or termination of employment as a caregiver, of a contract with an entity or of eligibility to reside at the entity.

(d) Special conditions or limitations placed upon the person, including restriction to an off-premises location during business hours or otherwise restricting the person's contact with clients.

**HFS 12.06 Determining whether an offense is substantially related to client care.** To determine whether a crime, delinquency adjudication under s. 48.685 (5m) or 50.065 (5m), Stats., or conduct relating to a governmental finding of abuse or neglect of another or of misappropriation of another's property is substantially related to the care of a client, the agency or entity may consider all of the following:

(1) In relation to the job:

(a) The nature and scope of the job's client contact.

(b) The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions that affect the care of clients.

(c) The opportunity the job presents for committing similar offenses.

(d) The extent to which acceptable job performance requires the trust and confidence of clients or their parent or guardian.

(e) The amount and type of supervision received in the job.

(2) In relation to the offense:

(a) Whether intent is an element of the offense.

(b) Whether the elements or circumstances of the offense are substantially related to the job duties.

(c) The pattern of offenses.

(d) The extent to which the offense relates to vulnerable clients.

(e) Whether the crime involves violence or a threat of harm.

(f) Whether the crime is of a sexual nature.

(3) In relation to the person:

(a) The number and type of offenses the person committed or for which the person has been convicted.

(b) The length of time between convictions or offenses and the employment decision.

(c) The individual's employment history, including references, if available.

(d) The individual's participation in or completion of pertinent programs of a rehabilitative nature.

(e) The individual's probation or parole status.

(f) The individual's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians.

(g) The age of the individual on the date of conviction or dates of conviction.

**Note:** A person refused employment or who has had his or her employment terminated and believes he or she may have been discriminated against, may file a complaint under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development, P.O. Box 8928, Madison, WI 53708-8928 or telephone 608-266-6860.

**HFS 12.07 Reporting background changes and nonclient residency.** (1) An entity shall include in its personnel or operating policies a provision that requires caregivers to notify the entity as soon as possible, but no later than the person's next working day, when the person has been convicted of any crime or has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect of, or threat of abuse or neglect to a child.

(2) When a signatory or other legal party to the entity application for regulatory approval or under which a contract under s. 120.13 (14), Stats., is signed or who is a nonclient resident at the entity has been convicted of a crime or has been or is being investigated by any governmental agency for any other act, offense, or omission, an entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the conviction or investigation to the agency that gave regulatory approval, or the school board with which the day care entity contracts under s. 120.13 (14), Stats.

(3) When a person begins residing at or is expected to reside at an entity, or the signatory for licensure changes, the entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the residency, expected residency, or signatory change to the agency that gave regulatory approval or to the school board that the day care entity contracts with under s. 120.13 (14), Stats., and submit a completed background information disclosure form for the new nonclient resident or new signatory, to the regulatory agency.

**HFS 12.08 Armed forces background searches.** If a person who is the subject of a background search under s. 48.685 or 50.065, Stats., served in a branch of the U.S. armed forces, including any reserve component, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge.

**HFS 12.09 Transmittal of background check information.** (1) When an entity sends a required background information disclosure form to the department under s. 48.685 (3) (a), Stats., the entity shall include in the transmittal all the following:

(a) Any reason for denial or revocation of a license or denial of an adoption application.

(b) The date of the license denial or revocation or adoption application denial.

(2) A child-placing agency or county department shall provide the department with written information about each person to whom the child-placing agency or county department denies a license or adoption home study approval for a reason specified in s. 48.685 (4m) (a), Stats., including all the following:

(a) The reason for denial or revocation of a license or denial of adoption application.

(b) The date of the license denial or revocation or adoption application denial.

**Note:** Send the information required in subs. (1) and (2) to the Bureau of Regulation and Licensing, Division of Children and Family Services, P. O. Box 8916, 1 West Wilson Street, Madison, WI 53708-8916.

(3) In addition to the persons specified in s. 48.685 (6) (b) 2., Stats., an entity shall send a completed background information disclosure form to the county department for a person who is licensed or an adoptive parent applicant studied by a county department.

