

(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.

(h) "Secretary" means the secretary of industry, labor and human relations.

(2) The following terms as used in ss. 101.01 to 101.25, shall be construed as follows:

(a) "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 private domestic service which does not involve the use of mechanical power or in farming. "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 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. When used with relation to building codes, "place of employment" does not include a previously constructed building used as a community-based residential facility as defined in s. 50.01 (1) which serves 20 or fewer unrelated residents, except for the purposes of s. 101.11.

(b) 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 par. (a).

(c) 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.

(d) 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.

(e) "Frequentener" means every person, other than an employe, who may go in or be in a place of employment or public building under circumstances which render such person other than a trespasser. Such term includes a pupil or student when enrolled in or receiving instruction at an educational institution.

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

(g) 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 frequenteners, 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.

(h) "Public building" means 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. When used in relation to building codes, "public building" does not include a previously constructed building used as a community-based residential facility as defined in s. 50.01 (1) which serves 20 or fewer unrelated residents.

(i) 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 101.25 shall apply, so far as consistent, to all architects and builders.

History: 1971 c. 185 ss. 1, 5; 1971 c. 228 ss. 15, 44; 1975 c. 413, 421; 1977 c. 29.

In a safe-place action by a plaintiff injured through contact with home power lines while installing aluminum trim on the premises, the power lines did not constitute a place of employment under (2) (a), for although a "process or operation" was carried on by the transmission of electricity through the lines, no person was employed by the power company on

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the premises at the time of the injury. *Barthel v. Wisconsin Electric Power Co* 69 W (2d) 446, 230 NW (2d) 863.

Vocational school was not place of employment. *Korenak v. Curative Workshop Adult Rehabil. Ctr* 71 W (2d) 77, 237 NW (2d) 43.

Right to make progress inspections and to stop construction for noncompliance with specifications is not exercise of control sufficient to make architect an owner under (2) (i). *Luterbach v. Mochon etc., Inc.* 84 W (2d) 1, 267 NW (2d) 13 (1978).

See note to 101.11, citing *Leitner v. Milwaukee County*, 94 W (2d) 186, 287 NW (2d) 803 (1980).

101.02 Powers, duties and jurisdiction of department. It shall be the duty of the department, and it shall have power, jurisdiction and authority:

(1) 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.

(2) The department may sue and be sued.

(3) 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.

(4) 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.

(5) (a) 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.

(b) For the purpose of making any investigation with regard to any employment or place of employment or public building, the secretary may appoint, by an order in writing, 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.

(c) In the discharge of his or her duties such agent shall have every power of an inquisitorial nature granted in ss. 101.01 to 101.25 to the department, 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.

(d) The department 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 department 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 department so orders nor preclude further investigation.

(e) The secretary 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.

(f) Upon the request of the department, the department of justice or district attorney of the county in which any investigation, hearing or trial had under ss. 101.01 to 101.25 is pending, shall aid therein and prosecute under the supervision of the department, 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.

(6) (a) 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.

(b) All general orders shall take effect as provided in s. 227.026. Special orders shall take effect as therein directed.

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

(d) 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.

(e) 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 101.25.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(7) (a) Nothing contained in ss. 101.01 to 101.25 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.

(b) Any person affected by any local order in conflict with an order of the department, may in the manner provided in s. 101.02 (6) (e) to (i), 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. 101.02 (6) (e) to (i).

(c) 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.

(8) (a) 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. 101.02 (6) (e) to (i), and in the petition therefor shall have raised every issue raised in such action.

(b) 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.

(9) A substantial compliance with the requirements of ss. 101.01 to 101.25, 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.

(10) Orders of the department under ss. 101.01 to 101.25 shall be subject to review in the manner provided in ch. 227.

(11) 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 this chapter 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. 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.

(12) 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 101.25, shall constitute a separate and distinct violation of such order, or of said sections as the case may be.

(13) (a) If any employer, employe, owner, or other person violates ss. 101.01 to 101.25, or fails or refuses to perform any duty lawfully enjoined, within the time prescribed by the

department, for which no penalty has been specifically provided, or fails, neglects or refuses 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 101.25, 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.

(b) 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.

(14) (a) The secretary or any examiner appointed by the secretary may hold hearings and take testimony.

(b) Each witness who appears before the department by its order shall receive for attendance the fees and mileage 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 secretary, and charged to the proper appropriation for the department. No witness subpoenaed at the instance of parties other than the department is entitled to compensation from the state for attendance or travel unless the department certifies that the testimony was material to the matter investigated.

(c) 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.

(d) 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.

(15) (a) The department has such supervision of every employment, place of employment and public building in this state as is 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. This paragraph shall not

apply to rural school buildings and, after October 31, 1975, where issues of employer-employe relationship are covered by federal standards enforced by the occupational safety and health administration.

(b) To administer and enforce, so far as not otherwise provided for in the statutes, the laws relating to child labor, laundries, stores, employment, licensed occupations, school attendance, bakeries, employment offices, intelligence offices and bureaus, manufacture of cigars, sweatshops, corn shredders, woodsawing 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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 ss. 101.01 to 101.25.

(g) Any commissioner, the secretary or any 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 may refuse to admit any commissioner, the secretary or any deputy of the department to his or her place of employment or public building.

(h) 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 employ-

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

(i) 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.

(j) 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.

(k) Every employer and every owner shall furnish to the department all information required by it to carry into effect ss. 101.01 to 101.25, and shall make specific answers to all questions submitted by the department relative thereto.

(l) Any employer receiving from the department any blanks calling for information required by it to carry into effect ss. 101.01 to 101.25, 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.

History: 1971 c. 185 ss 1 to 5, 7; 1971 c. 228 ss. 16, 42; 1975 c. 39; 94; 1977 c. 29.

Cross Reference: See 66.122 for provision authorizing special inspection warrants

The department's authority to adopt rules covering the safety of frequenters while engaged in recreational activities at youth camps is limited by 101.10 (2), (3), (4) and (5), Stats. 1969, to orders relating to the construction of public buildings on the premises, but only as to the structural aspects thereof, and by 101.01 (1), Stats. 1969, as to places of employment, but only as to those camps operated for profit. 59 Atty. Gen. 35.

The department has the power to promulgate reasonable safety standards for the protection of employes while working in and around motor vehicles used on the job. 59 Atty. Gen. 181.

The department may inspect those parts of boarding homes designed for 3 or more persons where employes work or those used by the public, but not interiors of private dwellings. It has no authority to license or register boarding homes nor to charge an inspection fee based upon number of beds or rooms. 62 Atty. Gen. 107.

The department cannot enact a rule which would alter the common law rights and duties of adjoining landowners with respect to lateral support, although the department may specify 30 days as the minimum safety period in which an excavating owner must give notice to a neighbor of an intent to excavate. 62 Atty. Gen. 287.

101.025 Ventilation requirements for public buildings and places of employment.

(1) Notwithstanding s. 101.02 (1) and (15), any rule which requires the intake of outside air for ventilation in public buildings or places of employment shall establish minimum quantities of outside air that must be supplied based upon the type of occupancy, the number of occupants, areas with toxic or unusual contaminants and other pertinent criteria determined by the department. The department shall set standards where the mandatory intake of outside air may be waived. The department may waive the requirement for the intake of outside air where the owner has demonstrated that the resulting air quality is equivalent to that provided by outdoor air ventilation. The department may not waive the mandatory intake of outside air unless smoking is prohibited in the building or place of employment. In this subsection "smoking" means carrying any lighted tobacco product.

(2) In the case where the intake of outside air is waived, any person may file a written complaint with the department requesting the enforcement of ventilation requirements for the intake of outside air for a particular public building or place of employment. The complaints shall be processed in the same manner and be subject to the same procedures as provided in s. 101.02 (6) (e) to (i) and (8).

(3) The department may order the owner of any public building or place of employment which is the subject of a complaint under sub. (2) to comply with ventilation requirements adopted under sub. (1) unless the owner can verify, in writing, that the elimination of the provision for outside air in the structure in question does not impose a significant detriment to the employes or frequenters of the structure and that the health, safety and welfare of the occupants is preserved. Upon receipt of a written verification from the owner, the department shall conduct an investigation, and the department may issue an order to comply with ventilation requirements under sub. (1) if it finds that the health, safety and welfare of the employes or frequenters of the structure in question is best served by reinstating the ventilation requirements for that structure.

(4) For ventilation systems in public buildings and places of employment, the department shall adopt rules setting:

(a) A maximum rate of leakage allowable from outside air dampers when the dampers are closed.

(b) Maintenance standards for ventilation systems in public buildings and places of employment existing on April 30, 1980.

History: 1979 c. 221.

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101.03 Testimonial powers of commissioners, secretary and deputy. Each of the commissioners, secretary or deputy secretary may certify to official acts, and take testimony.

History: 1971 c. 228; 1977 c. 29.

101.04 Labor and industry review commission. (1) The commission shall issue its decision in any case where petition for review is filed under ch. 102, 108 or 949 or s. 56.07 (7), 56.21, 66.191, 101.22, 101.223 (4) or 111.36.

(2) Notwithstanding s. 227.014, the commission may not promulgate rules except that it may promulgate its rules of procedure.

(3) The commission may employ professional and other persons to assist in the execution of its duties.

History: 1977 c. 29.

101.05 Exempt buildings. No building code adopted by the department under this chapter shall affect buildings located on research or laboratory farms of public universities or other state institutions and used primarily for housing livestock or other agricultural purposes.

History: 1971 c. 329.

101.06 State safety programs. The department shall coordinate and enforce state safety programs, with the assistance of departments and agencies, by:

(1) Planning and conducting a comprehensive safety and loss prevention program for state employes and facilities and promulgating rules for the operation of an effective program.

(2) Inspecting, investigating and analyzing all state facilities, job sites, equipment, material and work methods as deemed necessary.

(3) Conducting follow-up investigations to assure correction of all safety orders issued by the department on state-owned buildings or buildings occupied by state departments or agencies.

History: 1977 c. 29.

101.07 Flushing devices for urinals. The department shall not promulgate any rules which either directly or indirectly prohibit the use of manual flushing devices for urinals. The department shall take steps to encourage the use of manual flushing devices for urinals.

History: 1977 c. 418.

101.11 Employer's duty to furnish safe employment and place. (1) 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.

(2) (a) 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 employer 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.

(b) 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.

(3) This section applies to community-based residential facilities as defined in s. 50.01 (1).

History: 1971 c. 185; 1975 c. 413.

See note to 895.045, citing *Lovese v. Allied Development Corp.* 45 W (2d) 340, 173 NW (2d) 196.

Where an apartment complex was managed for a fee by a management company, the company was carrying on a business there. Reduction of rent to one of the tenants for caretaking services constituted employment on the premises. A tenant who fell on the icy parking lot after the caretaker knew of the condition need only prove negligence in maintaining the premises. *Wittka v. Hartnell*, 46 W (2d) 374, 175 NW (2d) 248.

A public sidewalk is not made a place of employment merely because an employer constructed it and kept it free of ice and snow. *Petroski v. Eaton Yale & Towne, Inc.* 47 W (2d) 617, 178 NW (2d) 53.

The fact that a violation of the safe-place statute is found puts the burden on the owner to rebut the presumption of causation but does not establish as a matter of law that the defendant's negligence was greater than the plaintiff's. *Frederick v. Hotel Investments, Inc.* 48 W (2d) 429, 180 NW (2d) 562.

A store must be held to have had constructive notice of a dangerous condition when it displayed shaving cream in spray cans on a counter and a 70-year old woman fell in cream

sprayed on the white floor. *Steinhorst v. H. C. Prange Co.* 48 W (2d) 679, 180 NW (2d) 525.

Mere existence of a step up into a hospital lavatory is not an unsafe condition. *Prelipp v. Wausau Memorial Hospital*, 50 W (2d) 27, 183 NW (2d) 24.

Failure to light a parking lot can support a safe-place action but the evidence must show how long the light was burned out to constitute constructive notice. *Low v. Siewert*, 54 W (2d) 251, 195 NW (2d) 451.

A parking lot owned by a city which is a continuation of a store parking lot, used by the public for attending the city zoo and the store, even though maintained by the private property owner, is not a place of employment. *Gordon v. Schultz Savo Stores, Inc.* 54 W (2d) 692, 196 NW (2d) 633.

