CHAPTER 254

ENVIRONMENTAL HEALTH

Cross−reference: See definitions in s. 250.01.

SUBCHAPTER I

GENERAL PROVISIONS

254.01 Definitions. In this chapter:

(1) "Environmental health" means the assessment, management, control and prevention of environmental factors that may adversely affect the health, comfort, safety or well−being of individuals.

(2) "Human health hazard" means a substance, activity or condition that is known to have the potential to cause acute or chronic illness or death if exposure to the substance, activity or condition is not abated.

History: 1993 a. 27.

254.015 Departmental power; designation. The department may designate a local health department to carry out a function of the department under this chapter.

History: 1993 a. 27.

254.02 Health risk assessments. (1) In this section:

(a) "Adverse health effect" means a condition that results in human morbidity, mortality, impaired reproductive function or toxicity or teratogenic, carcinogenic or mutagenic effects.

(b) "Health risk assessment" means the determination of the relationship between the magnitude of exposure to environmental hazards and the probability of occurrence of adverse health effects.

(2) The department is the lead state agency for health risk assessment.

(3) (a) The department of agriculture, trade and consumer protection, the department of corrections, the department of com-

merce, and the department of natural resources shall enter into memoranda of understanding with the department to establish protocols for the department to review proposed rules of those state agencies relating to air and water quality, occupational health and safety, institutional sanitation, toxic substances, indoor air quality, food protection or waste handling and disposal.

(b) The department shall review proposed rules in the areas under par. (a) and make recommendations to the appropriate state agency if public health would be adversely impacted or if prevention of human health hazards or disease is not adequately addressed by the proposed rules. The department shall make recommendations for enforcement standards to address public health concerns of the proposed rules.

(4) The department and the state laboratory of hygiene shall enter into a memorandum of understanding that delineates the public health testing and consultative support that the state laboratory of hygiene shall provide to local health departments.

(5) The department shall assess the acute or chronic health effect from occupational or environmental human health hazards exposure as follows:

(a) The chief medical officer for environmental health shall establish a system for assessment, collection and surveillance of disease outcome and toxic exposure data.

(b) State agencies and local health departments shall report known incidents of environmental contamination to the department. The department shall investigate human health implications of an incident and determine the need to perform a health risk assessment. The department may require the party that is responsible for an incident to perform a health risk assessment.

(6) State agencies that require health risk assessments as part of their permit issuance or regulatory responsibilities shall enter into a memorandum of understanding with the department that permits the state health officer to establish a risk management protocol to review and make recommendations on the completeness of the health risk assessments.

History: 1993 a. 27; 1995 a. 27 ss. 6327, 9116 (5).

SUBCHAPTER II

TOXIC SUBSTANCES

254.11 Definitions. In this subchapter:

(1) "Asbestos" means chrysotile, crocidolite, amosite, fibrous tremolite, fibrous actinolite or fibrous anthophyllite.

(2) "Asbestos abatement activity" means any activity which disturbs asbestos−containing material, including but not limited to the repair, enclosure, encapsulation or removal of asbestos−containing material and the renovation or demolition of any part of a structure.

(3) "Asbestos−containing material" means asbestos or any material or product which contains more than one percent of asbestos.

(4) "Asbestos management activity" means an inspection for asbestos−containing material, the design of an asbestos response action or the development of an asbestos management plan.

(4g) "Certificate of lead−free status" means a certificate issued by a certified lead risk assessor or other person certified under s. 254.176 that documents a finding by the assessor that a premises, dwelling or unit of a dwelling is free of lead−bearing paint as of the date specified on the certificate.

(4h) "Certificate of lead−safe status" means a certificate issued by a certified lead risk assessor or other person certified under s. 254.176 that documents that the assessor detected no lead−bearing paint hazards affecting the premises, dwelling or unit of the dwelling on the date specified on the certificate.

(5) "Dwelling" means any structure, all or part of which is designed or used for human habitation.

(5m) "Elevated blood lead level" means a level of lead in blood that is any of the following:

(a) Twenty or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test.

(b) Fifteen or more micrograms per 100 milliliters of blood, as confirmed by 2 venous blood tests that are performed at least 90 days apart.

(6) "Fibrous" means having parallel sides and a length which is at least 3 times the diameter and which results in an aspect ratio of 3 to one or more.

(7) "Hematofluorometer" means an instrument used in identification of minute amounts of a substance in human blood by detection and measurement of the characteristic wavelength of the light emitted by the substance during fluorescence.

