

TITLE XIII.

Regulation Of Industry.

CHAPTER 101

INDUSTRIAL COMMISSION

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101.01 Definitions of terms used. The following terms as used in sections 101.01 to 101.29 of the statutes, shall be construed as follows:

(1) The phrase "place of employment" includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in (a) private domestic service which does not involve the use of mechanical power or (b) farming. The term "farming" includes those activities specified in s. 102.04 (3), and also includes the transportation

of farm products, supplies or equipment directly to the farm by the operator of said farm or his employes for use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production.

(2) The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation or process of manufacture in which any person may be engaged, except in such private domestic service as does not involve the use of mechanical power and in farm labor as used in subsection (1).

(3) The term "employer" shall mean and include every person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or

quasi-public corporations as well as any agent, manager, representative or other person having control or custody of any employment, place of employment or of any employe.

(4) The term "employe" shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment.

(5) The term "frequenter" shall mean and include every person, other than an employe, who may go in or be in a place of employment or public building under circumstances which render him other than a trespasser.

(6) The term "welfare" shall mean and include comfort, decency and moral well-being.

(7) The term "safe" or "safety" as applied to an employment or a place of employment or a public building, shall mean such freedom from danger to the life, health, safety or welfare of employes or frequenters, or the public, or tenants, or firemen, and such reasonable means of notification, egress and escape in case of fire, and such freedom from danger to adjacent buildings or other property, as the nature of the employment, place of employment, or public building, will reasonably permit.

(8) The term "public building" as used in ss. 101.01 to 101.29 means and includes any structure, including exterior parts of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants.

(9) The term "owner" shall mean and include every person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporations as well as any manager, representative, officer, or other person having ownership, control or custody of any place of employment or public building, or of the construction, repair or maintenance of any place of employment or public building, or who prepares plans for the construction of any place of employment or public building. Said ss. 101.01 to 101.29 shall apply, so far as consistent, to all architects and builders.

101.02 Department of industry, labor and human relations. (1) POWER TO SUE AND BE SUED. The department of industry, labor and human relations may sue and be sued.

(2) DEFINITIONS. In chs. 101 to 106, and 108:

(a) "Department" means the department of industry, labor and human relations.

(b) "Commission" means the industry, labor and human relations commission.

(c) "Commissioner" means a member of the industry, labor and human relations commission.

(d) "Deputy" means any person employed by the department designated as a deputy, who possesses special, technical, scientific, managerial or personal abilities or qualities in matters within the jurisdiction of the department, and who may be engaged in the performance of duties under the direction of the commission, calling for the exercise of such abilities or qualities.

(e) "Order" means any decision, rule, regulation, direction, requirement or standard of the department, or any other determination arrived at or decision made by the department.

(f) "General order" means such order as applies generally throughout the state to all persons, employments, places of employment or public buildings, or all persons, employments or places of employment or public buildings of a class under the jurisdiction of the department. All other orders of the department shall be considered special orders.

(g) "Local order" means any ordinance, order, rule or determination of any common council, board of aldermen, board of trustees or the village board, of any village or city, or the board of health of any municipality, or an order or direction of any official of such municipality, upon any matter over which the department has jurisdiction.

101.06 Employer's duty to furnish safe employment and place. Every employer shall furnish employment which shall be safe for the employes therein and shall furnish a place of employment which shall be safe for employes therein and for frequenters thereof and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employes and frequenters. Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building as to render the same safe.

101.07 Same; employes not to meddle with safeguards. (1) No employer shall require, permit or suffer any employe to go or be in any employment or place of employment which is not safe, and no such employers shall fail to furnish, provide and use safety devices

and safeguards, or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employes and frequenters; and no employer or owner, or other person shall hereafter construct or occupy or maintain any place of employment, or public building, that is not safe, nor prepare plans which shall fail to provide for making the same safe.

(2) No employe shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, nor interfere in any way with the use thereof by any other person, nor shall any such employe interfere with the use of any method or process adopted for the protection of any employe in such employment or place of employment or frequenter of such place of employment, nor fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employes or frequenters.

101.08 Employers to furnish information; statistics; inspection by department. (1) Every employer and every owner shall furnish to the department all information required by it to carry into effect ss. 101.01 to 101.29, and shall make specific answers to all questions submitted by the department relative thereto.

(2) Any employer receiving from the department any blanks calling for information required by it to carry into effect ss. 101.01 to 101.29, with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case he is unable to answer any question, he shall give a good and sufficient reason for such failure, and said answer shall be verified under oath by the employer, or by the president, secretary or other managing officer of the corporation, if the employer is a corporation, and returned to the department at its office within the period fixed by the department.

(3) Any commissioner or deputy of the department may enter any place of employment or public building, for the purpose of collecting facts and statistics, examining the provisions made for the health, safety and welfare of the employes, frequenters, the public or tenants therein and bringing to the attention of every employer or owner any law, or any order of the department, and any failure on the part of such employer or owner to comply therewith. No employer or owner shall refuse to admit any commissioner or deputy of the department to his place of employment or public building.

101.085 Fallout shelter potential. Every architect and every engineer submitting plans for the construction of any structure using public funds shall, prior to the letting of final bids on such structures, submit a written report, indicating whether such structure meets or does not meet federal fallout shelter engineering standards, to the contracting agency.