(4) In addition to the persons specified in s. 48.685 (6) (b) 3., Stats., an entity shall send a completed background information disclosure form to the child-placing agency for a person who is in a home studied for adoptive parent applicant approval.



**HFS 12.10 Maintaining confidentiality of background information disclosure forms.**

Agencies and entities shall retain all required completed department background information forms in a manner that ensures prompt retrieval of the forms for inspection and shall comply with applicable federal and state confidentiality laws.

**HFS 12.11 Supervision pending receipt of caregiver background checks.** Entity

supervision required under ss. 48.685 (4m) (c) and 50.065 (4m) (c), Stats., shall include at a minimum periodic direct observation of the person.

**SUBCHAPTER III – REHABILITATION REVIEW**

**HFS 12.12 Rehabilitation process for persons who have committed certain offenses.**

(1) **GENERAL PROVISIONS.** (a) An agency shall conduct rehabilitation reviews as described in this section for the entities the agency regulates, and for persons employed by or contracted with and who reside as nonclients at those entities, who are eligible to receive rehabilitation review under this section.

(b) 1. A tribal governing body may conduct rehabilitation reviews under ss. 48.685 (5) and 50.065 (5), Stats.

2. Tribes desiring to conduct rehabilitation reviews shall send a rehabilitation review plan required under ss. 48.685 (5) (d) and 50.065 (5) (d), Stats., to the department.

**Note:** Send rehabilitation review plans to the Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53707–7850.

(2) **ELIGIBILITY TO REQUEST REHABILITATION REVIEW.** (a) Any person who is ineligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., to receive regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity, may request a rehabilitation review if the person meets both of the following conditions:

1. The person has not requested a rehabilitation review for a similar type of regulatory approval, job function or nonclient resident status within the preceding year. In this subdivision, “similar” means regulatory approval, or a job function or activity that could be categorized in a general way, such as: a review involving the question of direct client contact; or that would involve a similar job function or activity that allows unsupervised client access; or the review involved a family day care and now the applicant seeks a group day care license; or the applicant sought a group home license and now seeks a child caring institution license.

2. If the person is a foster home license applicant under s. 48.62, Stats., or an applicant for an adoption home study, the person has not been convicted of a serious crime under s. 48.685 (5) (bm) 1., 2. or 3., Stats., another crime listed in section III. of the appendix that results in a permanent bar, or a similar serious crime in another jurisdiction or, if the person was convicted of a crime under s. 48.685 (5) (bm) 4., Stats., the crime was committed more than 5 years before the background check was requested.

(b) If a person is eligible to request a rehabilitation review, the agency or tribe from which the person is seeking regulatory approval, or the entity with whom the person is seeking employment as a caregiver or a contract, or where the person wishes to reside shall give the person information on rehabilitation review eligibility criteria and on how to obtain the rehabilitation review request form.

**Note:** To obtain a master copy of the Department's Rehabilitation Review Request Form (EXS-263) in order to reproduce it, either download the form from the Department's internet site at [www.dhfs.state.wi.us/caregiver/forms/index.htm](http://www.dhfs.state.wi.us/caregiver/forms/index.htm), or request a copy of the form from, as appropriate, the agency that regulates the entity or from the entity.

(3) INITIATING A REHABILITATION REVIEW REQUEST. To request a rehabilitation review, an eligible person shall do all of the following:

(a) Obtain a rehabilitation review request form developed by the department or applicable tribe and submit the completed form to the agency that regulates the entity, or to the applicable tribe, or for day care programs established under s. 120.13 (14), Stats., to the school board.

(b) Submit any supporting documents and information required by the applicable rehabilitation review request form to the same agency, tribe, or school board.

(4) PROCESSING REHABILITATION REVIEW REQUESTS. (a) *Rehabilitation review panel.* When an eligible person has filed a complete rehabilitation review request form along with all required additional and supporting information, the applicable agency, tribe, or school board shall appoint a review panel of at least 2 persons to review the information submitted. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

(b) *Timeframe.* If the application form and any requested supporting materials are not complete within 90 days of the date the application is submitted, and the person requesting the review does not have good cause for the failure to submit a complete application form or supporting materials, the rehabilitation approval shall be denied.

(c) *Requestor appearance.* The person requesting the review shall have an opportunity to appear before the review panel to answer any questions the panel members may have.