(7g) "Imminent lead hazard" means a lead hazard that, if allowed to continue, will place a child under 6 years of age at risk of developing lead poisoning or lead exposure, as determined by the department or other state agency, a local health department or a federal agency.

(7r) "Interim control activity" means any set of measures designed to temporarily reduce human exposure or likely exposure to a lead hazard, including specialized cleaning, repair, maintenance, painting, temporary containment and ongoing monitoring of lead hazards or potential lead hazards.

(8) "Lead−bearing paint" means any paint or other surface coating material containing more than 0.06% lead by weight, calculated as lead metal, in the total nonvolatile content of liquid paint or more than 0.7 milligram of lead per square centimeter in the dried film of applied paint.

(8d) "Lead−bearing paint hazard" has the meaning specified by rule by the department.

(8g) "Lead hazard" means any substance, surface or object that contains lead and that, due to its condition, location or nature, may contribute to the lead poisoning or lead exposure of a child under 6 years of age.

(8j) "Lead hazard abatement" means any set of measures designed to permanently eliminate a lead hazard, including all of the following:

(a) The removal of lead−bearing paint and lead−contaminated dust, the permanent containment or encapsulation of lead−bearing paint, the replacement of surfaces or fixtures painted with lead−bearing paint, and the removal or covering of lead−contaminated soil.

(b) All preparation, clean−up, disposal and postabatement clearance testing activities associated with the measures under par. (a).

(8n) "Lead hazard reduction" means actions designed to reduce human exposure to lead hazards, including lead hazard abatement and interim control activities involving lead−bearing paint or lead−contaminated dust or soil or clearance activities that determine whether an environment contains a lead hazard.

(8r) "Lead inspection" means the inspection of a dwelling or premises for the presence of lead, including examination of painted or varnished surfaces, paint, dust, water and other environmental media.

(8s) "Lead investigation" means a measure or set of measures designed to identify the presence of lead or lead hazards, including examination of painted or varnished surfaces, paint, dust, water and other environmental media.

(8u) "Lead management activity" means a lead inspection or the design or management of lead hazard reduction.

(9) "Lead poisoning or lead exposure" means a level of lead in the blood of 10 or more micrograms per 100 milliliters of blood.

(9g) "Lead risk assessor" has the meaning specified by rule by the department.

(9r) "Occupant" means a person who leases or lawfully resides in a dwelling or premises.

(10) "Owner" means a person who has legal title to any dwelling or premises.

(10m) "Premises" means any of the following:

(a) An educational or child care facility, including attached structures and the real property upon which the facility stands, that provides services to children under 6 years of age.

(b) Other classes of buildings and facilities, including attached structures and real property upon which the buildings or facilities stand, that the department determines by rule to pose a significant risk of contributing to the lead poisoning or lead exposure of children under 6 years of age.

(11) "Public employee" has the meaning given under s. 101.055 (2) (b).

(12) "School" means any local education agency, as defined in 20 USC 3381, the owner of any nonpublic, nonprofit elementary or secondary school building or any governing authority of any school operated under 20 USC 921 to 932.

(13) "Third−party payer" means a disability insurance policy that is required to provide coverage for a blood lead test under s. 632.895 (10) (a); a health maintenance organization or preferred provider plan under ch. 609; a health care coverage plan offered by the state under s. 40.51 (6); a self−insured health plan offered by a city or village under s. 66.0137 (4), a political subdivision under s. 66.0137 (4m), a town under s. 60.23 (25), a county under s. 59.52 (11) (c), or a school district under s. 120.13 (2) (b); or a sickness care plan operated by a cooperative association under s. 185.981.

History: 1993 a. 27 s. 190, 191, 192, 425, 427 to 430; 1993 a. 183; 1993 a. 450 ss. 15 to 19, 25 to 34; 1995 a. 417; 1999 a. 113; 1999 a. 150 s. 672; 2001 a. 16.

254.115 Denial, nonrenewal and revocation of certification and permit based on tax delinquency. (1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with the applicant's social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing or renewing any of the following:

(a) Certification under s. 254.176.

(b) A certification card under s. 254.20 (3) or (4).

(c) A permit for operation of a campground under s. 254.47 (1) or (2m).

(d) A permit under s. 255.08 (2) (a) or (b).

(1m) If an individual who applies for or to renew a certification, certification card or permit under sub. (1) does not have a social security number, the individual, as a condition of obtaining the certification, certification card or permit, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A certification, certification card or permit issued or renewed in reliance upon a false statement submitted under this subsection is invalid.