101.09 Supervisory jurisdiction and powers of department over employments and places of employment. The department is vested with the power and jurisdiction to have such supervision of every employment, place of employment and public building in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment, place of employment or public building to be safe, and requiring the protection of the life, health, safety and welfare of every employe in such employment or place of employment and every frequenter of such place of employment, and the safety of the public or tenants in any such public building; provided, however, that the provisions of this section shall not apply to rural school buildings.

101.10 Other powers, duties and jurisdiction of department. It shall also be the duty of the department, and it shall have power, jurisdiction and authority:

(1) To employ, promote and remove deputies, clerks and other assistants as needed, to fix their compensation, and to assign to them their duties; and to appoint advisors who shall, without compensation except reimbursement for actual and necessary expenses, assist the department in the execution of its duties.

(1a) The commission, or any member thereof, or any examiner appointed thereby, may hold hearings and take testimony.

(2) To administer and enforce, so far as not otherwise provided for in the statutes, the laws relating to child labor, laundries, stores, employment of females, licensed occupations, school attendance, bakeries, employment offices, intelligence offices and bureaus, manufacture of cigars, sweatshops, corn shredders, wood-sawing machines, fire escapes and means of egress from buildings, scaffolds, hoists, ladders and other matters relating to the erection, repair, alteration or painting of buildings and structures, and all other laws protecting the life, health, safety and welfare of employes in employments and places of employment and frequenters of places of employment.

(3) To investigate, ascertain, declare and prescribe what safety devices, safeguards or other means or methods of protection are best adapted to render the employes of every employment and

place of employment and frequenters of every place of employment safe, and to protect their welfare as required by law or lawful orders.

(4) To ascertain and fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employes in employments and places of employment or frequenters of places of employment.

(5) To ascertain, fix and order such reasonable standards, rules or regulations for the construction, repair and maintenance of places of employment and public buildings, as shall render them safe.

(5a) To make reasonable orders for the repair or removal of any building or other structure which for want of repair or by reason of age or dilapidated condition or for any other cause is especially liable to fire, and which is so situated as to endanger other buildings or property and for the repair or removal of any combustible or explosive material or inflammable conditions, dangerous to the safety of any building or premises or the occupants thereof or endangering or hindering firemen in case of fire.

(5b) The commission and its deputies shall have the right at all reasonable hours to enter into and upon all buildings, premises and public thoroughfares excepting only the interior of private dwellings, for the purpose of ascertaining and causing to be corrected any condition liable to cause fire, or any violation of any law or order relating to the fire hazard or to the prevention of fire.

(5c) The department is hereby empowered and directed to provide the form of a course of study in fire prevention for use in the public schools, dealing with the protection of lives and property against loss or damage as a result of preventable fires, and transmit the same by the first day of August in each year to the state superintendent of public instruction.

(5d) The department may prepare and provide suitable forms for distribution to the school systems in the state through the office of the department of public instruction, for the purpose of providing uniform reports on fire drills conducted during the year in accordance with s. 118.07 (2).

(5f) To require a suitable space in which lunches may be eaten in any place of employment if found by the commission to be reasonably necessary for the protection of the life, health, safety and welfare of employes therein.

(6) To investigate, ascertain and determine such reasonable classifications of persons, employments, places of employment and public buildings, as shall be necessary to carry out the purposes of sections 101.01 to 101.29, inclusive.

(7) To adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

(8) To do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employes, and to avoid the necessity of resorting to lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary boards of arbitration, provide necessary expenses of such boards, order reasonable compensation not exceeding five dollars per day for each member engaged in such arbitration, prescribe rules of procedure for such arbitration boards, conduct investigations and hearings, publish reports and advertisements, and may do all other things convenient and necessary to accomplish the purposes directed in ss. 101.01 to 101.29. The department shall designate a deputy to be known as chief mediator and may detail other deputies from time to time to act as his assistants, for the purpose of executing these provisions. Deputies may act on temporary boards without extra compensation.

(9) To establish and conduct free employment agencies, to license and supervise the work of private employment offices, to do all in its power to bring together employers seeking employes and working people seeking employment, to make known the opportunities for self-employment in this state, to aid in procuring employment for the blind adults of the state, to aid in inducing minors to undertake promising skilled employments, to provide industrial or agricultural training for vagrants and other persons unsuited for ordinary employments, and to encourage wage earners to insure themselves against distress from unemployment. It shall investigate the extent and causes of unemployment in the state of Wisconsin and the remedies therefor in this and other countries, and it shall devise and adopt the most efficient means within its power to avoid unemployment, to provide employment, and to prevent distress from involuntary idleness.

(9a) Any county, city, town or village may enter into an agreement with the department of industry, labor and human relations for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and it shall be law-

ful for any county, city, town or village to appropriate and expend the necessary money and to permit the use of public property for the joint establishment and maintenance of such offices as may be agreed upon, or in counties containing 250,000 inhabitants or more in any city, town or village therein to purchase a site and construct necessary buildings. Provided, that in any county, city, village or town therein, wherein there is a citizens' committee on unemployment, such committee may rent, lease, purchase or construct necessary buildings for the joint establishment and maintenance of such free employment office, subject to the approval of such plans by the department. The department may establish such free employment offices as it deems necessary to carry out the purposes of ch. 108. All expenses of such offices, or all expenses not defrayed by the county, city, town or village in which an office is located, shall be charged to the appropriation to the department provided in s. 20.445 (9) (u) and (v).

(10) To collect, collate and publish statistical and other information relating to the work under its jurisdiction and to make public reports in its judgment necessary.