(d) *Rehabilitation decision formulation and factors.* After reviewing the information obtained, the review panel shall decide whether the person has demonstrated, by clear and convincing evidence, that the person is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The panel shall consider at least the following factors, as applicable:

1. Personal reference checks and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors and other professionals.

2. Evidence of successful adjustment to, compliance with or proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement agencies leading to probable cause to arrest or evidence of noncompliance leading to investigations by other regulatory enforcement agencies.

4. Any pending or existing criminal or civil arrest warrants, civil judgments or other legal enforcement actions or injunctions against the person.

5. Any aggravating or mitigating circumstances surrounding the crime, act or offense.

6. Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts or attempts at restitution, and demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

7. The amount of time between the crime, act or offense and the request for rehabilitation review, and the age of the person at the time of the offense.

8. Whether the person is on the sexual offender registry under s. 301.45, Stats., or under a similar authority.

9. A victim's impact statement, if appropriate.

10. Employment history, including evidence of acceptable performance or competency in a position and dedication to profession.

11. The nature and scope of the person's contact with clients in the position requested.

12. The degree to which the person would be directly supervised or working independently in the position requested.

13. The opportunity presented for someone in the position to commit similar offenses.

14. The number, type and pattern of offenses committed by the person.

15. Successful participation in or completion of recommended rehabilitation, treatment or programs.

16. Unmet treatment needs.

17. The applicant's veracity.

(5) REHABILITATION DECISIONS. (a) *Review panel decision.* The review panel shall decide whether to approve, defer, or deny rehabilitation approval, and shall issue a written decision to that effect, as follows:

1. If the review panel finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, whether the person is eligible for regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The decision shall describe the scope of the rehabilitation approval and state any conditions or limitations placed on the approval, such as whether the approval is only for employment doing certain job functions or the eligibility for regulatory approval is only to operate certain entity types.

2. If the review panel decides to defer a rehabilitation decision, the panel decision shall state the reasons for the deferral. Unless otherwise agreed to by the requestor, the panel may defer a final decision for a period of not more than 6 months from the initial decision date.

3. If the review panel decides to deny approval of the rehabilitation request, the decision shall explain the reasons for the denial and inform the requester he or she may appeal the decision as described in s. 48.685 (5c), Stats., or 50.065 (5c), Stats., as applicable, by filing a written request for review of the decision within 10 days of receipt.

**Note:** Pursuant to s. 48.685 (5c), Stats., or 50.065 (5c), Stats., submit an appeal to the following, as appropriate: 1. To appeal a Department denial of a rehabilitation request, send the appeal request to the Department Office of Legal Counsel, P.O. Box 7850, Madison, WI 53707-7850. 2. To appeal a school board denial of a rehabilitation request, send the appeal request to the Superintendent of the Department of Public Instruction, 125 South Webster St., Madison, WI 53703; or call 608-266-3390. 3. To appeal a county denial of a rehabilitation request, send the appeal request to the appropriate county. A request for a ch. 227, Stats., hearing to appeal any of the preceding Department, Department of Public Instruction or county denials of rehabilitation requests should be sent to the Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707-7875. The request may be delivered in person to that office at 5005 University Avenue, Suite 201, Madison, Wisconsin.

**Note:** Any person who is listed in the Department's caregiver misconduct registry under ch. HFS 13 as having a substantiated finding of abuse or neglect of a client or misappropriation of a client's property as the result of an action the person took while working as a nurse aide in a federally certified nursing home or intermediate care facility for persons with mental retardation (ICF/MR) is permanently prohibited from being employed in a federally-certified nursing home or a federally-certified ICF/MR. If a person obtains a rehabilitation approval, the person is eligible to be considered for regulatory approval, for employment as a caregiver, or for non-client residency at or contracting with other entities covered by ss. 50.065 and 48.685, Stats. See 42 CFR 483.13 and 483.420 for federal regulations relating to nurse aides.