(2) The department may not disclose any information received under sub. (1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(3) Except as provided in sub. (1m), the department shall deny an application for the issuance or renewal of a certification, certification card or permit specified in sub. (1) if the applicant does not provide the information specified in sub. (1).

(4) The department shall deny an application for the issuance or renewal of a certification, certification card or permit specified in sub. (1), or shall revoke the certification, certification card or permit specified in sub. (1), if the department of revenue certifies under s. 73.0301 that the applicant for or holder of the certification, certification card or permit is liable for delinquent taxes.

History: 1997 a. 237; 1999 a. 9.

254.12 Use or sale of lead−bearing paints. (1) No person may apply lead−bearing paints:

(a) To any exposed surface on the inside of a dwelling;

(b) To the exposed surface of a structure used for the care of children; or

(c) To any fixture or other object placed in or upon any exposed surface of a dwelling and ordinarily accessible to children.

(2) No person may sell or transfer any fixture or other object intended to be placed upon any surface on the inside of a dwelling, containing a lead−bearing paint and ordinarily accessible to children.

History: 1979 c. 221; 1993 a. 16; 1993 a. 27 s. 431; Stats. 1993 s. 254.12; 1993 a. 450.

254.13 Reporting requirements. (1) Every physician who diagnoses lead poisoning or lead exposure, or any nurse, hospital administrator, director of a clinical laboratory or local health officer who has verified information of the existence of any person found or suspected to have lead poisoning or lead exposure, shall report to the department or to the local health officer of the region in which the person resides within 48 hours after verifying this information. The local health officer shall report to the department the name, address, laboratory results, date of birth and any other information about the person that the department considers essential. Any physician, nurse, hospital administrator, director of a clinical laboratory, local health officer or allied health professional making such a report in good faith shall be immune from any civil or criminal liability that otherwise might be incurred from making the report.

(2) A person who screens a child under 6 years of age for lead poisoning or lead exposure under this subchapter, or any rule promulgated under this subchapter, shall report the results of the screening to the department within the time period for reporting by rule. The department shall promulgate rules specifying the form of the reports required under this subsection. A person making a report under this subsection in good faith is immune from civil or criminal liability that might otherwise be incurred from making the report.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 432; Stats. 1993 s. 254.13; 1993 a. 450.

Cross Reference: See also ch. HFS 181, Wis. adm. code.

254.15 Departmental duties. The department shall:

(1) Develop and implement a comprehensive statewide lead poisoning or lead exposure prevention and treatment program that includes lead poisoning or lead exposure prevention grants under s. 254.151; any childhood lead poisoning screening requirement under rules promulgated under ss. 254.158 and 254.162; any requirements regarding care coordination and follow−up for children with lead poisoning or lead exposure required under rules promulgated under s. 254.164; departmental responses to reports of lead poisoning or lead exposure under s. 254.166; any lead investigation requirements under rules promulgated under ss. 254.167; any lead inspection requirements under rules promulgated under 254.168; any lead hazard reduction requirements under rules promulgated under s. 254.172; certification, accreditation and approval requirements under ss. 254.176 and 254.178; any certification requirements and procedures under rules promulgated under s. 254.179; and any fees imposed under s. 254.181.

(2) Provide laboratory testing of biological and environmental lead specimens for lead content to any physician, hospital, clinic, municipality or private organization that cannot secure or provide testing through other sources. The department may not assume responsibility for blood lead analysis required in programs in operation on April 30, 1980.

(3) Develop or encourage the development of appropriate programs and studies to identify sources of lead poisoning or lead exposure, and assist other entities in the identification of lead in

children's blood and of the sources of the lead poisoning or lead exposure.

(4) Provide technical assistance and consultation to local, county or regional governmental or private agencies to promote and develop lead poisoning or lead exposure prevention programs that afford opportunities for employing residents of communities and neighborhoods affected by lead poisoning or lead exposure from lead−bearing paint, and that provide appropriate training, education and information to inform these residents of the opportunities for employment.

(5) Provide recommendations for the identification and treatment of lead poisoning or lead exposure.

(6) Develop educational programs to communicate to parents, educators and officials of local boards of health the health danger of lead poisoning or lead exposure from lead−bearing paint among children.

History: 1979 c. 221; 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1993 a. 27 ss. 434, 435; Stats. 1993 s. 254.15; 1993 a. 183; 1993 a. 450 ss. 21, 43; 1999 a. 113, 186.