Detailed construction specifications and the presence of engineers to insure compliance does not manifest control over the project so as to make the commission liable. *Berger v. Metropolitan Sewerage Comm.* 56 W (2d) 741, 203 NW (2d) 87.

In a safe-place action the employer's contributory negligence is less when his act or omission has been committed in the performance of his duties. *McCrossen v. Nekoosa-Edwards Paper Co.* 59 W (2d) 245, 208 NW (2d) 148.

A pier at a beach open to the public for a fee constitutes a place of employment. Any distinction between licensees and invitees is irrelevant, and the statute imposes a higher duty as to safety than the common law. *Gould v. Allstar Ins. Co.* 59 W (2d) 355, 208 NW (2d) 388.

A private road on the ground of a private racetrack which connected the track and a parking lot is subject to this section as to frequenters. *Gross v. Denow*, 61 W (2d) 40, 212 NW (2d) 2.

Causal negligence sustained where elevator had by-pass switch in violation of Wis. Adm. Code section Ind 460 (1) (e). *Sampson v. Laskin*, 66 W (2d) 318, 224 NW (2d) 594.

A one-eighth-inch variance in elevation between the sides of the ramp joint was too slight as a matter of law to constitute a violation of the safe-place statute. *Balas v. St. Sebastian's Congregation*, 66 W (2d) 421, 225 NW (2d) 428.

An employer may be held liable under the safe-place statute not only where he fails to construct or maintain safety-structures such as a fence, but also where he knowingly permits employes or frequenters to venture into a dangerous area. *Kaiser v. Cook*, 67 W (2d) 460, 227 NW (2d) 50.

Safe-place statute applies only to unsafe physical conditions, not to activities conducted on premises. *Korenak v. Curative Workshop Adult Rehabil. Ctr.* 71 W (2d) 77, 237 NW (2d) 43.

Discussion of contractor's liability under safe-place law for injury to sub-contractor's employe. *Barth v. Downey Co., Inc.* 71 W (2d) 775, 239 NW (2d) 92.

Time element of constructive notice of safe-place defect discussed. *Buerosse v. Dutchland Dairy Restaurants*, 72 W (2d) 239, 240 NW (2d) 176.

Retention of control and supervision is required for recovery against general contractor by subcontractor's employe. *Lemacher v. Circle Const. Co., Inc.* 72 W (2d) 245, 240 NW (2d) 179.

The length of time a safe-place defect must exist, in order to impose constructive notice of it on an owner, varies according to the nature of the business, the nature of the defect, and the public policy involved. *May v. Skelley Oil Co.* 83 W (2d) 30, 264 NW (2d) 574 (1978).

See note to 895.045, citing *Brons v. Bischoff*, 89 W (2d) 80, 277 NW (2d) 854 (1979).

Indemnity in safe-place action creates effect identical to that of contribution. *Barrons v. J. H. Findorff & Sons, Inc.* 89 W (2d) 444, 278 NW (2d) 827 (1979).

Non-negligent indemnitor was liable to indemnitee whose breach of safe-place duty was solely responsible for damages, under circumstances of case. *Dykstra v. Arthur G. McKee & Co.* 92 W (2d) 17, 284 NW (2d) 692 (Ct. App. 1979).

Architect's liability discussed. *Hortman v. Becker Const. Co., Inc.* 92 W (2d) 210, 284 NW (2d) 621 (1979).

Safe employment and safe place of employment distinguished. *Leitner v. Milwaukee County*, 94 W (2d) 186, 287 NW (2d) 803 (1980).

Evidence of prior accident was admissible to prove notice of unsafe condition. *Callan v. Peters Construction Co.* 94 W (2d) 225, 288 NW (2d) 146 (Ct. App. 1979).

101.111 Excavations; protection of adjoining property and buildings. (1) DEFINITION. In this section "excavator" means any

owner of an interest in land making or causing to be made an excavation.

(2) CAVE-IN PREVENTION. Any excavator shall protect the excavation site in such a manner so as to prevent the soil of adjoining property from caving in or settling.

(3) LIABILITY FOR UNDERPINNING AND FOUNDATION EXTENSIONS. (a) If the excavation is made to a depth of 12 feet or less below grade, the excavator may not be held liable for the expense of any necessary underpinning or extension of the foundations of buildings on adjoining properties.

(b) If the excavation is made to a depth in excess of 12 feet below grade, the excavator shall be liable for the expense of any necessary underpinning or extension of the foundations of any adjoining buildings below the depth of 12 feet below grade. The owners of adjoining buildings shall be liable for the expense of any necessary underpinning or extension of the foundations of their buildings to the depth of 12 feet below grade.

(4) NOTICE. Unless waived by adjoining owners, at least 30 days prior to commencing the excavation the excavator shall notify, in writing, all owners of adjoining buildings of his or her intention to excavate. The notice shall state that adjoining buildings may require permanent protection. The owners of adjoining property shall have access to the excavation site for the purpose of protecting their buildings.

(5) EMPLOYEES NOT LIABLE. No worker who is an employe of an excavator may be held liable for his or her employe's failure to comply with this section.

(6) FAILURE TO COMPLY; INJUNCTION. If any excavator fails to comply with this section, any aggrieved person may commence an action to obtain an order under ch. 813 directing such excavator to comply with this section and restraining the excavator from further violation thereof. If the aggrieved person prevails in the action, he or she shall be reimbursed for all his or her costs and disbursements together with such actual attorney fees as may be approved by the court.

(7) APPLICATION OF THIS SECTION. (a) Subject to par. (b), this section applies to any excavation made after January 1, 1978.

(b) This section does not apply to any excavation made under a contract awarded on or before January 1, 1978.

History: 1977 c. 88.

101.12 Approval and inspection of public buildings and places of employment and components. (1) The department shall require the submission of essential drawings, cal-

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culations and specifications for public buildings, public structures and places of employment including the following components:

(a) Heating, ventilation, air conditioning and fire detection, prevention or suppression 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.

(3) 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 evidence 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 pro-

vided 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.

(5) (a) In this subsection:

1. "Plans" means construction plans, designs, specifications and related materials filed with the department concerning a structure.

2. "Secure structure" means a building or other structure of a type which the department determines to have extraordinary security requirements, including but not limited to structures used:

a. For the safekeeping of large sums of money, negotiable instruments, securities or other valuables;

b. As a jail, correctional facility or other secure facility for persons in detention;

c. For the safekeeping or evaluation of evidence in criminal proceedings or investigations;

d. For the safekeeping of weapons, ordnance or explosives; or

e. In the generation, transmission or distribution of electric power, fuels or communications.

(b) A person requesting to inspect or copy plans shall submit a written application identifying the structure or proposed structure whose plans are sought to be inspected or copied, providing the full name and address of the requester and stating that any information obtained from the inspection or copying will not be used for any unlawful or unfair competitive purpose and that the information set forth in the application is true and correct. The department shall promptly transmit a copy of the application to the owner of the structure or proposed structure and the submitter of the plans being inspected or copied.

(c) If an application submitted under par. (b) requests inspection or copying of plans for a secure structure or proposed secure structure, the department shall consider the information supplied in the application and weigh the possible harm to the public interest which may result from permitting inspection and copying of the plans against the benefits of allowing such inspection or copying. If the department determines that the possible harm to the public interest outweighs the benefit to the requester and to the public interest of allowing such inspection or copying, it may deny the application or grant it upon such conditions as it determines are necessary to protect the public interest. This paragraph does not apply to an application submitted by a law enforcement agency or person authorized to have access to the plans by lawful subpoena.

(d) The department may charge a reasonable amount to defray its costs in providing copies of the plans.

History: 1971 c. 185; 1971 c. 228 s. 42; 1973 c. 326; 1979 c. 64, 243

The state statutes and building code have not preempted the field as to school buildings; local building codes apply to the extent that they are not inconsistent. *Hartford Union High School v. Hartford*, 51 W (2d) 591, 187 NW (2d) 849. See note to 19.21, citing 67 Atty. Gen. 214

101.122 Rental unit energy efficiency. (1) DEFINITIONS. In this section:

(a) "Dwelling unit" means a building or that part of a building which is used as a home or residence and which is furnished with natural gas, home heating fuel or electricity.

(b) "Energy conservation measure" means any measure which increases the energy efficiency of a rental unit, including, but not limited to, the installation of caulking, weather-stripping, insulation and storm windows.

(bd) "Home heating fuel" means number 2 heating oil, kerosene, butane or propane gas.

(c) "Inspector" means a person certified under sub. (2) (c).

(d) "Owner" means any person having a legal or equitable interest in a rental unit.

(e) "Rental unit" means any rented dwelling units. "Rental unit" does not include:

1. Any building containing up to 4 dwelling units, one of which is owner-occupied.

2. Any building constructed after December 1, 1978, which contains up to 2 dwelling units and which is less than 10 years old.

3. Any building constructed after April 15, 1976, which contains more than 2 dwelling units and which is less than 10 years old.

4. Any dwelling unit not rented at any time from November 1 to March 31.

(em) "Thermal performance" means the gross heat loss from the building.

(f) "Transfer" means a conveyance of an ownership interest in a rental unit by deed, land contract or judgment or conveyance of an interest in a lease in excess of one year. "Transfer" does not include a conveyance under chs. 851 to 879.

(2) DEPARTMENTAL DUTIES. The department shall:

(a) 1. No later than January 1, 1983, adopt rules which establish a code of minimum energy efficiency standards for rental units. The rules shall require installation of specified energy conservation measures. The present value benefits of each energy measure, in terms of saved energy over a 5-year period after installation, shall be less than the total present value cost of installing the measures.

2. In the rules adopted under this paragraph, the department may include a separate standard based on thermal performance.

(b) Adopt rules setting standards for inspections and certifications under sub. (4), including but not limited to prescription of a standard certificate form.

(c) Adopt rules for the certification, including provisions for suspension and revocation thereof, of inspectors for the purpose of inspecting rental units subject to any rule under this section. The rules shall include a maximum fee schedule for inspection and certification of rental units under sub. (4) by inspectors not employed by the department.

(d) Provide training, assistance and information services to any inspector or person seeking to be certified as an inspector under par. (c).

(e) Review the rules adopted under this section at least once every 5 years.

(f) Issue special orders which it deems necessary to secure compliance with this section and enforce the same by appropriate administrative and judicial proceedings.

(g) Hear petitions regarding the enforcement of rules and special orders under this section according to the procedure established under s. 101.02 (6) (e) to (i) and (8).

(3) DEPARTMENTAL POWERS. The department may:

(a) In rules adopted under sub. (2) (a), incorporate nationally recognized energy efficiency standards and vary standards according to:

1. Classes of energy use systems, including, but not limited to, building envelopes; heating, ventilating and air conditioning systems; lighting systems; appliances; and other fixtures which consume energy resources.

2. Climatic regions.

(b) Hold hearings on any matter relating to this section and issue subpoenas to compel the attendance of witnesses and the production of evidence at the hearings.

(4) CERTIFICATION. (a) The rules adopted under sub. (2) (a) shall take effect on the first day of the 24th month after adoption of the rules. After the rules take effect, except as provided under pars. (b) and (c), no owner may transfer a rental unit unless, within the previous 5 years, an inspector has inspected the unit and has issued a certificate stating that the unit satisfies applicable standards under sub. (2) (a) 1 or 2.

(b) The department or an inspector employed by the city, village or town within which a rental unit scheduled for demolition within 2 years is located may issue a written waiver of the requirements of par. (a). The waiver shall be conditioned on demolition of the rental unit within 2 years of the date of the waiver. If demolition does not take place within 2 years of the issuance of the waiver, the department or the

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city, village or town may do one or more of the following:

1. Order demolition of the rental unit no sooner than 90 days after the order.

2. Withdraw any certificate of occupancy.

3. Order energy conservation measures necessary to bring the rental unit into compliance with applicable standards under sub. (2) (a).

(c) The transferee of a rental unit may present a stipulation signed by the transferee and by the department or by the city, village or town within which the rental unit is located stating that the owner of the rental unit will bring the rental unit into compliance with the standards under sub. (2) (a) no later than one year after the date of the first transfer of the rental unit after the standards take effect under par. (a). The department, city, village or town signing the stipulation shall keep a copy of the stipulation and shall conduct an inspection of the rental unit no later than 180 days after the stipulated compliance date.