(11) To rent, furnish and equip, except as provided in sub. (9a), such offices as may be needed in cities for the conduct of its affairs. All payments arising under this section shall be charged against the proper appropriation for the department.

(14) To investigate and attempt equitably to adjust controversies between employers and employes as to alleged wage claims and to enforce s. 103.39. In pursuance of this duty, it may take an assignment in trust for the assigning employe of any wage claim deemed to be valid in the opinion of the department and not exceeding \$500, such assignment to run to the department. The department may sue the employer on any wage claim so assigned and s. 103.39 (3) shall apply. The department may join in a single proceeding any number of wage claims against the same employer, but the court may order separate trials or hearings. In such cases the taxable costs recovered shall be paid into the general fund.

(15) To conduct such investigations, hold such public meetings and attend or be represented at such meetings, conferences and conventions inside or outside of the state as may, in its judgment, tend to better the execution of its functions.

(16) To ascertain, fix and order such reasonable standards, rules or regulations for the erection, construction, repair and maintenance of electric fences as shall render them safe.

(17) To co-operate with the federal veterans administration in the performance of functions prescribed in U. S. Public Law 679 and any acts amendatory thereof or supplementary thereto. The commission is authorized with the approval of the governor to take all necessary steps in the making of leases or other contracts with the federal government in the adoption and execution of plans, methods, and agreements to effectuate said Public Law 679.

Cross Reference: See 66.122 for provision authorizing special inspection warrants.

101.101 Approval and inspection of public buildings, public structures, places of employment and components thereof. (1)

The department of industry, labor and human relations shall require the submission of essential drawings, calculations and specifications for public buildings, public structures and places of employment including the following components:

(a) Heating, ventilation and air conditioning systems.

(b) Industrial exhaust systems.

(c) Elevators, escalators, ski lift and towing devices and power dumbwaiters.

(d) Stadiums, grandstands and bleachers.

(e) Amusement and thrill rides equipment.

(2) Plans of said buildings, structures and components shall be examined for compliance with the rules of the department and a statement of the examination returned to the designer and owner before construction is started. Nothing in this section shall relieve the designer of the responsibility for designing a safe building, structure or component.

(4) The department shall:

(a) Accept the examination of essential drawings, calculations and specifications in accordance with sub. (1) performed by cities of the 1st class provided the same are examined in a manner approved by the department.

(b) Accept the examination of essential drawings, calculations and specifications in accordance with sub. (1) for buildings containing less than 50,000 cubic feet of volume and alterations to buildings containing less than 100,000 cubic feet of volume performed by cities of the 2nd and 3rd classes provided the same are examined in a manner approved by the department. The department shall determine and certify the competency of all such examiners.

(c) Determine and certify the competency of insurance company inspectors of boilers, unfired pressure vessels, refrigeration plants, elevators, escalators and power dumbwaiters.

(d) Accept inspections at no cost performed by insurance company inspectors for whom evi-

dence of competency has been furnished to the department.

(e) Approve inspection service maintained or employed by owners or operators of boilers and unfired pressure vessels.

(f) Accept inspections at no cost performed by approved owner or operator inspection service and provide shop inspection service when deemed necessary.

(g) Accept inspection at no cost when performed by qualified and authorized inspectors in the employ of cities of the 1st, 2nd and 3rd classes for the inspection of buildings and equipment located within the corporate limits of such cities

(h) Require all local officers not authorized by the department to grant approvals as provided in pars (a) and (b) to deny permits or licenses for construction or use of public buildings, public structures and places of employment until the required drawings and calculations have been examined by the department.

101.102 Fees and records. (1) The department of industry, labor and human relations shall fix and collect fees for:

(a) The examination of plans for public buildings, public structures, places of employment and the components thereof;

(b) The required inspection of boilers, unfired pressure vessels, refrigeration plants, elevators, ski towing and lift devices, amusement and thrill rides, escalators and dumbwaiters;

(c) Determining and certifying the competency of insurance company inspectors.

(2) The department shall collect a \$15 fee for each inspection of a facility conducted to insure that the construction is in accordance with the plans approved by the department. The department shall establish an initial fee to be paid at the time that the plans are submitted for review by the department. The fee schedule shall be established on the basis of the estimated number of inspections that will be conducted to insure compliance with the state code for that class of structure as established by the department.

(3) The department shall issue and record required certificates of inspection or of registration for equipment listed in sub. (1) (b). This subsection shall not apply to vessels classed as petroleum, liquefied petroleum gas, or anhydrous ammonia tanks or containers.

(4) This section shall not apply to buildings of state or local governments.

101.103 Mine excavations; application; permit; inspections. (1) For the purpose of this section:

(a) "Shaft" means an opening made for mining minerals, for hoisting and lowering men or material, or for ventilating underground workings.

(b) "Mineral" means a product recognized by standard authorities as mineral, whether metaliferous or nonmetaliferous.

(c) "Excavation" or "workings" means any or all parts of a mine excavated or being excavated, including shafts, tunnels, drifts, cross cuts, raises, winzes, stopes and all other working places in a mine.

(2) No excavation of a shaft shall be commenced unless a permit is first issued therefor by the department. Permits for such excavation shall be issued without cost upon application filed with the department, if the department is satisfied that the shaft or the excavation and workings will be in compliance with the safety orders adopted by the department and applicable thereto. Application shall be made upon forms prescribed by the department and shall be furnished upon request.