254.151 Lead poisoning or lead exposure prevention grants. From the appropriation under s. 20.435 (5) (ef), the department shall award the following grants under criteria that the department shall establish in rules promulgated under this section:

(1) To fund educational programs about the dangers of lead poisoning or lead exposure.

(2) To fund lead poisoning or lead exposure screening, care coordination and follow−up services, including lead inspections, to children under age 6 who are not covered by a 3rd−party payer.

(3) To fund administration or enforcement of responsibilities delegated under s. 254.152.

(4) To fund other activities related to lead poisoning or lead exposure.

(5) To fund any combination of the purposes under subs. (1) to (4).

(6) To develop and implement outreach and education programs for health care providers to inform them of the need for lead poisoning or lead exposure screening and of the requirements of this subchapter relating to lead poisoning or lead exposure.

(7) In each fiscal year, $125,000 to fund lead screening and outreach activities at a community−based human service agency that provides primary health care, health education and social services to low−income individuals in 1st class cities.

History: 1993 a. 450; 1995 a. 27; 1997 a. 27.
Cross Reference: See also ch. HFS 182, Wis. adm. code.

254.152 Delegation to local health departments. Except with respect to the department's authority to promulgate rules under this chapter, the department may designate local health departments as its agents in administering and enforcing ss. 254.11 to 254.178 and any rules promulgated under those sections. The department may not designate a local health department as its agent unless the department provides a grant that the department determines to be sufficient for the local health department to carry out any responsibilities as an agent designated under this section.

History: 1993 a. 450.

254.154 Local authority. This subchapter does not prohibit any city, village, town or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning or lead exposure control that provides the same or higher standards than those set forth in this subchapter. Nothing in this subchapter other than s. 254.173 (2) and (3) may be interpreted or applied in any manner to impair the right of any person, entity, municipality or other political subdivision to sue for damages or equitable relief. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for or restrain the violation of an ordinance specified in this section.

NOTE: This section is amended eff. 9−1−05 by 1999 Wis. Act 113 to read:

254.154 Local authority. This subchapter does not prohibit any city, village, town or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning or lead exposure control that provides the same or higher standards than those set forth in this subchapter. Nothing in this subchapter other than s. 254.173 (2) may be interpreted or applied in any manner to impair the right of any person, entity, municipality or other political subdivision to sue for damages or equitable relief. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for or restrain the violation of an ordinance specified in this section.

NOTE: This section is repealed and recreated eff. 9−1−08 by 1999 Wis. Act 113 to read:

254.154 Local authority. This subchapter does not prohibit any city, village, town or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning or lead exposure control that provides the same or higher standards than those set forth in this subchapter. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of any person, entity, municipality or other political subdivision to sue for damages or equitable relief. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for or restrain the violation of an ordinance specified in this section.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 436; Stats. 1993 s. 254.16; 1993 a. 450 s. 48; Stats. 1993 s. 254.154; 1999 a. 113.

254.156 Definition of lead−bearing paint and lead poisoning or lead exposure. Notwithstanding s. 254.11 (intro.), (8) and (9), whenever the centers for disease control and prevention of the federal department of health and human services specifies a standard for the determination of lead−bearing paint or lead poisoning or lead exposure that differs from that specified in s. 254.11 (8) or (9), the department shall promulgate a rule defining "lead−bearing paint" or "lead poisoning or lead exposure" to correspond to the specification of the centers for disease control and prevention. Rules promulgated under this section supersede s. 254.11 (8) and (9) with respect to the requirements of this subchapter.

History: 1993 a. 450.

254.158 Screening recommendations. The department may promulgate rules specifying recommended lead poisoning or lead exposure screening methods and intervals for children under 6 years of age. Any rules promulgated under this section:

(1) Shall meet any federal requirements for the screening of children under 6 years of age.

(1m) May include an appropriate questionnaire regarding potential exposure to lead and products containing lead.

(2) Shall permit at least the following persons to provide screening services:

(a) A person licensed to practice medicine or osteopathy under ch. 448.

(b) A nurse registered, permitted or licensed under ch. 441.

(c) A public health nurse under s. 250.06 (1).

(3) Shall exempt a child from the lead screening recommendations if the child's parent, guardian or legal custodian signs a written waiver objecting to the lead poisoning screening for reasons of health, religion or personal conviction.

(4) Shall exempt a child from the lead poisoning screening recommendations if the child's parent, guardian or legal custodian presents written evidence of a lead screening that was conducted within the previous 6 months, or other time period specified by the department by rule, and that was conducted in accordance with the laws or rules of another state whose laws or rules the department determines to be at least as stringent as the screening methods and intervals recommended under this section.