(5) **INSPECTION.** Any owner of a rental unit may request that an inspector inspect the owner's rental unit for the purpose of determining whether to issue a certificate under sub. (4). If an owner, after reasonable effort, is unable to procure an inspection, the department, within 14 days after receipt of a request by the owner shall perform the inspection and determine whether to issue a certificate. The department may establish a special fee under s. 101.19 (1) for an inspection under which it performs this subsection. If any inspector determines not to issue a certificate, the inspector shall specify in writing the energy conservation measures necessary to make the rental unit comply with applicable standards under sub. (2) (a).

(6) **PROOF OF CERTIFICATION REQUIRED FOR RECORDATION.** A register of deeds may not accept for recording any deed or other document of transfer of real estate which includes a rental unit unless the deed or document is accompanied by the certificate required under sub. (4) (a), a waiver under sub. (4) (b) or a stipulation under sub. (4) (c). A register of deeds is not required to record such certificate but shall file a waiver or stipulation.

NOTE: Chapter 221, laws of 1979, section 2204 (25) (d) provides that sub. (6) takes effect on the effective date of the rules under sub. (4) (a).

(6m) **REPORT TO LEGISLATURE.** Annually, before March 1, the department shall submit a written report to the legislature on the impact of the requirements of this section.

NOTE: Chapter 221, laws of 1979, section 2204 (25) (d) 2, provides that sub. (6m) is created effective January 1, 1985.

(6r) **MUNICIPAL CODES.** After the effective date of the rules under sub. (4) (a), no city or village may enforce a code of minimum energy

efficiency standards for rental units in the city or village unless the requirements of the code are at least as strict as the requirements of the code under sub. (2) (a).

(7) **PENALTY.** (a) *Inspectors.* Any inspector falsifying a certificate issued under sub. (4) shall have his or her certification revoked and may be required to forfeit not more than \$500 per dwelling unit in the rental unit for which the certificate is issued.

(b) *New owners.* Any person who offers documents evidencing transfer of ownership for recordation and who, with intent to evade the requirements of this section, falsely states under s. 706.05 (12) that the real property involved does not include a rental unit, may be required to forfeit not more than \$500 per dwelling unit in the rental unit being transferred.

(c) *Waiver.* Any person who fails to comply with the requirements of a waiver issued under sub. (4) (b) may be required to forfeit not more than \$500 per dwelling unit in the rental unit for which the waiver is issued.

(d) *Stipulation.* Any person who fails to comply with the requirements of a stipulation under sub. (4) (c) may be required to forfeit not more than \$500 per dwelling unit.

History: 1979 c. 221

101.124 Heated sidewalks prohibited. In this section "exterior pedestrian traffic surface" means any sidewalk, ramp, stair, stoop, step, entrance way, plaza or pedestrian bridge not fully enclosed within a building and "heated" means heated by electricity or energy derived from the combustion of fossil fuels, but not including the use of waste thermal energy. "Exterior pedestrian traffic surface" does not include any means of ingress and egress by the physically disabled required under s. 101.13 (2). No person may construct a heated exterior pedestrian traffic surface. The department may not approve any plan under s. 101.12 which includes such heated surface. The department shall order any existing heated exterior pedestrian traffic surface in operation after April 30, 1980 to be shut off. This section does not apply to any inpatient health care facility as defined in s. 140.85 (1).

History: 1979 c. 221.

101.125 Safety glazing in hazardous locations. (1) **DEFINITIONS.** In this section:

(a) "Building" means a "place of employment" as defined in s. 101.01 (2) (a) and a "public building" as defined in s. 101.01 (2) (h) and includes, without limitation because of enumeration, wholesale and retail stores, store-rooms, office buildings, factories, warehouses, governmental buildings, hotels, hospitals, mo-

tels, dormitories, sanatoriums, nursing homes, retirement homes, theaters, stadiums, gymnasiums, amusement park buildings, schools and other buildings used for educational purposes, places of worship and other places of public assembly and all residences including mobile homes, manufactured or industrialized housing, lodging homes and any other building used as a dwelling for one or more persons.

(b) "Entrance and exit door" means a hinged, pivoting, revolving or sliding door which is used alone or in combination with other such doors on interior or exterior walls of a residential, commercial or public building for passage, ingress or egress.

(c) "Fixed or operating, flat panels immediately adjacent to an entrance or exit door" means the first fixed or operating, flat panel on either or both sides of an interior or exterior door if:

1. The nearest vertical edge of such panel is located within 2 feet of the nearest vertical edge of the door; and

2. The lower horizontal edge of such panel is less than 2 feet from the floor.

(d) "Hazardous location" means the location of a structural element in a building which is used as an entrance and exit door to a compartment, room or building; the fixed or operating, flat panels immediately adjacent to an entrance or exit door; a sliding glass door unit; a storm or combination door; a shower and bathtub enclosure; and the adjacent sidelites of a door. In the case of a public building, the term also includes any other location designated by the department.

(e) "Safety glazing material" means any transparent or translucent material, including tempered glass, laminated glass, wire glass and rigid plastic, which is constructed, treated or combined with other materials to minimize the likelihood of cutting or piercing injuries to humans, and which is approved by rule of the department as meeting departmental standards for the location in which it is to be applied.

(f) "Sliding glass door unit" means a panel or an assembly of panels contained in a frame designed so that at least one panel is movable in a horizontal direction.

(g) "Storm or combination door" means a door which protects an entrance or exit door against weather elements and affects indoor temperature control.

(2) LABELING REQUIRED. (a) Except as provided in par. (b), each lite of safety glazing material manufactured, distributed, imported, sold or installed for use in a hazardous location shall be permanently labeled with a label which:

1. States the nominal thickness and the type of safety glazing material;

2. Identifies the labeling seller, manufacturer, fabricator or installer;

3. Is legible and so positioned as to be legible after installation; and

4. Is distinctive in design and is not used on materials other than safety glazing materials.

(b) The department may by rule provide that in new construction or remodeling, the installation of safety glazing material may be recorded with the department or other appropriate agency designated by it, by the filing of an affidavit certifying the installation, in lieu of the labeling requirement of par. (a), if it finds that enforcement of this section will not be hindered by such substitute procedure.

(3) SAFETY GLAZING MATERIALS REQUIRED. No material supplier, builder, contractor or subcontractor may knowingly install, cause to be installed, consent to the installation, or sell for installation in any hazardous location, transparent or translucent materials other than safety glazing materials, except that:

(a) In buildings contracted for or existing on or before November 30, 1976, the department may by rule require the installation of a vertical or horizontal bar, rail, grill or screen as a protective device in lieu of safety glazing material in hazardous locations where safety glazing would be impractical because of the size of the lite required.

(b) The department may by rule exempt from the requirements of this section and, if it deems necessary, prescribe other less stringent protective requirements for:

1. Any lite which is 8 inches or less in the least dimension, or no more than 4 inches in either dimension, and which is used in an application which the department finds is not hazardous.

2. Leaded stained glass which is used in an application which the department finds is not hazardous.

(c) Any mirror, framed glazed picture or similar decorative object which is attached to a door or wall in a hazardous location and which does not in whole or in part conceal any opening in such door or wall is exempt from the requirements of this section.

(4) LIABILITY OF EMPLOYERS AND SELLERS.

(a) No employe of a person responsible for compliance with this section is liable for the employer's failure to comply.

(b) No seller of glazing materials is subject to the penalty under sub. (5) or is liable for injuries occurring to any person if the seller has exercised reasonable care to see that the glazing materials sold by him or her are properly used.

(5) PENALTY. Whoever violates this section may be required to forfeit not less than \$100 nor more than \$500.

History: 1975 c. 293.

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101.127 Building requirements for certain residential facilities. The department, after consultation with the department of health and social services, shall develop a building code for previously constructed buildings converted to use as community-based residential facilities as defined in s. 50.01 (1) which serve between 9 and 20 unrelated residents. In setting standards, the department shall consider the criteria enumerated in ss. 46.03 (25) and 50.03 (1) (a), and in addition shall consider the relationship of the development and enforcement of the code to any relevant codes of the department of health and social services. The objectives of the code shall be to guarantee health and safety and to maintain insofar as possible a homelike environment. The department shall consult with the residential facilities council in developing the code.

History: 1975 c. 413; 1975 c. 422 s. 163.

101.13 Physically disabled persons; building requirements. (1) In this section, "access" means the physical characteristics of a place which allow persons with functional limitations caused by impairments of sight, hearing, coordination or perception or persons with semiambulatory or nonambulatory disabilities to enter, circulate within and leave a place of employment or public building and to use the public toilet facilities and passenger elevators in the place of employment or public building without assistance.

(1m) The department shall by rule provide minimum requirements to facilitate the use of public buildings by physically disabled persons where traffic might reasonably be expected by such persons.

(2) (a) Any place of employment or public building, the initial construction of which is commenced after July 1, 1970, but prior to May 27, 1976, shall be so designed and constructed as to provide reasonable means of ingress and egress by the physically disabled 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 disabled 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 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 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 wheelchair service.

(d) Any place of employment or public building, unless exempted by rule of the department, the initial construction of which is commenced on or after May 27, 1976, shall be designed and constructed so as to provide reasonable means of access. Buildings, as defined in s. 703.02 (5), 1975 stats., of 2 stories or less in height shall be exempt from requirements relating to parking space, ramps and grade-level entrances.

(e) The department shall by rule provide minimum regulations to ensure the access to and use of buildings prescribed in pars. (a) to (d).

(3) Any place of employment or public building subject to sub. (2) shall be so designed and constructed to allow physically disabled persons reasonable means of access from a parking lot, if any, ancillary to such buildings.

(4) 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.

(5) (a) Every place of employment and public building, except those described in sub. (2) (a) 1 to 8, the construction of which is begun after May 24, 1974 but prior to May 27, 1976, on each floor that is accessible to disabled persons, including persons in wheelchairs, which has public toilets shall have:

1. All public toilet rooms and at least one toilet compartment therein so designed and constructed that they will be suitable for entry and use by handicapped persons, including persons in wheelchairs;

2. The toilet compartment specified under par. (a) so designed and constructed to allow sufficient space between the front entrance of the compartment and adjacent furniture, fixtures or walls to permit the compartment door to open at least 95° and to allow a person in a wheelchair ample room to readily maneuver himself or the wheelchair into the compartment; and

3. At least one lavatory, sink, mirror and towel dispenser or hand drier in each public toilet room accessible to a disabled person, including a person in a wheelchair, if such item is provided.

(b) Within 90 days after May 24, 1974, the department shall adopt, by rule, specifications to effect the requirements of par. (a). The department, in so adopting rules, shall consider the specifications established in the most current revision of "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped", published by the American standards association of New York.

(6) (a) As used in this subsection, "remodeling" means to substantially improve, alter, extend or otherwise change the structure of a building or change the location of exits, but shall not include maintenance, redecoration, reroofing or alteration of mechanical or electrical systems.

(b) If more than 50% of the interior square footage of a public building is to undergo proposed remodeling, the entire building shall be made to conform to sub. (2) (d) and (e), notwithstanding whether the building was constructed prior to, on or after July 1, 1970, and any rules issued under this section.

(c) If 25% to 50% of the interior square footage of a public building is to undergo proposed remodeling, that part of the building which is to be remodeled shall conform to sub. (2) (d), notwithstanding whether the building was constructed prior to, on or after July 1, 1970, and any rules issued under this section.

(d) If less than 25% of the interior square footage of a public building is to undergo proposed remodeling, the remodeling is not subject to sub. (2) (d) and (e) unless the alteration involves work on doors, entrances, exits or public toilet rooms in which case such doors, entrances, exits or public toilet rooms shall be made to conform to sub. (2) (d) and (e), notwithstanding whether the building was constructed prior to, on or after July 1, 1970, and any rules issued under this section.

(e) If remodeling is undertaken pursuant to a plan whereby the project is done in stages which, taken together, add up to a portion of the public building subjecting the remodeling to the limits

specified in par. (b) or (c), the appropriate paragraph shall be complied with by the time the remodeling under the plan is completed.

(f) In the case of remodeling in a building having vertical transportation with adequate elevator openings to meet disabled requirements:

1. If the building has 5 floors or less, accessible toilet room accommodations for each sex shall be provided for the disabled on at least one floor.

2. If the building has more than 5 floors, in addition to the accommodations required by subd. 1, accessible toilet room accommodations for each sex shall be provided to serve each additional 5 floors or fraction thereof, and shall be located conveniently throughout the building to facilitate their use.