(3) Subsection (2) does not apply to shafts which will be less than 50 feet in depth wherein persons are not employed, or which are not equipped with power driven hoists used for hoisting persons in and out of the shafts, or which are not covered with a flammable building.

(4) The department is empowered:

(a) To employ additional mining inspectors, who shall have had at least 10 years experience in underground mining or be a graduate of a recognized college with a degree of mining engineering.

(b) To cause the inspection of all underground mines, quarries, pits, zinc works or other excavations.

(5) The department shall require all mine operators to conform with all general orders as are promulgated relating to the safety of mines, explosives, quarries and the like.

(6) (a) The department shall cause the inspections of mines and similar establishments at least once every 2 months. In the making of the inspections the owner and the labor union identified as the bargaining representative of the employes of the mine or establishment shall be permitted to accompany the inspector engaged in the tour of inspection. The department shall cause a report of any inspection so made, to be submitted to representatives of the operator and of the employes.

(b) The department may apply to a court of record for the closing of any underground mine, quarry, pit, zinc works or other excavation where the same is being operated in violation of any of its rules or orders, and the owners or

operators have failed within a reasonable time to correct any unsafe methods of operation. The failure of any owner or operator to comply with the order or judgment of the court shall subject such party or parties to criminal contempt proceedings.

101.104 Mines, tunnels, quarries, pits; operation in violation of safety aids. If any shaft or workings of a mine, or any tunnel, trench, caisson, quarry, or gravel or sand pit is being operated or used in violation of the safety orders of the department applicable thereto, the owner or operator upon receiving notice of such violation from the department shall immediately cease such operation or use. The operation or use of such shaft or workings of a mine, or of such tunnel, trench, caisson, quarry or gravel or sand pit, shall not be resumed until such safety orders have been complied with.

101.105 Liquefied petroleum gas. (1) The term "liquefied petroleum gas" as used in this section, shall mean and include any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes, normal butane or isobutane and butylenes.

(2) The department shall ascertain, fix and order such reasonable standards, rules or regulations for the design, construction, location, installation, operation, repair and maintenance of equipment for storage, handling, use, and transportation by tank truck or tank trailer, of liquefied petroleum gases for fuel purposes, and for the odorization of said gases used therewith, as shall render such equipment safe. The promulgation, effect and review of standards, rules and regulations adopted under this section shall be controlled by this chapter.

(3) No person, firm or corporation, except the owner thereof and those duly authorized by the owner so to do, shall fill, refill or use in any manner a liquefied petroleum gas container or receptacle for any purpose whatsoever.

(4) Every person, firm, association or corporation actually performing the work of installing, on and after the effective date of regulations promulgated by the department pursuant to this section, equipment utilizing liquefied petroleum gas for fuel purposes, shall furnish the customer or user of said equipment, a statement, the form of which shall be prescribed by the department, showing that the design, construction, location and installation of said equipment conforms with the rules and regulations adopted by the department pursuant to this section.

(5) Any person, firm, association or corporation violating this section, or any standard, rule or regulation adopted by the department pursu-

ant to this section, or issuing a false statement under sub. (4), shall be fined not less than \$25 nor more than \$100, or imprisoned not less than 30 days nor more than 6 months.

(6) This section shall not apply to railroads engaged in interstate commerce or to equipment used by them.

101.11 Complaints and investigation as to safety of employments; hearing and order. (1) Upon petition, after January 1, 1912, by any person that any employment or place of employment or public building is not safe, the department shall proceed with or without notice, to make such investigation as may be necessary to determine the matter complained of.

(2) After such hearing as may be necessary, the department may enter such order relative thereto as may be necessary to render such employment or place of employment or public building safe.

(3) Whenever the department shall learn that any employment or place of employment or public building is not safe it may of its own motion, summarily investigate the same, with or without notice, and enter such order as may be necessary relative thereto.

101.13 Orders of department declared lawful. All orders of the department in conformity with law shall be in force, and shall be prima facie lawful; and all such orders shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise upon judicial review thereof pursuant to ch. 227 or until altered or revoked by the department.

101.14 Orders, when effective. (1) All general orders shall take effect as provided in s. 227.026. Special orders shall take effect as therein directed.

(2) The department shall, upon application of any employer or owner, grant such time as may be reasonably necessary for compliance with any order.

(3) Any person may petition the department for an extension of time, which the department shall grant if it finds such an extension of time necessary.

101.15 Petition and hearing on reasonableness of orders. (1) Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the department in the manner provided in ss. 101.01 to 101.29.

(2) Such petition for hearing shall be by verified petition filed with the department, setting

out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable, and every issue to be considered by the department on the hearing. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. All hearings of the department shall be open to the public.

(3) Upon receipt of such petition, if the issues raised in such petition have theretofore been adequately considered, the department shall determine the same by confirming without hearing its previous determination, or if such hearing is necessary to determine the issues raised, the department shall order a hearing thereon and consider and determine the matter or matters in question at such times as shall be prescribed. Notice of the time and place of such hearing shall be given to the petitioner and to such other persons as the department may find directly interested in such decision.

(4) Upon such investigation, if it shall be found that the order complained of is unjust or unreasonable the department shall substitute therefor such other order as shall be just and reasonable.

(5) Whenever at the time of the final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the order of the department, the department shall grant such time as may be reasonably necessary for such compliance.