History: 1993 a. 450.

254.162 Screening requirements. (1) INSTITUTIONS AND PROGRAMS PROVIDING SERVICES TO CHILDREN UNDER 6 YEARS OF AGE. The department may promulgate rules requiring the following institutions and programs to obtain written evidence that each child under 6 years of age participating in the institution or program has obtained a lead screening, or is exempt from obtaining one, under the recommended lead screening levels and intervals

contained in the rules promulgated by the department under s. 254.158, within the time periods specified by the department:

(a) Multidisciplinary evaluations for early intervention under s. 51.44.

(b) Head start programs administered by a head start agency under 42 USC 9836.

(c) Day care providers certified under s. 48.651 and day care centers licensed under s. 48.65, provisionally licensed under s. 48.69 or established or contracted for under s. 120.13 (14).

(d) School−based programs serving children under 6 years of age, including kindergartens, special education and related services for children with disabilities, as defined in s. 115.76 (5), and other early childhood programs.

(e) Health care programs that provide services to children under 6 years of age and that receive state funding.

(f) Other institutions or programs that provide services to children under 6 years of age.

(2) INFORMATION REQUIREMENT. If a program or institution is required to request written evidence of a lead screening under rules promulgated under sub. (1), the institution or program shall, at the time that it makes the request, inform the parent, guardian or legal custodian of the child in writing, in a manner that is prescribed by the department by rule, of the importance of lead screening, of how and where the lead screening may be obtained, and of the conditions under which a child is exempt from the recommended lead screening requirements under the department's rules.

History: 1993 a. 450; 1997 a. 164.

254.164 Care for children with lead poisoning or lead exposure. The department may promulgate rules establishing standards for the care coordination and follow−up of children under 6 years of age with lead poisoning or lead exposure. Any rules promulgated under this section shall meet any federal requirements for the care coordination and follow−up of children under 6 years of age with elevated blood lead levels. Rules promulgated under this subsection may specify different care coordination and follow−up requirements based on different blood lead levels and may, where appropriate, require that the care coordination and follow−up include any of the following:

(1) Physical, developmental and nutritional assessment.

(2) Parent education.

(3) Medical evaluation.

(4) A lead inspection of all or part of the child's dwelling or other dwellings or premises that may have contributed to the child's lead poisoning or lead exposure.

(5) Assistance in developing a plan for lead hazard reduction or other actions needed to reduce exposure to lead and the consequences of such exposure.

(6) Where necessary, assistance in obtaining permanent or temporary lead−safe housing.

(7) Nutritional supplements.

(8) Follow−up services, including monitoring the provision of services to the child.

History: 1993 a. 450.

254.166 Departmental response to reports of lead poisoning or lead exposure. (1) The department may, after being notified that an occupant of a dwelling or premises who is under 6 years of age has blood lead poisoning or lead exposure, present official credentials to the owner or occupant of the dwelling or premises, or to a representative of the owner, and request admission to conduct a lead investigation of the dwelling or premises. If the department is notified that an occupant of a dwelling or premises who is a child under 6 years of age has an elevated blood lead level, the department shall conduct a lead investigation of the dwelling or premises or ensure that a lead investigation of the dwelling or premises is conducted. The lead investigation shall be conducted during business hours, unless the owner or occupant of the dwelling or premises consents to an investigation during nonbusiness hours or unless the department determines that the dwelling or premises presents an imminent lead hazard. The department shall use reasonable efforts to provide prior notice of the lead investigation to the owner of the dwelling or premises. The department may remove samples or objects necessary for laboratory analysis to determine the presence of a lead hazard in the dwelling or premises. The department shall prepare and file written reports of all lead investigations conducted under this section and shall make the contents of these reports available for inspection by the public, except for medical information, which may be disclosed only to the extent that patient health care records may be disclosed under ss. 146.82 to 146.835. If the owner or occupant refuses admission, the department may seek a warrant to investigate the dwelling or premises. The warrant shall advise the owner or occupant of the scope of the lead investigation.

(2) If the department determines that a lead hazard is present in any dwelling or premises, the department may do any of the following:

(a) Cause to be posted in a conspicuous place upon the dwelling or premises a notice of the presence of a lead hazard.

(b) Inform the local health officer of the results of the lead inspection and provide recommendations to reduce or eliminate the lead hazard.