(g) The owner of any public building who fails to comply with this subsection may be compelled to meet its requirements in a circuit court suit 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.

(h) Each toilet room accommodation provided for disabled persons as required under this section shall be identified on its entrance as a disabled accommodation, and directions to such accommodations shall appear at the building's primary entrance.

(7) The international symbol of accessibility as adopted by the rehabilitation international in 1969 is established as the official state symbol designating buildings and facilities constructed and designed to be accessible. The symbol may be used only in buildings or other facilities, or parts thereof, which meet the standards for access established by rule of the department. If anyone uses or causes the use of the symbol in violation of department standards, the department shall order the discontinuance of such use until such standards are met. Whoever fails to comply with a department order under this subsection shall be fined \$50.

(8) Every passenger elevator installed in a place of employment or public building after October 1, 1978 shall be equipped with raised letters and numerals on the operating panel and the external door frame on each floor, and the letters and numerals shall be designed and placed to maximize the ability of persons with functional limitations to use the passenger elevator without assistance.

History: 1971 c. 185; 1971 c. 228 ss. 17, 42, 44; 1973 c. 201, 202, 336; 1975 c. 276; 1977 c. 249, 407.

While neither the US nor Wisconsin Constitutions compel states to require that public buildings and seats of government be constructed and maintained as to be accessible to the physically handicapped, the legislature has an affirmative duty to address this problem and assure equal access to all

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constituted classes of citizens, including the physically handicapped 63 Atty. Gen 87.

101.14 Fire inspections, prevention, detection and suppression. (1) (a) The department may 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.

(b) The secretary and any deputy may at all reasonable hours 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.

(c) 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.

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

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

(b) 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.

(c) Such inspection 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.

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

(e) 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.

(f) 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.

(g) 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.

(3) The department shall annually conduct training sessions and provide manuals and other materials and services to assist deputies and inspectors in the fulfillment of their duties under sub. (2).

(4) (a) The department shall make rules, pursuant to ch. 227, requiring the owner of each place of employment and public building which exceeds 60 feet in height to install such fire detection, prevention or suppression devices as will protect the property and the health, welfare and safety of all employers, employes and frequenters of each place of employment and public building. These rules shall require all such places and buildings, the construction of which is begun after July 3, 1974, except open parking structures as defined by the department, to contain an automatic sprinkler system, as defined in s. 145.01 (8), on each floor. If the department determines that water would cause irreparable damage and undue economic loss if discharged in such places or buildings, it shall require a suppression device which has a substance other than water.

(b) Fire detection, prevention and suppression devices, installation of which may be required, include but are not limited to smoke and heat detection devices, standpipes and an auto-

matic fire sprinkler system as defined in s. 145.01 (8).

(c) Each building, the construction of which is completed or is begun prior to July 3, 1974, shall be exempt from compliance with this subsection. Each building, the construction of which is begun after July 3, 1974, except open parking structures as defined by the department, or additions to which are begun after such date, shall have the necessary devices installed at the time of its construction.

(d) Whoever violates this subsection may be fined not less than \$100 but not more than \$500 for each day of violation.

(e) The department may inspect all buildings covered by this subsection and may issue such orders as may be necessary to assure compliance with it.

History: 1971 c. 185, 228; 1973 c. 324, 326, 336; 1975 c. 39, 94; 1977 c. 29, 413; 1979 c. 221.

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

See note to 893.80, citing *Coffey v. Milwaukee*, 74 W (2d) 526, 247 NW (2d) 132.

101.141 Record-keeping of fires. The department shall maintain records of all fires occurring in this state. Such records shall be open to public inspection during normal business hours.

History: 1975 c. 224

101.145 Smoke detectors. (1) DEFINITIONS. As used in this section:

(a) "Residential building" means any public building which is used for sleeping or lodging purposes and includes any apartment house, rooming house, hotel, children's home, community-based residential facility or dormitory but does not include a hospital or nursing home.

(b) "Smoke detector" means a device which detects particles or products of combustion other than heat.

(c) "Sleeping area" means the area of the unit in which the bedrooms or sleeping rooms are located. Bedrooms or sleeping rooms separated by another use area such as a kitchen or living room are separate sleeping areas but bedrooms or sleeping rooms separated by a bathroom are not separate sleeping areas.

(d) "Unit" means a residential building or that part of a residential building which is intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(2) **APPROVAL.** A smoke detector required under this section shall be approved by underwriters laboratory.

(3) **INSTALLATION AND MAINTENANCE.** A smoke detector required under this section shall

be installed according to the directions and specifications of the manufacturer and maintained in good working order.

(4) **REQUIREMENT.** The owner of a residential building of which construction is commenced on or after May 23, 1978 shall install and maintain a smoke detector in each sleeping area of each unit, in the basement and at the head of the stairway on each floor level of the building.

(5) **PENALTY.** Whoever violates this section shall forfeit to the state not more than \$50 for each day of violation.

(6) **DEPARTMENT INSPECTION AND ORDERS.** The department may inspect all residential buildings and may issue orders as may be necessary to ensure compliance with this section.

History: 1977 c. 388.

101.15 Mines, tunnels, quarries and pits.

(1) 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.

(2) (a) For the purpose of this section:

1. "Shaft" means an opening made for mining minerals, for hoisting and lowering persons or material, or for ventilating underground workings.

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

3. "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.

(b) No excavation of a shaft may be commenced unless a permit is first issued therefor by the department. Permits for such excavation shall be issued upon fee payment and 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.

(c) Paragraph (b) 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.

(d) The department may:

1. 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.

2. Cause the inspection of all underground mines, quarries, pits, zinc works or other excavations.

(e) 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.

(f) 1. 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 employees 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 employees.

2. 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 subjects the party or parties to contempt proceedings.

History: 1971 c. 185; 1971 c. 228 s. 44; 1975 c. 94 s. 91 (9); 1977 c. 29; 1979 c. 257

When a deputy inspector determines that there is a violation of safety orders where a condition of extreme and imminent danger to a workman's life exists, he may seek the assistance of a local law enforcement officer. The local law enforcement officer has a duty to render such assistance unless in his opinion other priority assignment take precedence. 59 Atty. Gen. 12.

101.16 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 pro-

mulgation, 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 pursuant 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.

History: 1971 c. 185.

101.17 Machines and boilers, safety requirement. 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 101.25. Any person violating this section shall be subject to the forfeitures provided in s. 101.02 (12) and (13).

History: 1971 c. 185 ss. 1, 7; 1971 c. 228 ss. 19, 43

101.175 Local energy resource systems.

(1) In this section:

(a) "Local energy resource system" means a solar energy system, a wind energy system or a wood energy system.

(b) "Solar energy system" means equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy.

(c) "Wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy.

(d) "Wood energy system" means wood-burning stove or furnace.

(1m) The purpose of this section is to establish statewide local energy resource system standards to promote accurate consumer evaluation of local energy resource systems and components thereof.

(2) Any manufacturer or retailer prior to the sale in this state of any local energy resource system or components thereof may request the department to issue a seal of quality for each system or component which meets or exceeds the quality standards established by the department under sub. (4).

(3) The department, in consultation with the department of agriculture, trade and consumer protection, shall establish by rule quality standards for local energy resource systems which do not impede development of innovative systems but which do:

(a) Promote accurate consumer evaluation of local energy resource systems and components thereof.

(b) Conform, where feasible, with national performance standards promulgated or recognized by the federal government for local energy resource systems.

(c) Promote the production, marketing and installation of local energy resource systems.

(4) The quality standards under sub. (3) shall include but are not limited to:

(a) The requirement of a warranty and minimum requirements for the contents thereof.

(b) The requirement of an operation and maintenance manual and minimum requirements for the contents thereof.

(c) Minimum specifications for materials, workmanship, durability and efficiency.

(d) A requirement that a local energy resource system meet the standards for certification under s. 101.57 (5) if the type of energy system is eligible for a refund grant under s. 101.57 (1).

(5) Upon request by any manufacturer or retailer of any local energy resource system or components thereof which meet or exceed the quality standards established under sub. (4), the department shall issue an appropriate seal of quality. The department may charge a fee to cover the cost of the seal and to cover the cost of examining the system or its components.

(6) Misrepresentation, misuse or duplication of the department seal of quality issued under sub. (5) shall be deemed deceptive advertising under s. 100.18 (9m).

(7) At the request of any buyer of a local energy resource system the department may

inspect any local energy resource system necessary to ascertain compliance with this section.

History: 1979 c. 350

101.18 Electric fences. The department shall 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.

History: 1971 c. 185, 228.

101.19 Fees and records. (1) The department, by rule promulgated under ch. 227, shall fix and collect fees which shall, as closely as possible, equal the cost of providing the following services:

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

(b) The required inspection of boilers, pressure vessels, refrigeration plants, petroleum and liquefied petroleum gas vessels, anhydrous ammonia tanks and containers, elevators, ski towing and lift devices, amusement and thrill rides, escalators and dumbwaiters.

(c) Determining and certifying the competency of inspectors, blasters and welders.

(d) Each inspection of a facility conducted to ensure that the construction is in accordance with the plans approved by the department.

(e) The review of plans, construction inspections, department labels and licensing of manufacturers of mobile homes.

(f) Defraying the cost of the manufactured dwelling and one- and two-family dwelling programs.

(g) The inspection and investigation of accidents.

(h) Inspections of mines, tunnels, quarries, pits and explosives.

(i) Inspecting and certifying rental units under s. 101.122 (4) and certifying and training inspectors under s. 101.122 (2) (c) and (d).

(2) The department shall issue and record required certificates of inspection or of registration for equipment listed in sub. (1) (b).

History: 1971 c. 185; 1973 c. 228 s. 42; 1975 c. 39; 1977 c. 29; 1979 c. 221.

101.211 Lunchrooms. The department shall require a suitable space in which lunches may be eaten in any place of employment if found by the department to be reasonably necessary for the protection of the life, health, safety and welfare of employees therein.

History: 1971 c. 185, 228; 1977 c. 29

101.22 Equal rights. (1) INTENT. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of

this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age 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. The legislature hereby extends the state law governing equal housing opportunities to cover single-family residences which are owner-occupied. The legislature finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated. 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.

(1m) 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.

(b) "Discriminate" and "discrimination" mean to segregate, separate, exclude or treat any person or class of persons unequally because of sex, race, color, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age or ancestry. It is intended that the factors set forth herein shall be the sole bases for prohibiting discrimination.

(bm) "Handicap" means any physical disability or developmental disability as defined under s. 51.01 (5) (a).

(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, financing 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.

(e) For a person in the business of insuring against hazards, by refusing to enter into, or by exacting different terms, conditions or privileges with respect to, a contract of insurance against hazards to a dwelling.

(f) By refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant.

(2g) EXCEPTIONS. (a) Nothing in this section shall prohibit discrimination on the basis of age in relation to housing designed to meet the needs of elderly individuals.

(b) Nothing in this section shall prohibit a person from exacting different or more stringent terms or conditions for financing housing based on the age of the individual applicant for financing if the terms or conditions are reasonably related to the individual applicant.

(c) Nothing in this section shall prohibit the development of housing designed specifically for persons with a handicap and discrimination on the basis of handicap in relation to such 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 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 a complaint charging a violation of this section if the complaint is filed with the department no more than 300 days after the alleged discrimination occurred. 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. The department, upon its own motion, may test and investigate for the purpose of establishing violations of this section, and may make, sign and file complaints alleging violations of this section, and initiate investigations and studies to carry out the purposes of this section.

(c) The department shall employ such examiners as are necessary to hear and decide complaints of discrimination and to assist in the effective administration of this section. The examiners may make findings and orders under this section.

(d) If the department finds probable cause to believe that any discrimination has been or is being committed in violation of this section, it may 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, in this section called the "respondent", to answer the complaint at a hearing before an examiner. 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 before an examiner, except those for determining probable cause, the burden of proof is on the party alleging discrimination. If, after the hearing, the examiner finds by a fair preponderance of the evidence that the respondent has engaged in discrimination in violation of this section, the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of this section. The department shall serve a certified copy of the examiner's findings and order on the respondent and complainant, 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 the order is automatically stayed upon the filing of a petition for review with the commission. If the examiner finds that the respondent has not engaged in discrimination as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant and the respondent together with an order dismissing the complaint. If 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.