101.16 General orders; local orders. (1)

Nothing contained in ss. 101.01 to 101.29 shall be construed to deprive the common council, the board of aldermen, the board of trustees or the village board of any village or city, or the board of health of any municipality of any power or jurisdiction over or relative to any place of employment or public building, provided that, whenever the department shall, by an order, fix a standard of safety or any hygienic condition for employments or places of employment or public buildings, such order shall, upon the filing by the department of a copy thereof with the clerk of the village or city to which it may apply, be held to amend or modify any similar conflicting local order in any particular matters governed by said order. Thereafter no local officer shall make or enforce any order contrary thereto.

(2) Any person affected by any local order in conflict with an order of the department, may in the manner provided in s. 101.15, petition the department for a hearing on the ground that such local order is unreasonable and in conflict

with the order of the department. The petition for such hearing shall conform to the requirements set forth for a petition in s. 101.15.

(3) Upon receipt of such petition the department shall order a hearing thereon, to consider and determine the issues raised by such appeal, such hearing to be held in the village, city or municipality where the local order appealed from was made. Notice of the time and place of such hearing shall be given to the petitioner and such other persons as the department may find directly interested in such decision, including the clerk of the municipality or town from which such appeal comes. If upon such investigation it shall be found that the local order appealed from is unreasonable and in conflict with the order of the department, the department may modify its order and shall substitute for the local order appealed from such order as shall be reasonable and legal in the premises, and thereafter the said local order shall, in such particulars, be void and of no effect.

101.17 Condition precedent to action to review order. (1)

No action, proceeding or suit to set aside, vacate or amend any order of the department or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have applied to the department for a hearing thereon at the time and as provided in s. 101.15, and in the petition therefor shall have raised every issue raised in such action.

(2) Every order of the department shall, in every prosecution for violation thereof, be conclusively presumed to be just, reasonable and lawful, unless prior to the institution of prosecution for such violation a proceeding for judicial review of such order shall have been instituted, as provided in ch. 227.

101.18 Per diem unit of violations. Every day during which any person, persons, corporation or any officer, agent or employe thereof, shall fail to observe and comply with any order of the department or to perform any duty enjoined by ss. 101.01 to 101.29, shall constitute a separate and distinct violation of such order, or of said sections as the case may be.

101.185 Noncompliance with orders a defense to action on contract.

Proof by any person, firm or corporation employing a contractor to construct, repair, alter or improve any building or structure, that such contractor in performing such work has failed to comply with any applicable order or regulation of the department promulgated under the provisions of section 101.10 shall constitute a defense to any action for payment by such contractor to the extent that it shall bar recovery for any part

of the work which fails to comply. Advancements paid to the contractor for work which fails to comply as well as any reasonable amount expended to effectuate compliance with any applicable order or regulation may be recovered from such contractor by way of counterclaim or in a separate action. The provisions of this section shall not apply where plans or specifications were prepared by an architect or engineer licensed to do business in this state and the contract performed in accordance therewith.

101.19 Testimonial powers of commissioners. Each of the commissioners may certify to official acts, and take testimony.

101.20 Witness fees. Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the chairman of the commission, and charged to the proper appropriation for the department. But no witness subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated.

101.21 Depositions. The department or any party may in any investigation cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts. The expense incurred by the state in the taking of such depositions shall be charged against the proper appropriations for the department.

101.22 Record of proceedings. A full and complete record shall be kept of all proceedings had before the department on any investigation and all testimony shall be taken down by the stenographer appointed by the department.

101.23 Special agents; delegation of inquisitorial powers. (1) For the purpose of making any investigation with regard to any employment or place of employment or public building, the commission may appoint, by an order in writing, any commissioner, any deputy who is a citizen of the state, or any other competent person as an agent whose duties shall be prescribed in such order.

(2) In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in this act to the commis-

sion, and the same powers as a court commissioner with regard to the taking of depositions; and all powers granted by law to a court commissioner relative to depositions are hereby granted to such agent.

(3) The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude the taking of further testimony if the commission so order nor further investigation.

101.24 Department of justice, district attorney, special prosecutor. (1) The commission may direct any deputy who is a citizen to act as special prosecutor in any action, proceeding, investigation, hearing or trial relating to the matters within its jurisdiction.

(2) Upon the request of the commission, the department of justice or district attorney of the county in which any investigation, hearing or trial had under ss. 101.01 to 101.29 is pending, shall aid therein and prosecute under the supervision of the commission, all necessary actions or proceedings for the enforcement of those sections and all other laws of this state relating to the protection of life, health, safety and welfare, and for the punishment of all violations thereof.

101.25 Technical omissions not fatal to orders. A substantial compliance with the requirements of ss. 101.01 to 101.29, shall be sufficient to give effect to the orders of the department, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

101.26 Court review. Orders of the commission under sections 101.01 to 101.25 shall be subject to review in the manner provided in chapter 227.

101.28 Penalty for violations. If any employer, employe, owner, or other person shall violate any provisions of ss. 101.01 to 101.13, or shall do any act prohibited in ss. 101.01 to 101.29, or shall fail or refuse to perform any duty lawfully enjoined, within the time prescribed by the department, for which no penalty has been specifically provided, or shall fail, neglect or refuse to obey any lawful order given or made by the department, or any judgment or decree made by any court in connection with ss. 101.01 to 101.29, for each such violation, failure or refusal, such employer, employe, owner

or other person shall forfeit and pay into the state treasury a sum not less than \$10 nor more than \$100 for each such offense. It shall be the duty of all officers of the state, the counties and municipalities, upon request of the department, to enforce in their respective departments, all lawful orders of the department, insofar as the same may be applicable and consistent with the general duties of such officers.