(c) Notify the occupant of the dwelling or premises or the occupant's representative of all of the following:

1. That a lead hazard is present on or in the dwelling or premises.

2. The results of any lead investigations conducted on or in the dwelling or premises.

3. Any actions taken to reduce or eliminate the lead hazard.

(d) Notify the owner of the dwelling or premises of the presence of a lead hazard. The department may issue an order that requires reduction or elimination of an imminent lead hazard within 5 days after the order's issuance and reduction or elimination of other lead hazards within 30 days after the order's issuance, except that, for orders that are issued between October 1 and May 1 and that relate only to exterior lead hazards that are not imminent lead hazards, the order may require elimination or reduction of the lead hazard no earlier than the June 1 immediately following the order's issuance. If the department determines that the owner has good cause for not complying with the order within the 5−day or 30−day time period, the department may extend the time period within which the owner is required to comply with the order. The failure to comply with the department's order within the time prescribed or as extended by the department shall be prima facie evidence of negligence in any action brought to recover damages for injuries incurred after the time period expires. If an order to conduct lead hazard reduction is issued by the department or by a local health department and if the owner of the dwelling or premises complies with that order, there is a rebuttable presumption that the owner of the dwelling or premises has exercised reasonable care with respect to lead poisoning or lead exposure caused, after the order has been complied with, by lead hazards covered by the order, except that with respect to interim control activities the rebuttable presumption continues only for the period for which the interim control activity is reasonably expected to reduce or eliminate the lead hazard.

(e) If an order is issued under par. (d), conduct or require a certified lead risk assessor or other person certified under s. 254.176 to conduct a lead investigation, a check of work completed and dust tests for the presence of hazardous levels of lead to ensure compliance with the order.

(4) The department shall give priority to eliminating lead hazards from dwellings in which children under 6 years of age with diagnosed lead poisoning or lead exposure reside.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 433; Stats. 1993 s. 254.14; 1993 a. 450 ss. 39 to 41; Stats. 1993 s. 254.166; 1999 a. 113.

254.167 Conduct of lead investigation. Subject to the limitation under s. 254.174, the department may promulgate rules establishing procedures for conducting lead investigations of dwellings and premises. The rules promulgated under this section may include the following:

(1) Specific procedures for investigating, testing or sampling painted, varnished or other finished surfaces, drinking water, household dust, soil and other materials that may contain lead.

(2) Specific procedures for the notification of owners, operators, occupants or prospective occupants, mortgagees and lienholders of lead levels identified during a lead investigation and of any health risks that are associated with the lead level and condition of the lead found during the lead investigation.

(3) The form of lead investigation reports, the requirements for filing the reports with the department and the procedures by which members of the public may obtain copies of lead investigation reports.

(4) Requirements for the posting of warnings, where appropriate, of the presence of a lead hazard.

History: 1993 a. 450; 1999 a. 113.
Cross Reference: See also ch. HFS 163, Wis. adm. code.

254.168 Lead inspections of facilities serving children under 6 years of age. Subject to the limitation under s. 254.174, the department may promulgate rules that, after June 30, 1998, require any of the following facilities to have periodic lead inspections at intervals determined by the department or to otherwise demonstrate that the facility does not contain a lead hazard, if any part of the facility was constructed before January 1, 1978:

(1) A foster home licensed under s. 48.62.

(2) A group home licensed under s. 48.625.

(3) A shelter care facility under s. 48.66.

(4) A day care provider certified under s. 48.651.

(5) A day care center licensed under s. 48.65, provisionally licensed under s. 48.69 or established or contracted for under s. 120.13 (14).

(6) A private or public nursery school or kindergarten.

(7) Any other facility serving children under 6 years of age that presents a risk for causing lead poisoning or lead exposure in children.

History: 1993 a. 450.

254.171 Dwellings and units of dwellings where child has elevated blood lead level. If an owner of a dwelling or unit of a dwelling receives written notice from the department or a local health department that a child under 6 years of age, who resides in the owner's owner−occupied dwelling or unit or who resides in the owner's dwelling or unit under the terms of a rental agreement, has an elevated blood lead level, the owner shall obtain a certificate of lead−free status or certificate of lead−safe status for the affected dwelling or unit in a timely manner, based on the reasonable availability of lead risk assessors or other persons certified under s. 254.176 to conduct any necessary lead investigation or lead hazard reduction activities and based on the time required for issuance of a certificate of lead−free status or a certificate of lead−safe status. A certificate of lead−safe status obtained under this section may not be for less than 12 months in duration. Nothing in this section precludes the department or the department's agent from conducting a lead investigation or issuing an order under s. 254.166.

History: 1999 a. 113.