(e) At any time after a complaint is filed, the department may file a petition in the circuit court for the county in which the act of discrimination allegedly occurred, or for the county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this section, including an order or decree restraining the respondent from performing an act tending to render ineffectual an order the department may enter with respect to the complaint. The court may grant such temporary relief or restraining order as it deems just and proper.

(4m) INTERFERENCE, COERCION OR INTIMIDATION. No person may coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of any right granted or protected by this section, or with any person who has aided or encouraged another person in the exercise or enjoyment of any right granted or protected by this section.

(4n) REQUIRING REFERENCES. Nothing in this section shall be deemed to prohibit an owner, or agent, from requiring that any person who seeks to buy, rent or lease housing supply information concerning family, marital, financial and business status but not concerning race, color, physical condition, developmental disability as defined in s. 51.01 (5) or creed.

(4p) PETITION FOR REVIEW. (a) Any respondent or complainant who is dissatisfied with the findings and order of the examiner may file a written petition with the department for review by the commission of the findings and order.

(b) The commission shall either reverse, modify, set aside or affirm the findings and order in whole or in part, or direct the taking of additional evidence. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a respondent or complainant has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 20 days for filing the petition with the department.

(c) On motion, the commission may set aside, modify or change any decision made by the commission, at any time within 28 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. The commission may on its own motion, for reasons it deems sufficient, set aside any final decision of the commission within one year from the date thereof upon grounds of mistake or newly discovered evidence, and re-

mand the case to the department for further proceedings.

(d) If no petition is filed within 20 days from the date that a copy of the findings and order of the examiner are mailed to the last-known address of the respondent and complainant, the findings and order shall be considered final.

(5) **JUDICIAL REVIEW.** Within 30 days after service upon all parties of any order of the commission 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 new trial 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 commission. 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.** (a) Any person who wilfully violates this section or any lawful order issued under this section shall, for the first violation, forfeit not less than \$100 nor more than \$1,000.

(b) Any person adjudged to have violated this section within 5 years after having been adjudged to have violated this section, for every violation committed within the 5 years, shall forfeit not less than \$1,000 nor more than \$10,000.

(c) Payment of a forfeiture under this section shall be stayed during the period in which any appeal may be taken and during the pendency of an appeal under sub. (5).

(7) **PRIVATE CIVIL ACTIONS.** (a) A person alleging a violation of this section may bring a civil action for appropriate injunctive relief, for damages including punitive damages, and for court costs and reasonable attorney fees in the case of a prevailing plaintiff.

(b) An action commenced under par. (a) may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within one year after the alleged violation occurred.

(c) The remedies provided for in this subsection shall be in addition to any other remedies contained in this section.

(8) **DISCRIMINATION BY LICENSED OR CHARTERED PERSONS.** (a) If the department finds probable cause to believe that an act of discrimination has been or is being committed in

violation of this section by a person taking an action enumerated under sub. (2) for which the person is licensed or chartered under state law, the department shall notify the licensing or chartering agency of its findings, and shall file a complaint with such agency together with a request that the agency initiate proceedings to suspend or revoke the license or charter of such person or take other less restrictive disciplinary action.

(b) Upon filing a complaint under par. (a), the department shall make available to the appropriate licensing or chartering agency all pertinent documents and files in its custody, and shall cooperate fully with such agency in the agency's proceedings.

History: 1971 c. 185; 1971 c. 228 s. 42; 1971 c. 230; 1971 c. 307 s. 51; 1975 c. 94, 275, 421, 422; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 110; 1979 c. 177 s. 85; 1979 c. 188, 221, 355

Under (3) the department is precluded from actively publicizing complaints only at those stages before the department finds that conference, conciliation and persuasion have not eliminated the alleged discrimination. 60 Atty Gen 43

101.221 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 ss. 101.22 to 101.222 and report to the proper legislative committee its view on any pending bill relating to the subject matter of ss. 101.22 to 101.222.

History: 1971 c. 185, 228

101.222 Division of equal rights. (1) The division of equal rights may investigate a complaint of discrimination in public places of accommodation or amusement, as defined in s. 942.04 (2) if the complaint is filed with the department no more than 300 days after the alleged discrimination occurred. The department may seek conciliation in any case where it believes discrimination 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. 101.221 are valid and shall be used to carry out the purposes for which made and received.

History: 1971 c. 185 ss. 1, 7; 1977 c. 29

101.223 Postsecondary education: prohibition against discrimination on basis of physical condition or developmental disability.

(1) Subject to sub (3), no school, university or other institution offering courses or programs in postsecondary education or vocational training which is supported wholly or in part by public funds may refuse to admit any person to any school, institution, course or program or any curricular or extracurricular activity, or may otherwise discriminate against any person, solely on the basis of physical condition or developmental disability as defined in s. 51.01 (5).

(2) If admission to any such school, university, institution, program or course requires that a prospective enrollee take a standardized aptitude examination and the prospective enrollee is unable to take such an examination under standard conditions because of physical condition or developmental disability as defined in s. 51.01 (5), the school, university or institution shall make a good-faith effort to modify the examination conditions in a manner which will permit the prospective enrollee to demonstrate aptitude. The failure of any school, university or institution to make such a good-faith effort is discrimination within the meaning of this section.

(3) The prohibition against discrimination under sub (1) does not apply to:

(a) Courses, programs or activities involving the handling or operation of hazardous substances, machines or appliances if there is no feasible way in which the physical safety of the disabled student or of other persons can be adequately protected; or

(b) The admission of a person who does not meet the minimum physical standards which are reasonably necessary for a particular course, program or activity. The school, university or other institution has the burden of proving that such minimum physical standards are reasonably necessary.

(4) (a) The department shall receive and investigate complaints charging discrimination or discriminatory practices in particular cases, and publicize its findings with respect thereto. The department has all powers provided under s. 111.36 with respect to the disposition of such complaints. The findings and orders of examiners may be reviewed as provided under s. 101.22 (4p).

(b) Findings and orders of the commission under this section are subject to review under ch. 227. Upon such review, the department of justice shall represent the commission.

History: 1975 c. 275, 421; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 221.

101.225 Discrimination in education prohibited. No child may be excluded from or discriminated against in admission to any public school or in obtaining the advantages, privileges and courses of study of such public school on account of sex, race, religion or national origin.

History: 1975 c. 94.

101.23 Public employment offices. (1)

The department shall establish and conduct free employment agencies, license and supervise the work of private employment offices, do all in its power to bring together employers seeking employes and working people seeking employment, make known the opportunities for self-employment in this state, aid in procuring employment for the blind adults of the state, aid in inducing minors to undertake promising skilled employments, provide industrial or agricultural training for vagrants and other persons unsuited for ordinary employments, and encourage wage earners to insure themselves against distress from unemployment. It shall investigate the extent and causes of unemployment in this state 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.

(2) Any county, city, town or village may enter into an agreement with the department 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 lawful 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 (1) (v) and (z).

(3) The department may rent, furnish and equip, except as provided in sub. (2), such offices as may be needed in cities for the conduct of its affairs. All payments arising under this

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section shall be charged against the proper appropriation for the department.

(4) 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 cooperation with the states in the promotion of such system, and for other purposes."

(5) The department 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.

(6) 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.

History: 1971 c. 185 ss. 1, 7; 1971 c. 228 ss. 25, 42; 1973 c. 90 s. 559; 1979 c. 34 s. 2102 (25) (a).

101.24 Labor disputes. The department shall 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 \$5 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 do all other things convenient and necessary to accomplish the purposes directed in ss. 101.01 to 101.25. 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.

History: 1971 c. 185 ss. 1, 5; 1971 c. 228.

101.245 Labor law violators. (1) The department shall maintain a list of persons or firms that have been found by the national labor relations board, and by 3 different final decisions of a federal court within a 5-year period as determined under sub. (1m), if the 3 final decisions involved a cumulative finding of at least 3 separate violations, to have violated the national labor relations act, 29 USC 151 et. seq., and of persons or firms that have been found to be in contempt of court for failure to correct a violation of the national labor relations act on 3 or more occasions by a court within a 5-year period as determined under sub. (1m) if the 3 contempt findings involved a cumulative total of at least 3 different violations.

(1m) On or before July 1 of each year the department shall compile the list required under sub. (1) based upon the 5-year period which ended on September 30 of the year preceding.

(2) This list may be compiled from the records of the national labor relations board.

(3) Whenever a new name is added to this list the department shall send the name to the department of administration for action as provided in s. 16.75 (8).

(4) A name shall remain on the list for 3 years.

(5) If any person or firm files a written statement with the department alleging that the person's or firm's name should not be included on this list because the person or firm did not violate that national labor relations act as provided in sub. (1) or that 3 years have passed since the person's or firm's name was included on the list, the department shall hold a hearing on the matter. If the department finds that the allegations in the person's or firm's statement are correct, the department shall notify the department of administration that it should remove the person's or firm's name from the list.

History: 1979 c. 340.

101.25 Veterans job training. The department shall cooperate with the federal veterans administration in the performance of functions prescribed in P.L. 79-679, 60 Stat. 934 and any acts amendatory thereof or supplementary thereto. The secretary may with the approval of the governor 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 P.L. 79-679.

History: 1971 c. 185, 228; 1977 c. 29, 272.

101.30 Work incentive program; AFDC recipients. The department shall attempt to place recipients of aid to families with dependent children who are registered with the work incentive program in part-time jobs:

(1) In cases in which a part-time job will allow the pursuit of education or training leading to self-support.

(2) If the salary or wages from part-time employment combined with child support payments will result in a discontinuation of assistance under the aid to families with dependent children program.

History: 1977 c. 418.

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 health and social services deems necessary.

History: 1977 c. 164 s. 89

101.41 Department of industry, labor and human relations, unemployment. In cooperation with the department of agriculture, trade and consumer protection, 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.

History: 1977 c. 29 s. 1650m (4)

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 Depression, applicants for public employment. Immediately upon publication of a finding that a period of extraordinary unemployment due to industrial depression exists throughout the state, the department 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.

History: 1977 c. 29 s. 1651

101.47 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 finds that the injury or death of a state or local government officer or employe arose out of the performance of duties in connection with a public insurrection, and finds that death or disability benefits are payable under ch. 102, a supplemental award equal to the amount of the benefits (other than medical expense) payable under ch. 102 shall be made to the persons and in the same manner provided by ch. 102, except that when benefits are payable under s. 102.49, a supplemental award equal to one-half the benefits payable under that section 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.

History: 1971 c. 40; 1975 c. 199; 1975 c. 404 s. 7; 1975 c. 405 s. 7; 1977 c. 29 s. 1651

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 the governor and the U.S. nuclear regulatory commission as to the adequacy of the state's program of regulation, enter into such an agreement.

History: 1977 c. 29.

101.57 Renewable energy resource system and cogeneration facility incentive.

(1) Any person other than a corporation or other than a cooperative as defined in s. 185.01 (1) or (2) owning a renewable energy resource system may apply for a refund of the percentage determined under sub. (1m) of the total cost of the design, construction, equipment and installation of the renewable energy resource system, but not exceeding \$10,000 of such costs per system if:

(a) The installation of the system is completed during the year for which the refund is claimed;

(b) The system is installed on the person's property in this state;

(c) The total cost of the system exceeds \$500; and

(d) The system is certified under sub. (4).

(1d) A person may apply for a refund under sub. (1) for the design, construction, equipment and installation of an alcohol fuel production system only if the person's primary residence is in this state.

(1g) A person may apply for a refund under sub. (1) for the design, construction, equipment and installation of a system only if the person's primary residence is in this state.

(1m) The percentage of the total cost of the renewable energy resource system which may be claimed under sub. (1) shall be:

(a) If the real property improvements on which the system is installed appeared on the local tax roll prior to April 20, 1977:

1. For 1979 to 1981, 24%.

2. For 1982 and 1983, 18%.

3. For 1984 and 1985, 12%.

(b) If the real property improvements on which the system is installed appeared on the local tax roll on or after April 20, 1977:

1. For 1979 to 1981, 16%.

2. For 1982 and 1983, 12%.

3. For 1984 and 1985, 8%.

(1n) For taxable years 1980 to 1985 any corporation or cooperative as defined in s. 185.01 (1) or (2) owning a renewable energy

resource system or a cogeneration facility installed on the corporation's or cooperative's property in this state, or installed on residential property in this state under a leasing agreement between the corporation or cooperative as defined in s. 185.01 (1) or (2) and the owner of the residential property, may apply for a refund of an amount equal to 10% of the first \$1,000,000 of the total cost of the design, construction, equipment and, except for leased systems, installation of the renewable energy resource system or cogeneration facility if the system or facility is certified under sub. (4), if the installation of the system or facility is completed during the year for which the refund is claimed and, in the case of a corporation, if the corporation is subject to the tax imposed upon or measured by the corporation's net income under s. 71.01 (1) and (2). Only a corporation having its commercial domicile in this state or a cooperative incorporated under ch. 185 may apply for a refund under this subsection for the design, construction, equipment and, except for leased systems, installation of an alcohol fuel production system.