101.29 Fire inspection. (1) The chief of the fire department in every city, village or town, except cities of the 1st class, is hereby constituted a deputy of the department, subject to the right of the commission to relieve any such chief from his duties as such deputy for cause, and upon such suspension to appoint some other person to perform the duty imposed upon such deputy. The commission may appoint either the chief of the fire department or the building inspector as its deputy in cities of the 1st class.

(2) Such chief of the fire department is required, by himself or by officers or members of his fire department designated by him for that purpose, to inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violations of any law or ordinance relating to the fire hazard or to the prevention of fires.

(3) Such inspection, except in cities of the 1st class, shall be made at least once in 6 months in all of the territory served by such fire department, and not less than once in 3 months in such territory as the common council has designated or thereafter designates as within the fire limits or as a congested district subject to conflagration, and oftener as the chief of the fire department orders. Each 6-month period shall begin on January 1 and July 1, and each 3-month period on January 1, April 1, July 1 and October 1 of each year. In cities of the 1st class such inspection shall be made not less than once in 4 months in each year throughout the entire city, and oftener as the chief of the fire department orders. Each such 4-month period shall begin on January 1, May 1 and September 1 of each year.

(4) The chiefs of fire departments in every city of the 1st, 2nd and 3rd classes shall designate a sufficient number of men as inspectors to carry out this section.

(5) Written reports of inspection shall be made and kept on file in the office of the chief of the fire department in the manner and form required by the department.

(6) Such inspection shall be subject to the supervision and direction of the department,

which shall upon examination certify to the commissioner of insurance after the expiration of each calendar year each such city, village or town where the inspections for such year have been made, and records thereof have been made and kept on file as required by law.

(7) A copy of any report showing a change in the hazard from the survey, or any violation of law or ordinance relating to the fire hazard upon any risk shall be given by the department to any inspection bureau making written request therefor.

101.30 Boiler inspection, penalties. No machine, mechanical device, or steam boiler shall be installed or used in this state which does not fully comply with the requirements of the laws of this state enacted for the safety of employes and frequenters in places of employment and public buildings and with the orders of the department adopted and published in conformity with ss. 101.01 to 101.28. Any person, firm, or corporation, violating this act shall be subject to the forfeitures provided in ss. 101.18 and 101.28.

101.305 Public building requirements; approvals. (1) (a) Any place of employment or public building, the initial construction of which is commenced after July 1, 1970, shall be so designed and constructed as to provide reasonable means of ingress and egress by the physically handicapped with the exception of:

1. Apartment houses with less than 20 units, row houses and rooming houses;
2. Convents and monasteries;
3. Jails or other places of detention;
4. Garages, hangars and boathouses;
5. All buildings classified as hazardous occupancies;
6. Warehouses;
7. State buildings specifically built for field service purposes such as but not limited to conservation fire towers, fish hatcheries, tree nursery buildings; and
8. University residence halls at universities which have at least 3 residence halls for men and 3 residence halls for women so constructed as to allow physically handicapped persons reasonable means of ingress and egress to such buildings.

(b) The requirements of par. (a) may be accomplished by at least one ground or street level entrance and exit without steps, by ramps with slopes not more than one foot of rise in 12 feet, coated with a nonskid surface; or by elevator or such other arrangement as may be reasonably appropriate under the circumstances and which meets with the approval of the department of

industry, labor and human relations or in lieu thereof with the approval of the municipality wherein the building is located. The doors of such entrance and exit must have a clear opening of at least 40 inches in width and shall otherwise conform to the department of industry, labor and human relations building code.

(c) If any ground or street level entrance or exit is not so designed or constructed a sign shall be placed at such entrance or exit indicating the location of the entrance or exit available for wheel chair service.

(2) Any place of employment or public building subject to sub (1) (a), the initial construction of which is commenced after July 1, 1970, shall be so designed and constructed to allow physically handicapped persons reasonable means of access from a parking lot, if any, ancillary to such buildings and reasonable means of ingress and egress to at least one floor on which the primary business of such building is located.

(3) The owner of any building who fails to meet the requirements of this section may be required to reconstruct the same by mandatory injunction in a circuit court suit brought by any interested person. Such person shall be reimbursed, if successful, for all costs and disbursements plus such actual attorney fees as may be allowed by the court.

101.306 Safeguards for the physically handicapped. The department shall by rule, provide minimum requirements to facilitate the use of public buildings by physically handicapped persons where traffic might reasonably be expected by such persons; the department to hold its first public hearings under this section within 60 days after July 4, 1963.

101.37 Acceptance of federal act relating to public employment offices. (1) The legislature hereby accepts the provisions of an act of congress, approved June 6, 1933, entitled "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes."

(2) The department of industry, labor and human relations is authorized and directed to cooperate with the U.S. employment service in the administration of said act and in carrying out all agreements made thereunder.

(3) All funds made available to this state under said act shall, upon receipt thereof, be paid into the unemployment administration fund created by s. 108.20.

101.40 Public works, unemployment. The department of health and social services shall ascertain from the various departments and

state institutions tentative plans for such extension of public works of the state as shall be best adapted to supply increased opportunities for advantageous public labor during periods of temporary unemployment, together with estimates of the amount, character and duration of such employment, and the number of employes that could profitably be used therein, and the rates of wages and such other information as the department of public welfare deems necessary.