254.172 Prevention and control of lead−bearing paint hazards in dwellings and premises. (1) Subject to the limitation under s. 254.174, the department may promulgate rules governing lead hazard reduction that the department determines are consistent with federal law.

(2) If a certified lead risk assessor or other person certified under s. 254.176 conducts a lead investigation of a dwelling or premises, he or she shall conduct the lead investigation and issue a report in accordance with any rules promulgated under s. 254.167. If the report indicates that the dwelling or premises meets criteria under s. 254.179 (1) (a) for issuance of a certificate of lead−free or of a certificate of lead−safe status, the lead risk assessor or other person shall issue the appropriate certificate, subject to s. 254.181.

History: 1993 a. 450; 1999 a. 113, 186.
Cross Reference: See also ch. HFS 163, Wis. adm. code.

254.173 Immunity from liability for lead poisoning or lead exposure; restrictions. (1) LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds all of the following:

1. That a national task force appointed by the federal department of housing and urban development, the task force on lead−based paint hazard reduction and financing, found that 1,700,000 children under 6 years of age have blood lead levels at or above the federally established level of concern. The task force also found that the most common cause of childhood lead poisoning is ingestion of lead−contaminated dust and chips from lead−bearing paint. The other significant cause is dust from bare lead−contaminated soil.

2. That high levels of lead in a child's blood can cause permanent nervous system damage and even relatively low blood lead levels can cause significant nervous system effects. Of 58,797 children who were screened in this state in fiscal year 1995−96, 11,170, or 19%, were newly identified as having blood lead levels that constitute lead poisoning or lead exposure.

(b) The legislature encourages property owners to address the problems associated with lead−bearing paint by bringing their property into compliance with the applicable state standards and finds that an appropriate method to so encourage property owners is to hold them not liable with respect to a person who develops lead poisoning or lead exposure in the property. The purpose of these standards and this restriction on liability is to reduce the exposure of children and others to lead−bearing paints, thereby substantially reducing the number of persons who develop lead poisoning or lead exposure. In addition, these standards and this restriction on liability will improve the quality of this state's housing stock and result in greater availability of insurance coverage for lead hazards.

NOTE: Section 254.173 (title) and sub. (1) are repealed eff. 9−1−08 by 1999 Wis. Act 113.

(2) IMMUNITY; CONDITIONS; RESTRICTIONS. An owner of a dwelling or unit of a dwelling and his or her employees and agents are immune from civil and criminal liability and may not be subject to an agency proceeding under ch. 227, other than for the enforcement of rules promulgated by the department under this subchapter, for their acts or omissions related to lead poisoning or lead exposure of a person who resides in or has visited the dwelling or unit if, at the time that the lead poisoning or lead exposure occurred, a certificate of lead−free status or a certificate of lead−safe status was in effect for the dwelling or unit. This subsection does not apply if it is shown by clear and convincing evidence that one of the following has occurred:

(a) The owner or his or her employee or agent obtained the certificate by fraud.

(b) The owner or his or her employee or agent violated a condition of the certificate.

(c) During renovation, remodeling, maintenance or repair after receiving the certificate, the owner or his or her employee or agent created a lead−bearing paint hazard that was present in the dwelling or unit of the dwelling at the time that the lead poisoning or lead exposure occurred.

(d) The owner or his or her employee or agent failed to respond in a timely manner to notification by a tenant, by the department or by a local health department that a lead−bearing paint hazard might be present.

(e) The lead poisoning or lead exposure was caused by a source of lead in the dwelling or unit of the dwelling other than lead−bearing paint.

NOTE: Sub. (2) is repealed eff. 9−1−08 by 1999 Wis. Act 113.

(3) TEMPORARY IMMUNITY; EXCEPTION. (a) An owner of a dwelling or unit of a dwelling and his or her employees and agents are immune from civil and criminal liability and may not be subject to an agency proceeding under ch. 227, other than for the enforcement of rules promulgated by the department under this subchapter, for their acts or omissions related to lead poisoning or lead exposure that occur during the first 60 days after the owner acquires the dwelling or unit, except that this subsection does not apply to lead poisoning or lead exposure that results from a lead−bearing paint hazard created by the owner or his or her employee or agent.

(b) Immunity under par. (a) applies only if all of the following occur:

1. The owner obtains a certificate of lead−free status or a certificate of lead−safe status for the dwelling or unit.

2. The owner shows by clear and convincing evidence that the property was in compliance with the standard to obtain a certificate of lead−free status or a certificate of lead−safe status by the end of the 60−day period and that the owner obtained the certificate in a reasonable amount of time following the owner's acts to achieve compliance.