(3) Applications for refund under this section shall be made to the department. If approved by the department, the amount of refund shall be certified to the department of administration for payment to the claimant by check from the appropriation under s. 20.445 (1) (e). Only one claim may be filed by any claimant during any year. No claim filed under this section may be allowed unless the claim is filed within 4 years of the year in which the costs upon which it is based were incurred. A claimant who has filed a timely claim under this section may file an amended claim with the department within 4 years of the last day prescribed by law for filing the original claim.

(4) The department shall approve the refund if:

(a) The renewable energy resource system or cogeneration facility is a specified model which has been certified by the department as meeting the standards specified in sub. (5); or

(b) Based on design calculations or other appropriate documentation, specified by the department by rule, and submitted by the owner of a renewable energy resource system or cogeneration facility, the system has been certified by the department as meeting the standards specified in sub. (5).

(5) The department, in consultation with the department of administration, shall establish by rule performance standards for renewable energy resource systems and performance and minimum conversion efficiency standards for

cogeneration facilities. The performance standards shall be established to:

(a) Produce the maximum practical amount of energy.

(b) Conform, where feasible, with national performance standards promulgated or recognized by the federal government for renewable energy resource systems or cogeneration facilities.

(c) Produce present value benefits in terms of saved energy costs in an amount not less than the total present value cost of designing, constructing and installing the renewable energy resource system or cogeneration facility within 25 years after installation of the system or facility and not produce present value benefits in terms of saved energy costs in an amount greater than the total present value cost of designing, constructing and installing the renewable energy resource system or cogeneration facility within 4 years after installation of the system or facility.

(d) Not hamper individual development of innovative renewable energy resource systems or cogeneration facilities.

(5g) The department shall inspect selected renewable energy resource systems or cogeneration facilities which have been installed and certified for purposes of this section or s. 71.04 (16) or 71.09 (12) to ensure compliance with the standards established under sub. (5).

(5r) Any person who intentionally files fraudulent information with the department for purposes of obtaining the certification of a renewable energy resource system or a cogeneration facility as meeting the standards established under sub. (5) for purposes of this section or s. 71.04 (16) or 71.09 (12) is subject to the penalties under s. 71.11 (42) or (43).

(6) If more than one person owns a renewable energy resource system or cogeneration facility eligible for the refund under this section, such persons may divide the refund among themselves as desired. If a business partnership owns such a system, each partner may claim the refund under sub. (1) for up to \$10,000 of costs per partner, but the total claimed by the partnership may not exceed \$50,000 of costs per system. If a refund is claimed for a renewable energy resource system or cogeneration facility under this section, subsequent owners of the system or facility are not eligible for a refund under this section for the same system or facility.

(7) No person may claim the refund under this section for expenses incurred before the first day of the person's 1979 taxable year, if an individual, or before the first day of the person's 1980 taxable year, if a corporation, or before May 22, 1980 if a cooperative as defined in s. 185.01 (1) or (2), or after December 31, 1985.

(7m) No refund may be granted under this section if a tax credit has been received under s. 71.09 (12) in a prior year for the same renewable energy resource system or if expenses relating to the same system have been deducted, depreciated or amortized under s. 71.04 (16).

(8) In this section:

(a) "Renewable energy resource system" means a solar energy system, a waste conversion energy system, a wind energy system or an alcohol fuel production system, but does not include any equipment which would be present as part of a conventional energy system.

(b) "Solar energy system" means equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy.

(c) "Waste conversion energy system" means equipment which converts wastes into usable forms of energy but does not include solid fuel-consuming devices used for residential purposes.

(d) "Wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy.

(dm) "Cogeneration facility" means an electric power plant or a fuel-burning installation, or a portion of an electric power plant or a fuel-burning installation, which provides a new or expanded capacity for producing electric or mechanical power and any other form of useful energy which is used for commercial, industrial, space-cooling or space-heating purposes, including a steam or hot water generation and handling system, an electric or mechanical turbine and generation system and any associated environmental control systems, but excluding a fuel supply system; a steam or hot water delivery system; a building or any foundation or other support system.

(e) 1. "Alcohol fuel production system" means manufacturing equipment that produces for the owner's own use or for sale an alcohol fuel from raw materials other than coal or another nonrenewable fossil fuel and that makes effective use of the energy resource used to power the production.

2. "Manufacturing equipment" does not include materials, supplies, buildings or building components; nor does it include equipment, tools or implements used to service or maintain the production equipment; nor does it include pollution control equipment.

3. "Effective use of the energy resource" means that:

a. The principal energy resource used to power the production of the alcohol fuel is not a premium fuel; or

b. The principal energy resource used to power the production of the alcohol fuel is a premium fuel, all of the raw material is a waste and the average energy content of the alcohol fuel produced by the facility is greater than the average total energy content of the premium fuel used in the collection, handling, processing, transportation, storage and conversion to alcohol fuel of the waste; or

c. The principal energy resource used to power the production of the alcohol fuel is a premium fuel, part of the raw material is not a waste and the average energy content of the alcohol fuel produced by the facility is greater than the average energy content of the premium fuel used in the development or growing, collection, handling, processing, transportation, storage and conversion to alcohol fuel of the raw material.

(f) "Alcohol fuel" means methyl or ethyl alcohol that is used as a fuel either by itself or blended and injected or both with gasoline, kerosene, fuel oil, burner oil or diesel fuel oil.

(g) "Premium fuel" means gasoline, kerosene, fuel oil, burner oil and diesel fuel or any other nonrenewable fossil fuel, except coal.

(9) In cooperation with the department of administration and the university of Wisconsin system-extension, the department shall develop materials to inform the public of the refunds for renewable energy resource systems and cogeneration facilities available under this section. Such material shall include information on the calculation of the life-cycle costs of renewable energy resource systems and cogeneration facilities.

(10) The department shall annually prepare a summary of the number of claims under this section and s. 71.04 (16), including but not limited to information concerning the costs, size and type of each renewable energy resource system or cogeneration facility for which a refund or deduction is claimed.

(12) Whenever an audit of any claim filed under this section indicates that an incorrect claim was filed, the department shall make a determination of the correct amount and notify the claimant of the determination and the reasons therefor. Notice of the determination shall be given to the claimant within 4 years of the last day prescribed by law for filing the claim. If the claim has been paid, the refund shall be reduced or canceled, and the proper portion of any amount paid shall be certified to the department of revenue and recovered by assessment as income taxes are assessed and the assessment shall bear interest at 9% per year from the due date of the claim. Any person feeling aggrieved by the determination may, within 30 days after receipt,

petition the department for redetermination. The department shall make a redetermination on the petition within 6 months after it is filed and notify the claimant. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive.

(13) In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full and, if the claim has been paid, the refund shall be canceled and the amount paid may be certified to the department of revenue and recovered by assessment as income taxes are assessed and the assessment shall bear interest from the due date of the claim, until refunded or paid, at the rate of 1.5% per month. The claimant in such case, and any person who assisted in the preparation or filing of the excessive claim or supplied information upon which the excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor. In any case in which it is determined that a claim is or was excessive and was negligently prepared, 10% of the corrected claim shall be disallowed and, if the claim has been paid, the refund shall be reduced or canceled and the proper portion of any amount paid shall be certified to the department of revenue and recovered by assessment as income taxes are assessed and the assessment shall bear interest at 1.5% per month from the due date of the claim.

History: 1979 c. 34, 154, 221; 1979 c. 329 ss. 15 to 25 (1), (3); 1979 c. 350 ss. 18b to 20, 27 (1), (6); 1979 c. 355.

SUBCHAPTER II

ONE- AND 2-FAMILY DWELLING CODE

101.60 Purpose. The purpose of this subchapter is to establish statewide construction standards and inspection procedures for one- and 2-family dwellings and to promote interstate uniformity in construction standards by authorizing the department to enter into reciprocal agreements with other states which have equivalent standards.

History: 1975 c. 404; 1977 c. 369, 447.

101.61 Definitions. In this subchapter:

(1) "Dwelling" means any building the initial construction of which was commenced on or after December 1, 1978, which contains one or 2 dwelling units. "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(2) "Owner" means any person having a legal or equitable interest in the dwelling. "Owner" does not include any person whose legal or equitable interest in the dwelling is a security interest derived solely from the extension of credit to permit construction or remodeling of the dwelling or purchase of the dwelling by a 3rd party.

History: 1975 c 404; 1979 c 89, 148

Code applies to additions of any buildings initially constructed after the effective date of the one- and two-family dwelling code act 67 Atty. Gen 191

101.62 Dwelling code council; power. The dwelling code council shall review the standards and rules for one- and 2-family dwelling construction and recommend a uniform dwelling code for adoption by the department which shall include rules providing for the conservation of energy in the construction and maintenance of dwellings and for costs of specific code provisions to home buyers to be related to the benefits derived from such provisions. Upon its own initiative or at the request of the department, the council shall consider and make recommendations to the department pertaining to rules and any other matters related to this subchapter. The council shall recommend variances for different climate and soil conditions throughout the state.

History: 1975 c 404.

101.63 Departmental duties. The department shall:

(1) Adopt rules which establish standards for the construction and inspection of one- and 2-family dwellings and components thereof. Where feasible, the standards used shall be those nationally recognized and shall apply to the dwelling and to its electrical, heating, ventilating, air conditioning and other systems, including plumbing, as defined in s. 145.01 (1). No set of rules may be adopted which has not taken into account the conservation of energy in construction and maintenance of dwellings and the costs of specific code provisions to home buyers in relationship to the benefits derived from the provisions.

(2) Adopt rules for the certification, including provisions for suspension and revocation thereof, of inspectors for the purpose of inspecting building construction, electrical wiring, heating, ventilating, air conditioning and other systems, including plumbing, as defined in s. 145.01 (1), of one- and 2-family dwellings under sub. (1). Persons certified as inspectors may be employes of the department, a city, village, town, county or an independent inspection agency. The department may not adopt any rule which prohibits any city, village, town or

county from licensing persons for performing work on a dwelling in which the licensed person has no legal or equitable interest.

(3) Contract to provide inspection services, at municipal expense, to any municipality which requires such service under s. 101.65.

(5) Biennially review the rules adopted under this subchapter.

(6) Issue special orders which it deems necessary to secure compliance with this subchapter and enforce the same by all appropriate administrative and judicial proceedings.

(7) Prescribe and furnish to municipalities a standard building permit form for all new one- and 2-family dwellings.

(8) Hear petitions regarding the dwelling code, rules and special orders in accordance with s. 101.02 (6) (e) to (i) and (8).

(9) Establish by rule a schedule of fees sufficient to defray the costs incurred under this subchapter.

History: 1975 c 404; 1979 c 221

101.64 Departmental powers. The department may:

(1) Hold hearings on any matter relating to this subchapter and issue subpoenas to compel the attendance of witnesses and the production of evidence at such hearings.

(2) At the request of the owner or renter enter, inspect and examine dwellings, dwelling units or premises necessary to ascertain compliance with the rules and special orders under this subchapter.

(3) Revise the rules under this subchapter after consultation with the dwelling code council.

(4) Provide for or engage in the testing, approval and certification of materials, devices and methods of construction.

(5) Collect and publish data secured from the building permits.

(6) Adopt rules prescribing procedures for approving new building materials, methods and equipment.

(7) Enter into reciprocal agreements with other states regarding the approval of building materials and methods where the standards of the other state meet the intent of the dwelling code and the rules promulgated under this subchapter.

(8) Study the operation of the dwelling construction code and other laws related to the construction of dwelling units to determine their impact upon the cost of building construction and their effectiveness upon the health, safety and welfare of the occupants.

History: 1975 c 404.