(b) *Burden of proof.* A person who appeals under par. (a) 3. shall bear the burden of proving, by a preponderance of the evidence, that the agency or tribe abused its discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

(c) *Review panel decision distribution.* The review panel shall send its decision to the requestor and a copy, if appropriate, to the entity, and, within 10 days, shall also send a completed copy of the department's required reporting form regarding any rehabilitation decision to the department. If the entity is a tribe, the review panel shall also send a copy of the decision to the same address accompanied by a copy of the requestor's application materials.

**Note:** Rehabilitation decisions should be addressed to the Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 W. Wilson St., Room 651, Madison, WI 53707-7850.

(d) *Maintaining rehabilitation decision documentation.* The review panel shall maintain a file containing a copy of the original written decision and any decisions from filed appeals that may result. The agency or tribe shall maintain in the file the rehabilitation review request and all materials or information obtained or notes made as part of the rehabilitation review decision.

(6) REHABILITATION APPROVAL COMPLIANCE AND WITHDRAWALS. (a) *Approval conditions.* A person who receives rehabilitation approval shall comply with all conditions and limitations imposed with that approval.

(b) *Rehabilitation approval violation--mandatory withdrawal.* An agency or tribe that granted a person a rehabilitation approval shall withdraw the approval when the agency or tribe learns that the person has been convicted of a new crime, act, or offense and is no longer eligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., for regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity.

(c) *Rehabilitation approval violation—summary suspension.* An agency or tribe that granted a person a rehabilitation approval may immediately temporarily rescind the rehabilitation approval when the agency or tribe has knowledge that the person has done either of the following:

1. The person has failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.

2. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise could or would have affected the review panel's decision to grant the rehabilitation approval.

(d) *Informing agencies or tribes.* An agency, entity or tribe other than the agency or tribe that granted a rehabilitation approval that becomes aware any person has violated his or her rehabilitation approval under par. (b) or (c) shall inform the agency or tribe that granted the approval, of the violation.

(e) *Review of summary suspensions.* 1. Within 10 working days of temporarily rescinding a rehabilitation approval under sub. (c), the approving agency or tribe shall determine whether the new information related to an approval violation under par. (c) is valid and represents a risk of harm to the client. If the new information is valid and does represent a risk of harm to the client, the approving agency or tribe shall withdraw the rehabilitation approval, thereby re-imposing, as applicable, the person's bar from regulatory approval, from employment as a caregiver or from contracting with or residing at an entity.

2. An agency, entity, or tribe, as applicable, that determines the new information related to an approval violation under par. (c) represents a risk of harm to a client shall also immediately take appropriate measures to protect clients until any appeal filed under par. (g) is exhausted. Appropriate measures may include a repeal of regulatory approval, termination of employment as a caregiver or of approval to reside at an entity, contract termination, reassigning the person away from duties involving direct regular contact with clients or placing the person on temporary leave.

(f) *Withdrawal decisions.* When an agency or tribe withdraws a rehabilitation approval, it shall issue a written decision to that effect. The decision shall explain the reasons for the withdrawal and inform the requester whether he or she may appeal under par. (g).

(g) *Appeal rights.* Any person who has his or her rehabilitation approval withdrawn under par. (c) may file an appeal of this decision as provided in sub. (5) (a).

(h) *Withdrawal reporting.* When an agency or tribe that granted a rehabilitation approval withdraws the approval, and the withdrawal results in a bar to regulatory approval, to eligibility to work as a caregiver, or to contracting with or residing at an entity, the approving agency or tribe shall immediately report the withdrawal to the subunit of the department responsible for collecting this information.

**Note:** Send reports of withdrawn rehabilitation approval to: Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 West Wilson Street, Room 651, Madison, WI 53707-7850.

(7) SCOPE OF AGENCY OR TRIBE REHABILITATION APPROVAL. (a) *Agency approval limitations.* An agency may grant rehabilitation approval only within the scope of its regulatory authority. The approval applies to all types of entities, job activities and functions the agency

regulates, unless the agency specifies otherwise in the form of limitations or conditions expressed in the written rehabilitation approval decision.

(b) *Tribe approval limitations.* A tribe may only grant rehabilitation approvals within the scope of its own employment, contracting, or licensing authority.