101.41 Department of industry, labor and human relations, unemployment. In cooperation with the department of agriculture, the department of industry, labor and human relations shall keep constantly advised of industrial conditions affecting the employment of labor in this state; and whenever it is represented to the department of industry, labor and human relations by the governor, or the department of industry, labor and human relations shall otherwise have reason to believe, that a period of extraordinary unemployment caused by industrial depression exists in the state, the department of industry, labor and human relations shall immediately inquire into the facts relating thereto, and find and report to the governor whether in fact such condition does exist.

101.42 Department of health and social services, expenditures to relieve depression. In the event that the department of industry, labor and human relations reports to the governor that a condition of extraordinary unemployment caused by industrial depression exists in the state, the department of health and social services may make such disposition of funds to be used for said purposes among the several institutions and departments for such extension of the public works of the state under the charge or direction thereof, including the purchase of materials and supplies necessary therefor, as shall, in the judgment and discretion of the department of health and social services, be best adapted to advance the public interest by providing the maximum of public employment, in relief for the existing conditions of extraordinary unemployment, consistent with the most useful, permanent and economic extension of the works aforesaid.

101.43 Department of industry, labor and human relations, depression, labor lists, employment. Immediately upon publication of a finding that a period of extraordinary unemployment due to industrial depression exists throughout the state, the department of industry, labor and human relations shall cause to be

prepared by the various institutions and departments approved lists of applicants for public employment and secure from such applicants full information as to their industrial qualifications and submit the same to the department of health and social services. Preference for employments under ss. 101.40 to 101.43 shall be extended first to citizens of this state, second to other citizens of the United States at the time of making application, and last to aliens who are residents of this state at the time of making such application.

101.55 Executive agreements to control sources of radiation. When the legislative council determines that it is in the interest of the state to enter into agreement with the government of the United States to provide for the discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by the state pursuant to authority granted by P.L. 86-373, it shall convey its determination to the governor together with its estimate of the initial and ultimate cost of the assumption of this responsibility by the state and the governor, on behalf of the state, may, after a finding by both him and the U.S. atomic energy commission as to the adequacy of the state's program of regulation, enter into such an agreement.

101.60 Equal rights. (1) **DEFINITIONS.** In this section unless the context requires otherwise:

(a) "Housing" means any improved property, including any mobile home as defined in s. 66.058, which is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence, but does not include:

1. Any building or structure containing living quarters occupied or intended to be occupied by no more than one family and which is used by or was last used by the owner thereof as a bona fide residence for himself and any members of his family forming his household

2. Any building occupied by the owner as his residence, in which single rooms are rented out for occupancy by 4 or less individuals, not members of the owner's family.

3. Any building located on a lot which does not exceed 60 feet by 120 feet in size, on which lot is situated a building or structure occupied by the owner thereof as his residence, provided the total number of family housing units on said lot does not exceed 4.

4. Any building consisting of 4 or less dwelling units, all in one structure, in which at least one of such dwelling units is occupied by the owner of such building as his residence

(b) "Discriminate" and "discrimination" mean to segregate, separate, exclude or treat any person unequally only because of race, color, religion, national origin or ancestry. It is intended that the factors set forth herein shall be the sole bases for prohibiting discrimination

(c) "Unimproved residential lot" means any residential lot upon which no permanent building or structure containing living quarters has been constructed.

(2) **DISCRIMINATION PROHIBITED.** It is unlawful for any person to discriminate:

(a) By refusing to sell, lease, finance or contract to construct housing or by refusing to discuss the terms thereof.

(b) By refusing to permit inspection or exacting different or more stringent price, terms or conditions for the sale, lease or rental of housing

(c) By refusing to finance or sell an unimproved residential lot or to construct a home or residence upon such lot.

(d) By publishing, circulating, issuing or displaying, or causing to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing, lease or rental of housing, which states or indicates any discrimination in connection with housing.

(2m) **REPRESENTATIONS DESIGNED TO INDUCE PANIC SALES.** It is unlawful to induce or attempt to induce any person to sell, rent or lease any dwelling by representations regarding the present or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin or economic status, or by representations to the effect that such present or prospective entry will or may result in: a) the lowering of real estate values in the area concerned; b) a deterioration in the character of the area concerned; c) an increase in criminal or antisocial behavior in the area concerned; or d) a decline in the quality of the schools or other public facilities serving the area.

(3) **DEPARTMENT TO ADMINISTER.** This section shall be administered by the department of industry, labor and human relations through its division of equal rights. The department may promulgate such rules as are necessary to carry out this section. No publicity shall be given a complaint in those cases where the department obtains compliance with this section or the department finds that the complaint is without foundation.

(4) **POWERS.** (a) The department may receive and investigate complaints charging violations of this section. A complaint shall be a written statement of the essential facts constituting the discrimination charged, and shall be verified.

(b) In carrying out this section the department and its duly authorized agents may hold hearings, subpoena witnesses, take testimony and make investigations as provided in this chapter.