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101.645 Smoke detectors. (1) DEFINITION. The definition of "smoke detector" under s. 101.145 (1) (b) also applies to this section.

(2) APPROVAL; INSTALLATION AND MAINTENANCE. A smoke detector required under this section shall be approved, installed and maintained as required under s. 101.145 (2) and (3).

(3) REQUIREMENT. The owner of a multi-unit dwelling the initial construction of which was commenced on or after May 23, 1978 shall install and maintain a smoke detector in the basement of the dwelling and on each floor level except the attic or storage area of each dwelling unit.

(4) INSPECTION. The department or a municipal authority may inspect new dwellings and may inspect dwellings at the request of the owner or renter to ensure compliance with this section.

History: 1977 c. 388.

101.65 Municipal authority. Cities, villages, towns and counties:

(1) May:

(a) Exercise jurisdiction over the construction and inspection of new dwellings by passage of ordinances, provided such ordinances meet the requirements of the one- and 2-family dwelling code adopted in accordance with this subchapter. A county ordinance shall apply in any city, village or town which has not enacted such ordinance.

(b) Under s. 66.30, jointly exercise the jurisdiction granted under par. (a).

(c) By ordinance establish and collect fees to defray the cost of jurisdiction exercised under par. (a) or (b).

(d) By ordinance provide remedies and penalties for violation of the jurisdiction exercised under par. (a) or (b).

(2) Shall contract with the department for those inspection services which the municipality does not perform or contract for under sub. (1) (a) or (b) and reimburse the department for its reasonable and necessary expenses incurred in the performance of such services pursuant to s. 101.63 (9).

(3) Shall use the standard building permit form prescribed and furnished by the department and file a copy of each such permit issued with the department.

(4) A county or the department of industry, labor and human relations may not provide or require inspection services under this section in a city, village or town with a population of 2,500 or less unless the municipality consents.

History: 1975 c. 404; 1979 c. 221 s. 2025 (12); 1979 c. 355 s. 238.

101.655 Pilot lights prohibited on gas appliances. (1) In this section:

(a) "Class of gas appliances" means a group of gas appliances all of which perform a similar function.

(b) "Gas appliance" means any furnace or heater requiring electrical supply for operation, air conditioner, refrigerator, stove having an electrical supply cord, dishwasher, dryer, swimming pool heater or other similar appliance or device used in a private residence or private dwelling, which uses a gaseous fuel for operation and is automatically ignited for operation by means of a pilot light or other ignition device.

(c) "Intermittent ignition device" means an ignition device which is actuated only when a gas appliance is in operation.

(d) "Manufacturer" means any person who manufactures, produces or assembles gas appliances.

(e) "Nationally recognized standards and testing procedures" means those standards adopted by the American national standards institute and those testing procedures developed by the American gas association laboratories or underwriters laboratories, or such other standards and testing procedures that are recognized nationally by the gas appliance industry.

(f) "Pilot light" means any gas-operated device that remains continually lighted in order to ignite a gas appliance to begin normal operation.

(2) The department shall, on or before July 1, 1978, develop the specifications for certifying intermittent ignition devices. Development of the specifications shall proceed with the cooperation of representatives designated by the department from the affected gas appliance industry and consumers. The development of specifications shall make the fullest possible use of nationally recognized standards and testing procedures for intermittent ignition devices.

(3) The specifications for certification shall be developed with consideration for:

(a) The conservation of primary energy resources.

(b) Provisions necessary for public health and safety.

(c) Initial consumer costs, including installation and maintenance costs.

(d) Any other criteria determined necessary by the department.

(4) The department shall demonstrate that an intermittent ignition device operates according to the established specifications. Based upon this demonstration, the department may determine that an intermittent ignition device is feasible and may so certify the device.

(5) Within 90 days after an intermittent ignition device has been certified by the department, the department shall notify all gas appliance manufacturers doing business in this state of the prohibition of affected pilot lights, including the effective date of the prohibition, and shall inform manufacturers of ignition devices available which comply with established specifications.

(6) (a) No person may sell, distribute or install or cause to be sold, distributed or installed in this state a new gas appliance that is not equipped with a certified intermittent ignition device, beginning 24 months after any intermittent ignition device has been certified by the commission under sub. (5) as feasible for the class of gas appliances to which the gas appliance belongs, but no earlier than July 1, 1980.

(b) Commencing 24 months after an intermittent ignition device has been certified by the department, but no earlier than July 1, 1980, the department shall have all the powers conferred by s. 101.02 for purposes of enforcing this section.

(c) The department may seek a forfeiture or initiate a civil action for a temporary or permanent injunction for any violation of this section or any rule promulgated under this section.

(d) Any person who violates this section or any rule promulgated under this section shall be subject to a forfeiture of not more than \$400 for each day of violation.

(7) Commencing 3 years after May 20, 1978, the department shall include annually in the report required under s. 15.04 (1) (d), a description of its enforcement activities under this section.

(8) The department shall make rules as it deems necessary to carry out its duties under this section.

History: 1977 c. 369, 447; 1979 c. 154; 1979 c. 175 s. 53.

101.66 Compliance and penalties. (1) Every builder, designer and owner shall use building materials, methods and equipment which are in conformance with the one- and 2-family dwelling code.

(2) All inspections shall be by persons certified by the department.

(3) Whoever violates this subchapter shall forfeit to the state not less than \$25 nor more than \$500 for each violation. Each day that such violation continues constitutes a separate offense.

History: 1975 c. 404.

SUBCHAPTER III

MANUFACTURED BUILDING CODE

101.70 Purpose. The purpose of this subchapter is to establish statewide standards and inspection procedures for the manufacture and installation of manufactured buildings for dwellings and to promote interstate uniformity in standards for manufactured buildings by authorizing the department to enter into reciprocal agreements with other states which have equivalent standards.

History: 1975 c. 405.

101.71 Definitions. In this subchapter:

(1) (a) "Manufactured building" means any structure or component thereof which is intended for use as a dwelling and:

1. Is of closed construction and fabricated or assembled on-site or off-site in manufacturing facilities for installation, connection, or assembly and installation, at the building site; or

2. Is a building of open construction which is made or assembled in manufacturing facilities away from the building site for installation, connection, or assembly and installation, on the building site and for which certification is sought by the manufacturer.

(b) The term "manufactured building" does not include a building of open construction which is not subject to par. (a) 2. In no case may a single or double width mobile home as defined in s. 218.10 (2) be considered a manufactured building nor may such a mobile home be subject to this subchapter.

(2) "Dwelling" means any building the initial construction of which was commenced on or after December 1, 1978, which contains one or more dwelling units. "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(3) "Insignia" means a device or seal approved by the department to certify compliance with this subchapter.

(4) "Installation" means the assembly of a manufactured building on-site and the process of affixing a manufactured building to land, a foundation, footing or an existing building.

(5) "Manufacture" means the process of making, fabricating, constructing, forming or assembling a product from raw, unfinished, semifinished or finished materials.

(6) "Closed construction" means any building, building component, assembly or system manufactured in such a manner that it cannot be

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inspected before installation at the building site without disassembly, damage or destruction.

(7) "Open construction" means any building, building component, assembly or system manufactured in such a manner that it can be readily inspected at the building site without disassembly, damage or destruction.

History: 1975 c. 405; 1979 c. 89.

101.72 Dwelling code council. The dwelling code council shall review the standards and rules for manufactured buildings for dwellings and recommend a statewide manufactured building code for adoption by the department which shall include rules providing for the conservation of energy in the construction and maintenance of dwellings. Such rules shall take into account the costs to home buyers of specific code provisions in relation to the benefits derived therefrom. Upon its own initiative or at the request of the department, the council shall consider and make recommendations to the department pertaining to rules and any other matters related to this subchapter.

History: 1975 c. 405.

101.73 Departmental duties. The department shall:

(1) Adopt rules which establish standards for the use of building materials, methods and equipment in the manufacture and installation of manufactured buildings for use as dwellings or dwelling units. Where feasible, the standards used shall be those nationally recognized and shall apply to the dwelling and to its electrical, heating, ventilating, air conditioning and other systems. Such rules shall take into account the conservation of energy in construction and maintenance of dwellings and the costs to home buyers of specific code provisions in relation to the benefits derived therefrom.

(2) Adopt rules for the examination of plans and specifications and for periodic in-plant and on-site inspections of manufacturing facilities, processes, fabrication, assembly and installation of manufactured buildings to ensure that examinations and inspections are made in compliance with the rules adopted for construction, electrical wiring, heating, ventilating, air conditioning and other systems under ss. 101.70 to 101.77 and with the rules for indoor plumbing adopted by the department under ch. 145.

(3) Provide for examination of plans and specifications and in-plant inspections when contracted for by the manufacturer under s. 101.75 (1) and shall contract to provide on-site inspection services for the installation of manufactured buildings for dwellings, at municipal expense, for any municipality which requires such service under s. 101.76.

(5) Adopt rules for the certification, including provisions for suspension and revocation thereof, of on-site inspectors of the installation of manufactured buildings for dwellings. Persons certified as on-site inspectors may be employes of the department, a city, village, town or county or an independent agency.

(6) Adopt rules for the certification, including provisions for suspension and revocation thereof, of independent inspection agencies to conduct in-plant inspections of manufacturing facilities, processes, fabrication and assembly of manufactured buildings for dwellings and to certify compliance with this subchapter.

(7) Issue or recognize an insignia of compliance for dwellings which conform to the manufactured building code.

(8) Biennially review the rules promulgated under this subchapter.

(9) Issue special orders which it deems necessary to secure compliance with this subchapter and enforce the same by all appropriate administrative and judicial proceedings.

(10) Prescribe and furnish to municipalities a standard building permit form for all new one- and 2-family dwellings.

(11) Hear petitions regarding the manufactured building code, rules and special orders in accordance with s. 101.02 (6) (e) to (i) and (8).

(12) Establish by rule a schedule of fees sufficient to defray the costs incurred under this subchapter.

History: 1975 c. 405; 1979 c. 221.

101.74 Departmental powers. The department may:

(1) Hold hearings on any matter relating to this subchapter.

(2) At the request of the owner or renter enter, inspect and examine dwellings, dwelling units and premises necessary to ascertain compliance with the rules and special orders under this subchapter.

(2m) Study the operation of the dwelling construction code and other laws related to the construction of dwelling units to determine their impact upon the cost of building construction and their effectiveness upon the health, safety and welfare of the occupants.

(3) Revise the rules under this subchapter after consultation with the dwelling code council.

(4) Provide for or engage in the testing, approval and certification of materials, devices and methods for the manufacture or installation of manufactured buildings.

(5) Collect and publish data secured from the examinations and inspections under s. 101.73 (2) and (3), and from building permits.

(6) Adopt rules prescribing procedures for approving new building materials, devices and methods for the manufacture or installation of manufactured buildings for dwellings.

(7) Enter into reciprocal agreements with other states regarding the design, construction, inspection and labeling of manufactured buildings where the laws or rules of other states meet the intent of the manufactured building code and the rules promulgated under this subchapter.

History: 1975 c. 405

101.745 Smoke detectors. (1) DEFINITION. The definition of smoke detector under s. 101.145 (1) (b) also applies to this section.

(2) APPROVAL. A smoke detector required under this section shall be approved by underwriters laboratory.

(3) INSTALLATION. A smoke detector required under this section shall be installed according to the directions and specifications of the manufacturer.

(4) REQUIREMENT. The manufacturer of a manufactured building manufactured on or after May 23, 1978 shall install a smoke detector on each floor level except the attic or storage area of each dwelling unit.

History: 1977 c. 388.

101.75 Inspections, insignia and alterations. (1) INSPECTIONS AND COMPLIANCE.

Manufacturers of manufactured buildings shall contract with a certified independent inspection agency or the department to conduct in-plant inspections and certify compliance with this subchapter. Manufacturers shall reimburse the independent inspection agency in accordance with the terms of the contract or reimburse the department in accordance with fees established under s. 101.73 (12). All inspections shall be performed by persons certified by the department.

(2) DISPLAY OF INSIGNIA REQUIRED. All manufactured buildings manufactured, sold for initial use or installed within this state shall display, in a manner determined by the department, the insignia issued or recognized under ss. 101.73 (7) and 101.74 (7). All manufactured buildings bearing such insignia shall be deemed to comply with the requirements of all building ordinances and regulations of any local government except those related to zoning and siting requisites including but not limited to building setback, side and rear yard requirements and property line requirements.