(c) *Rehabilitation approval transfers.* 1. When an agency, tribe, or entity learns from the department's background information disclosure form that an applicant for regulatory approval, for employment as a caregiver, or for a contract with or permission to reside at an entity has had a rehabilitation review, the agency, tribe, or entity shall request from the rehabilitation review agency or tribe a copy of the rehabilitation review decision. If the rehabilitation review decision was an approval, the agency, tribe or entity shall determine whether the approval can be applied to the regulatory approval, employment as a caregiver, or contract with or residency at an entity that the applicant currently seeks.

2. Except as specified in subd. 3., an agency, entity, or tribe may review and accept a rehabilitation granted to a person by another agency or tribe if the receiving agency or tribe determines both of the following:

a. The crime, act, or offense that required the person to request rehabilitation review is not substantially related to the person's job duties.

b. Any limitations or conditions imposed with the rehabilitation approval continue to be able to be met.

3. No rehabilitation approval granted by a tribe may be transferred outside of the tribe's employment or contracting authority.

4. Before transferring a rehabilitation approval under subd. 1., an agency, tribe, or entity shall verify with the department that the applicant has in fact had a rehabilitation review, and if so, the date and status of that review and whether any reason other than the one the applicant reported on the background information disclosure form exists that requires the applicant to request a rehabilitation review.

5. If the decision of the agency or tribe that conducted the rehabilitation review is to deny approval of transferring the rehabilitation approval, the agency, entity, or tribe shall determine whether the applicant for regulatory approval, for employment as a caregiver, or for contracting with or residency at an entity is eligible to seek another rehabilitation review under sub. (2), and if so, shall inform the person of his or her eligibility.

**Note:** Examples of circumstances in which approvals may or may not be transferable include the following:

1. An approval to be a foster parent by one county or child-placing agency is not, unless approved by the other county or child-placing agency, transferable to the other county or child-placing agency.

2. An approval by the department for a person to work as a shipping clerk in a hospital or nursing home would be transferable to another entity or job function or activity regulated under ch. 50, Stats., as long as any limitations or conditions, if any, imposed with the rehabilitation approval are able to be met.

3. A rehabilitation approval for employment at a children's day care or a child caring institution is not transferable to a hospital or nursing home or vice versa.

4. A rehabilitation approval is not transferable from a group day care center to a family day care center if the department's rehabilitation approval imposed limits or conditions.

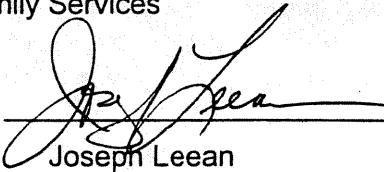
5. A rehabilitation approval is transferable from one department-regulated child care residential setting to another as long as any limitations or conditions can be met.

The rules contained in this order shall take effect as emergency rules on February 13, 2000.

Wisconsin Department of Health and  
Family Services

Dated: February 7, 2000

By: \_\_\_\_\_



Joseph Leean  
Secretary

SEAL:

## APPENDIX A

### OFFENSES AFFECTING CAREGIVER ELIGIBILITY

FEBRUARY, 2000

#### INTRODUCTION

This document lists Wisconsin crimes and other offenses that the Wisconsin State Legislature, under the Caregiver Law, ss. 48.685 and 50.065, Stats., has determined either require rehabilitation review approval before a person may receive regulatory approval, may work as a caregiver, may reside as a nonclient resident at or contract with an entity, or that act to permanently bar a person from receiving regulatory approval to be a foster parent.

**NOTE: This table reflects changes in the caregiver law made by 1999 Wisconsin Act 9.**

If a person has been convicted of a crime in another state or jurisdiction, the entity or regulatory agency must locate on the table below the Wisconsin crime that is identical or most similar to the crime for which the person was convicted and apply the consequence identified. This instruction also applies if the person was convicted in Wisconsin, but the statute number or crime title has been changed or amended. For example, convictions under Chapter 961, the Uniform Controlled Substances Act, were previously convictions under Chapter 161.

Notwithstanding s. 111.335, Stats., ss. 48.685(5m) and 50.065(5m), Stats., permit a regulatory agency to deny regulatory approval or an entity to refuse to employ, contract with or permit to reside at the entity a person whom the regulatory agency or entity determines has been convicted of a crime that is "substantially related" to the care of a client. The agency or entity may review a conviction to make that determination when: (a) The person has been convicted in Wisconsin or another state or jurisdiction of any crime that is not listed in this appendix; or (b) The person has been convicted of a crime that is listed in part III. of this appendix for foster care purposes only.