(c) If the department finds probable cause to believe that any discrimination has been or is being committed in violation of this section, it shall immediately endeavor to eliminate such discrimination by conference, conciliation and persuasion. If the department determines that such conference, conciliation and persuasion has not eliminated the alleged discrimination, the department shall issue and serve a written notice of hearing, specifying the nature and acts of discrimination which appear to have been committed, and requiring the person named, hereinafter called the "respondent" to answer the complaint at a hearing before the department. The notice shall specify a time of hearing, not less than 10 days after service of the complaint, and a place of hearing within the county in which the act of discrimination is alleged to have occurred. The testimony at the hearing shall be recorded by the department. In all hearings, except those for determining probable cause, before the department the burden of proof shall be on the party alleging discrimination. If, after the hearing, the department finds by a fair preponderance of the evidence that the respondent has engaged in discrimination in violation of this section, the department shall make written findings and recommend such action by the respondent as will effectuate the purpose of this section and shall serve a certified copy of its findings and recommendations on the respondent and complainant together with an order requiring the respondent to comply with the recommendations, the order to have the same force as other orders of the department and be enforced as provided in this section except that the enforcement of such order shall automatically be stayed upon the filing of a petition for review with the circuit court for the county in which the alleged discrimination took place. If the department finds that the respondent has not engaged in discrimination as alleged in the complaint, it shall serve a certified copy of its findings on the complainant and the respondent together with an order dismissing the complaint. Where the complaint is dismissed, costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

(4m) TESTING PROHIBITED. It is unlawful for any person not having any bona fide intention to avail himself of any rights under this section to solicit offers, to buy or lease from property owners or lessees or their agents, to demand the services or facilities of any place of public ac-

commodation, to demand facilities or to demand any employment for the sole purpose of securing evidence of a discriminatory practice. Any person found by the department under the hearing procedure provided in sub. (4) (c) to have violated this subsection shall be subject to the penalties prescribed under sub. (6), together with costs and disbursements as provided in sub. (4) (c). Such finding is subject to judicial review as provided in sub. (5).

(4n) REQUIRING REFERENCES. Nothing in this section shall be deemed to prohibit an owner, or his agent, from requiring that any person who seeks to buy, rent or lease housing supply information concerning his family, marital, financial and business status but not concerning race, color or creed.

(5) JUDICIAL REVIEW. Within 30 days after service upon all parties of any order under this section the respondent or complainant may appeal the order to the circuit court for the county in which the alleged discrimination took place by the filing of a petition for review. The respondent or complainant shall receive a trial de novo on all issues relating to any alleged discrimination and a further right to a trial by jury, if so desired. The department of justice shall represent the department of industry, labor and human relations. In any such trial the burden shall be to prove discrimination by a fair preponderance of the evidence. Costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be taxed to the prevailing party on the appeal.

(6) PENALTY. Any person who wilfully violates this section or any lawful order issued hereunder shall, for each such violation, forfeit not less than \$10 nor more than \$200. Payment of any such forfeiture shall be stayed during the period in which any appeal may be taken and during the pendency of any appeal under sub. (5).

(7) INTENT. It is the intent of this section to render unlawful discrimination in housing where the sale, rental or lease of the housing constitutes a business. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of race, color, religion, national origin or ancestry and it is the duty of the local units of government to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under s. 66.433. This section shall be deemed an exercise of the police powers of the state for the protection of the welfare, health, peace, dignity and human rights of the people of this state.

Note: Chapter 439, laws of 1965, contained the following provision:

"Section 9 If any provision of section 101 60 (1) of the statutes is declared invalid, such invalidity shall affect and render invalid all other provisions of this act."

101.61 Equal rights council. (1) The equal rights council shall disseminate information and attempt by means of discussion as well as other proper means to educate the people of the state to a greater understanding, appreciation and practice of human rights for all people, of whatever race, creed, color or national origin, to the end that Wisconsin will be a better place in which to live.

(2) The council shall give consideration to the practical operation and application of this subchapter and report to the proper legislative committee its view on any pending bill relating to the subject matter of this subchapter.

101.62 Division of equal rights. (1) The division of equal rights may investigate alleged cases of discrimination in public places of accommodation or amusement, as defined in s. 942.04 (2), and may seek conciliation in any such case where it believes discrimination to have occurred.

(2) The division shall encourage and assist local units of government in guaranteeing all persons an equal opportunity for housing.

(3) All gifts, grants, bequests and devises to the division for its use for any of the purposes mentioned in s. 101 61 are valid and shall be used to carry out the purposes for which made and received.

101.80 Public insurrection; death and disability benefits. (1) **DEFINITIONS.** In this section:

(a) "Public insurrection" means a civil disturbance in which a group or groups of persons are simultaneously engaged in acts of violence against persons or property by the illegal use of weapons, by burning, pillaging or looting or by committing any other illegal acts, and which is of such a magnitude as to result in any of the following:

1. Extraordinary utilization of off-duty local law enforcement personnel.
2. Declaration of a public emergency by the governor.
3. The calling of the national guard or other troops.

(2) **DEATH AND DISABILITY BENEFITS.** If the department of industry, labor and human relations finds that the injury or death of a state or local government officer or employe arose out of the performance of his duties in connection with a public insurrection, and finds that he is entitled to death or disability benefits under ch. 102, a supplemental award equal to the benefit he is entitled to shall be made by the department to the persons and in the same manner provided by ch. 102, except that when benefits are prescribed under s. 102.49, a supplemental award equal to one-half the benefit he is entitled to shall be made.

(3) **PAYMENTS.** All payments under this section shall be made from the general fund.

(4) **BENEFITS ADDITIONAL TO ALL OTHERS.** Death and disability benefits under this section are in addition to all other benefits provided by state law or by action of any municipality or public agency.