(3) DEPARTMENT APPROVAL OF ALTERATIONS. No person shall alter an approved manufactured building in any way prior to or during installation without the approval of the department.

(4) COUNTERFEIT INSIGNIA. No person may falsely or fraudulently make, forge, alter or counterfeit any insignia issued or recognized under ss. 101.73 (7) and 101.74 (7).

History: 1975 c. 405.

101.76 Municipal authority. Cities, villages, towns and counties:

(1) May:

(a) With the approval of the department, exercise jurisdiction over the installation of manufactured buildings for dwellings by passage of ordinances, provided such ordinances are in strict conformance with this subchapter and the on-site inspection is performed by persons certified by the department. A county ordinance shall apply in any city, village or town which has not enacted such ordinance.

(b) Under s. 66.30, jointly exercise the jurisdiction granted under par. (a).

(c) By ordinance establish and collect fees to defray the cost of jurisdiction exercised under par. (a) or (b).

(d) By ordinance provide remedies and penalties for violation of the jurisdiction exercised under par. (a) or (b).

(2) Shall contract with the department for on-site installation inspection services which the municipality does not perform under sub. (1) (a) or (b) and reimburse the department for its reasonable and necessary expenses incurred in the performance of such services pursuant to s. 101.73 (12).

(3) Shall use the standard building permit form prescribed by the department and file a copy of each such permit issued with the department.

History: 1975 c. 405.

101.77 Penalties. Whoever violates this subchapter shall forfeit to the state not less than \$25 nor more than \$500 for each violation and each day that such violation continues constitutes a separate offense.

History: 1975 c. 405.

SUBCHAPTER IV

INSPECTION OF ELECTRICAL CONSTRUCTION

101.80 Definitions. In this subchapter:

(1) "Public buildings" and "places of employment" have the meanings provided by s. 101.01 (2) and include all exterior wiring ex-

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cept wiring owned, leased, operated or maintained by a public utility including any electrical cooperative, in the exercise of its utility function.

(2) "Municipality" means city, town, village and county.

History: 1979 c. 309.

101.82 Departmental duties. The department shall:

(1) Adopt rules for the construction and inspection of electrical construction of public buildings and places of employment. Where feasible, the standards used shall be those nationally recognized. No rule may be adopted which does not take into account the conservation of energy in construction and maintenance of buildings.

(2) Adopt rules for the certification, including provisions for suspension and revocation thereof, of electrical inspectors for the purpose of inspecting the electrical wiring of public buildings and places of employment. Persons certified as inspectors may be employes of the department, a municipality or private inspection agency.

(3) Contract to provide inspection services, at municipal expense, to any municipality which requests such service under s. 101.86.

(3m) Provide inspection services in those municipalities which have not adopted and enforced ordinances providing for inspection of electrical construction under s. 101.86 and defray the cost of this inspection through fees charged to the owner of the inspected building.

(4) Establish by rule a schedule of fees sufficient to defray the costs incurred under this subchapter.

History: 1979 c. 309.

101.84 Departmental powers. The department may:

(1) Hold hearings on any matter relating to this subchapter and issue subpoenas to compel the attendance of witnesses and the production of evidence at the hearings.

(2) At the request of the owner or tenant, enter, inspect and examine the exterior and interior wiring of a public building or place of employment necessary to ascertain compliance with the rules promulgated under this subchapter.

History: 1979 c. 309.

101.86 Municipal authority. (1) Municipalities may:

(a) Exercise jurisdiction over electrical construction and inspection of electrical construction in public buildings and places of employment by passage of ordinances, providing such

ordinances meet the minimum requirements of the department's rules adopted under this subchapter. A county ordinance shall apply in any city, village or town which has not enacted such an ordinance.

(b) Under s. 66.30, jointly exercise the jurisdiction granted under par. (a).

(c) By ordinance, establish and collect fees to defray the cost of jurisdiction exercised under par. (a) or (b) or a contract under sub. (2).

(d) By ordinance, provide remedies and penalties for violation of the jurisdiction exercised under par. (a) or (b).

(2) A municipality may contract with the department for those inspection services which the municipality does not perform or contract for under sub. (1) (a) or (b) and reimburse the department for its reasonable and necessary expenses incurred in the performance of such services under s. 101.82 (4).

(3) The cost of inspection services provided by any county which has enacted an ordinance under sub. (1) or contracted under sub. (2) if not defrayed by fees shall be charged to or taxed upon the property within those cities, villages and towns in the county which have not enacted a local construction and inspection ordinance under sub. (1) or contracted under sub. (2), and no part of the cost of inspection services may be charged to or taxed against the property within any city, village or town which has enacted such an ordinance or contracted under sub. (2).

History: 1979 c. 309.

101.88 Compliance and penalties. (1)

Every contractor, designer and owner shall use building materials, methods and equipment which are in conformance with the rules adopted by the department under this subchapter.

(2) All inspections shall be made by persons certified by the department.

(3) Whoever violates this subchapter or any rule promulgated under this subchapter shall forfeit to the state not less than \$25 nor more than \$500 for each violation. Each day of violation constitutes a separate offense.

History: 1979 c. 309.

SUBCHAPTER V**MOBILE HOMES; REGULATION OF MANUFACTURERS**

101.90 Purpose. The purpose of this law is to establish uniform construction standards, inspection procedures and licensing of manufacturers of mobile homes and to promote interstate uniformity and the ability to enter into

reciprocal agreements with other states and the federal government.

History: 1973 c. 116.

101.91 Definition. In ss. 101.90 to 101.96, "mobile home" means a vehicle designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction, which has an overall length in excess of 45 feet. "Mobile home" includes the mobile home structure, its plumbing, heating and electrical systems, and all appliances and all other equipment carrying a manufacturer's warranty.

History: 1973 c. 116, 132.

101.92 Departmental powers and duties. The department:

(1) Shall adopt, administer and enforce rules for the safe and sanitary design and construction of mobile homes manufactured, distributed, sold or offered for sale in this state.

(2) Shall license all manufacturers desiring to sell or distribute for sale mobile homes in this state.

(3) Shall review annually the rules adopted under ss. 101.90 to 101.96, and may revise rules upon recommendation by the advisory committee appointed under s. 101.96.

(4) Shall provide for announced or unannounced inspection of manufacturing facilities, processes, fabrication and assembly of mobile homes to ensure compliance with the rules adopted under ss. 101.90 to 101.96.

(5) Shall establish standards for certification of inspection and testing agencies which shall include standards for in-plant inspection of manufacturing facilities, processes, fabrication and assembly of mobile homes and for issuance of or acceptance of a label of approval.

(6) May enter into reciprocal agreements with other states regarding the design, construction, inspection and labeling of mobile homes which are not required to be constructed in accordance with 42 USC 5401 to 5426 where the laws or rules of other states meet the intent of ss. 101.90 to 101.96 and where the laws or rules are actually enforced.

(7) Shall establish within the division of industrial safety and buildings a staff for the administration and enforcement of ss. 101.90 to 101.96.

(8) May revoke the license of any manufacturer who violates ss. 101.90 to 101.96 or any rules promulgated thereunder.

History: 1973 c. 116; 1979 c. 221.

101.925 Smoke detectors. (1) DEFINITION. The definition of smoke detector under s. 101.145 (1) (b) also applies to this section.

(2) APPROVAL. A smoke detector required under this section shall be approved by underwriters laboratory.

(3) INSTALLATION. A smoke detector required under this section shall be installed according to the directions and specifications of the manufacturer.

(4) REQUIREMENT. The manufacturer of a mobile home shall install a smoke detector in each mobile home manufactured on or after May 23, 1978.

History: 1977 c. 388.

101.93 Departmental powers and duties.

(1) The department shall adopt rules relating to plumbing in the design and construction of mobile homes. The rules shall be consistent with s. 101.94 (1) to (3) and shall be reviewed annually.

(2) The department shall establish qualification requirements for and shall certify persons to perform inspections of the plumbing systems in mobile homes.

(3) The department shall review plans and specifications for approval of plumbing systems in mobile homes.

History: 1973 c. 116; 1979 c. 221.

101.94 Mobile home manufacturers, distributors and dealers: design and construction of mobile homes. (1) Mobile homes manufactured, distributed, sold or offered for sale in this state shall conform to the code promulgated by the American national standards institute and identified as ANSI 119.1, including all revisions thereof in effect on August 28, 1973, and further revisions adopted by the department and the department of health and social services. The department may establish standards in addition to those required under ANSI 119.1. This subsection applies to units manufactured or assembled after January 1, 1974, and prior to June 15, 1976.

(2) No person may manufacture, assemble, distribute or sell a mobile home on or after April 30, 1980 unless the mobile home complies with 42 USC 5401 to 5426 as in effect on April 30, 1980. The department may establish, by rule, standards for the safe and sanitary design and construction of mobile homes for the purpose of enforcement of this subchapter, and those standards may include standards in addition to any standards established by the secretary of housing and urban development under 42 USC 5401 to 5426.

(3) Each mobile home manufacturer shall submit to the department typical construction plans and specifications for review. The department shall, by its own inspectors whether inside or outside this state, perform sufficient inspections of manufacturing premises and manufactured units to ensure compliance with this section. The department may contract for inspection services, as provided in sub. (4), for inspections outside this state. Each mobile home, upon final assembly, shall display a label which shall be prescribed by and be available only from the department, or similar agency of other states where units are manufactured, providing reciprocal agreements have been executed and are effective between this state and such other states indicating that the mobile home meets the requirements of ss. 101.90 to 101.96 or the applicable laws of the state with which a reciprocal agreement has been executed. No mobile home which bears such label shall be required by any person to comply with any building, plumbing, heating or electrical code or any construction standards other than those promulgated under this section.

(4) The department shall inspect mobile homes manufactured in other states to be sold or intended to be sold in this state. For such out-of-state inspections, the department may contract for 3rd party inspection by an inspection agency which has been approved by the department. The department shall monitor inspections conducted by 3rd party inspection agencies to ensure the quality of those inspections. To obtain departmental approval, the inspection agency shall submit an application to the department accompanied by written materials evidencing that the agency is:

(a) Not under the jurisdiction or control of any manufacturer or supplier of the mobile home industry.

(b) Professionally competent to determine that a mobile home is in compliance with the requirements and standards of this section by having sufficient expertise to:

1. Inspect mobile homes.
2. Review mobile home plans and specifications.
3. Evaluate mobile home manufacturer quality control procedures.
4. Submit detailed reports regarding all of its findings to the department.

(5) No mobile home after once being approved to display the label prescribed shall be altered in any way by a manufacturer, factory

branch, distributor, distributor branch, dealer or salesman without first obtaining an approval from the department or its authorized agent.

(6) Fees for review of plans, construction inspections, department labels and licensing of manufacturers shall be established by department rule under s. 101.19.

(7) The department shall hear and decide petitions brought under ss. 101.90 to 101.96 in the manner provided under s. 101.02 (6) (e) to (i) and (8) for petitions concerning property.

(8) (a) A person who violates this subchapter or a rule or order issued under this subchapter shall forfeit not more than \$1,000 for each violation. Each violation of this subchapter constitutes a separate violation with respect to each mobile home or with respect to each failure or refusal to allow or perform an act required by this subchapter, except the maximum forfeiture under this subsection may not exceed \$1,000,000 for a related series of violations occurring within one year of the first violation.

(b) Any individual or a director, officer or agent of a corporation who knowingly and wilfully violates this subchapter in a manner which threatens the health or safety of a purchaser shall be fined not more than \$1,000 or imprisoned not more than one year or both.

History: 1973 c. 116; 1977 c. 29; 1979 c. 221 ss. 552 to 556, 2202 (25).

101.95 Mobile home manufacturers regulated. The department shall by rule prescribe the manner by which a manufacturer shall be licensed for the manufacture, distribution or selling of mobile homes in this state.

History: 1973 c. 116

101.96 Advisory committee. The department shall appoint an advisory committee of 5 members to review the rules and standards for mobile homes and recommend changes. The committee shall be composed of 2 members representing the mobile home industry, 2 public members and one member from the department. The committee shall submit an annual report to the department and to the department of health and social services. The annual report shall include recommended changes in this subchapter reflecting amendments to 42 USC 5401 to 5426 and rules and regulations issued under 42 USC 5401 to 5426.

History: 1973 c. 116; 1979 c. 221.