Under the Caregiver Law, current limitations on a person's professional credentials may limit the person's eligibility for employment or licensure in a position for which the person must be credentialed by the department of regulation and licensing.

If a Background Information Disclosure form, a caregiver background check, or any other information shows that a person was convicted of any of the offenses immediately below within 5 years before the information was obtained, the department, county department, child welfare agency, school board, or entity, as applicable, shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that conviction.

940.19 (1)	Misdemeanor battery
940.195	Battery to an unborn child
940.20	Battery, special circumstances
941.30	Reckless endangerment
942.08	Invasion of Privacy
947.01	Disorderly conduct
947.013	Harassment



**I. Entities and Programs Serving Only Persons 18 Years of Age or Older****CONVICTIONS**

Regulatory approval, employment as a caregiver, and nonclient residency at or contracting with an entity are prohibited until rehabilitation approval is received, for all programs and entities that serve only clients 18 years of age or older.

Wis. Stats.	Crime
940.01	First degree intentional homicide
940.02	1st degree reckless homicide
940.03	Felony murder
940.05	2nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients and residents (misdemeanor or felony)
948.02 (1)	1st degree sexual assault of a child
948.025	Repeated acts of sexual assault of a child
948.03 (2) (a)	Physical abuse of a child – intentional – cause great bodily harm
<b>OTHER OFFENSES</b>	
---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property
---	Finding by a governmental agency of child abuse or neglect

**II. Entities and Programs Serving Any Clients Under the Age of 18  
CONVICTIONS**

**Regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are prohibited until rehabilitation approval is received, for all entities and programs that serve any clients who are under the age of 18. (For additional federal foster care bars, see part III. below.)**

Wis. Stats.	Crime
940.01	First degree intentional homicide
940.02	1st degree reckless homicide
940.03	Felony murder
940.05	2nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients & residents (misdemeanor or felony)
948.02 (1) or (2)	1st or 2nd degree sexual assault of a child
948.025	Repeated acts of sexual assault of same child
948.03 (2) (a), (b), or (c)	Physical abuse of a child – intentional causation of bodily harm
948.05	Sexual exploitation of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.08	Soliciting a child for prostitution
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)
948.12	Possession of child pornography
948.13	Child sex offender working with children
948.21 (1)	Neglect of a child – resulting in death (felony)
948.30	Abduction of another's child; constructive custody
<b>OTHER OFFENSES</b>	
---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property
---	Finding by a governmental agency of child abuse or neglect

### III. Foster Care CONVICTIONS

By federal or state law, for **Foster Homes and Treatment Foster Homes**, regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are barred as follows:

- Permanent bar = Conviction acts as permanent bar.  
 Spouse = Permanent bar applies when spouse was the victim in the offense.  
 5 years = Bar is for 5 years from time crime committed.  
 Spouse / 5 years / R = If spouse was the victim, bar is permanent. In other cases, bar is for 5 years from time crime committed; then must show rehabilitation.  
 Spouse / 5 years = If spouse was the victim, bar is permanent. In other cases, bar is for 5 years from time crime committed.  
 Bar w/ rehab = Regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are barred until rehabilitation approval is received.

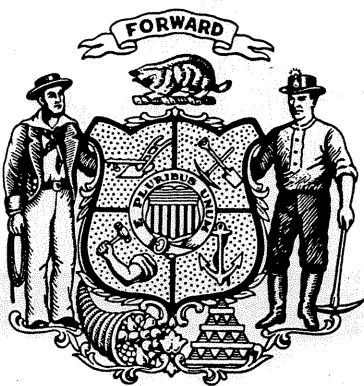
Wis. Stats.	Crime	Federal law / Foster Care Bar
940.01	First degree intentional homicide	Permanent bar
940.02	1st degree reckless homicide	Permanent bar
940.03	Felony murder	Permanent bar
940.05	2nd degree intentional homicide	Permanent bar
940.06	2nd degree reckless homicide	Permanent bar
940.12	Assisting suicide	Bar w/ rehab
940.19 (2) through (6)	Battery (felony)	Spouse / 5 years / R
940.20	Battery – special circumstances	5 years
940.20 (1) or (1m)	Battery – special circumstances	Spouse
940.203	Battery or threat to judge	5 years
940.205	Battery or threat to a Department of Revenue employee	5 years
940.207	Battery or threat to a Department of Commerce or DWD employe	5 years
940.21	Mayhem	Permanent bar
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report	Bar w/ rehab
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault	Permanent bar
940.23	Reckless injury	Permanent bar
940.285	Abuse of vulnerable adults (misdemeanor or felony)	Bar w/ rehab
940.29	Abuse of residents of a penal facility	Bar w/ rehab
940.295	Abuse or neglect of patients or residents (misdemeanor or felony)	Bar w/ rehab
940.305	Taking hostages	Permanent bar
940.31	Kidnapping	Permanent bar
941.20 (2) or (3)	Endangers safety by use of a dangerous weapon	Permanent bar
941.21	Disarming a peace officer	Permanent bar
943.10(2)	Burglary while armed	Permanent bar
943.23 (1g), (1m) or (1r)	Operating motor vehicle without owner's consent (OMVWOC)	Permanent bar
943.32 (2)	Robbery with dangerous weapon	Permanent bar
948.02 (1), (2), (3), or (3m)	1st or 2nd degree sexual assault of a child; failure to act; penalty enhancement	Permanent bar

948.025	Repeated acts of sexual assault of a child	Permanent bar
948.03 (2), (3), or (4)	Physical abuse of a child	Permanent bar
948.04	Causing mental harm to a child	Permanent bar
948.05	Sexual exploitation of a child	Permanent bar
948.055	Causing a child to view or listen to sexual activity	Permanent bar
948.06	Incest with a child	Permanent bar
948.07	Child enticement	Permanent bar
948.08	Soliciting a child for prostitution	Permanent bar
948.095	Sexual assault of student by school staff	Permanent bar
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)	Permanent bar
948.12	Possession of child pornography	Permanent bar
948.13	Child sex offender working with children	Permanent bar
948.20	Abandonment of a child	Permanent bar
948.21 (1)	Neglect of a child – resulting in death (felony)	Permanent bar
948.22	Failure to support (felony)	Permanent bar
948.23	Concealing death of a child	Permanent bar
948.24	Unauthorized placement for adoption	Permanent bar
948.30	Abduction of another's child; constructive custody	Permanent bar
948.31	Interference with custody by parent or others	Permanent bar
948.35	Solicitation of a child to commit a felony	Permanent bar
948.36	Use of a child to commit a class A felony	Permanent bar
948.40	Contributing to the delinquency of a minor (felony)	Permanent bar
948.51	Hazing (felony)	Permanent bar
948.60	Possession of a dangerous weapon by a person under 18 (felony)	Permanent bar
948.605 (3)	Gun-free school zones; discharge of firearm in a school zone (felony)	Permanent bar
948.61	Dangerous weapons other than firearms on school premises (felony)	Permanent bar
948.62	Receiving stolen property from a child (felony)	Permanent bar
---	<b>All other Chapter 948 crimes that are felonies</b>	<b>Permanent bar</b>
961.41 (1)	Manufacture, distribution or delivery (felony)	5 years
961.41 (1m)	Possession with intent to manufacture, distribute, or deliver (felony)	5 years
961.41 (3g)	Possession (felony)	5 years
961.43 (1)(a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, or forgery, deception, or subterfuge (felony)	5 years
961.43 (1)(b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (felony)	5 years
961.455	Using a child for illegal drug distribution or manufacturing purposes (felony)	5 years
961.46	Distribution to persons under 18 (felony)	5 years
961.465	Distribution to prisoners	5 years
961.49	Distribution of or possession with intent to deliver at or near certain places	5 years
961.492	Distribution of or possession with intent to deliver on public transit (felony)	5 years
---	<b>All other ch. 961 offenses that are felonies</b>	<b>5 years</b>

### OTHER OFFENSES

---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property	Bar w/ rehab
---	Finding by a governmental agency of child abuse or neglect	Bar w/ rehab

*END*



*END*