(c) Immunity does not apply under this subsection if, during the 60−day period under par. (a), one of the following applies:

1. The owner receives an order under s. 254.166 (2) (d) and fails to comply with the order.

2. The dwelling or unit is vacant and the owner fails to comply with interim lead hazard control measures specified by the department by rule.

NOTE: Sub. (3) is repealed eff. 9−1−05 by 1999 Wis. Act 113.
History: 1999 a. 113.

254.174 Technical advisory committees. Before the department may promulgate rules under s. 254.167, 254.168, 254.172 or 254.179, the department shall appoint a technical advisory committee under s. 227.13 and shall consult with the technical advisory committee on the proposed rules. Any technical advisory committee required under this section shall include representatives from local health departments that administer local lead programs, representatives from the housing industry, persons certified under s. 254.176, representatives from the medical or public health professions, advocates for persons at risk of lead poisoning and a resident of a 1st class city. Any technical advisory committee required under this section before promulgating rules under s. 254.168 shall also include representatives of facilities serving children under 6 years of age.
History: 1993 a. 450; 1999 a. 113.

254.176 Certification requirements. (1) Except as provided in sub. (2) and s. 250.041, and subject to s. 254.115, the department may establish by rule certification requirements for any person who performs lead hazard reduction or a lead management activity or who supervises the performance of any lead hazard reduction or lead management activity.

(2) No certification is required under this section for lead hazard reduction conducted by any of the following persons, unless the lead hazard reduction is being done to comply with an order by the department or another state or local agency that requires the use of persons certified under this section:

(a) A person whose activities are limited to interim control activities, unless the activities are directly funded by a grant from the federal department of housing and urban development.

(b) A person whose activities do not involve lead−bearing paint or lead−contaminated soil or dust.

(c) A homeowner who engages in lead hazard reduction only in or on his or her own nonrental residential dwelling or real property.

(d) A person licensed, certified or registered under ch. 145 who engages in activities that constitute lead hazard reduction, only to the extent that these activities are within the scope of his or her license, certification or registration.

(e) A person who engages in the business of installing or servicing heating, ventilating or air conditioning equipment if the person is registered with the department of commerce and if the person engages in activities that constitute lead hazard reduction, only to the extent that the activities are within the scope of his or her registration.

(3) Except as provided in s. 250.041 and subject to s. 254.115, the department may promulgate rules establishing certification requirements for persons required to be certified under this section. Any rules promulgated under this section:

(a) Shall include requirements and procedures for issuing, renewing, revoking and suspending under this section certifications issued under this section.

(c) Shall require completion of an appropriate training course accredited under s. 254.178 or of a training course determined by the department to be comparable to the appropriate training course under s. 254.178.

(d) May provide for requirements other than training as a condition for full certification.

(e) Shall specify fees for certifying persons under this section, except that no fee may be imposed on any person employed by the state or by any political subdivision of the state for a certification required to perform duties within the scope of the employment.

(f) Shall require the issuance of a photo identification card to each person certified under this section.

(4) The department shall maintain lists of all persons who are certified under this section and shall make the lists available to the public. The department may charge a fee for lists provided under this subsection to cover the department's costs in providing the lists.

(5) After notice and opportunity for hearing, the department may revoke, suspend, deny or refuse to renew any certification issued under this section in accordance with the procedures set forth in ch. 227, except that the only hearing rights available for a denial, revocation or nonrenewal of any certification issued under this section based on tax delinquency are those set forth in s. 73.0301 (5).
History: 1993 a. 450; 1995 a. 27 ss. 6330, 9116 (5); 1997 a. 191, 237; 1999 a. 113.
Cross Reference: See also ch. HFS 163, Wis. adm. code.

254.178 Accreditation of lead training courses and approval of lead instructors. (1) (a) No person may advertise or conduct a training course in lead hazard reduction, or in a lead management activity, that is represented as qualifying persons for certification under s. 254.176 unless the course is accredited by the department under this section.

(b) Except as provided in s. 250.041, no person may function as an instructor of a lead training course accredited under this section unless the person is approved by the department under this section.

(2) The department shall promulgate rules establishing requirements, except as provided in s. 250.041, for accreditation of lead training courses and approval of lead instructors. These rules:

(a) Except as provided in s. 250.041, shall include requirements and procedures for granting, renewing, revoking and suspending under this section lead training course accreditations and lead instructor approvals.

(c) May provide for full or contingent accreditation or approval.

(d) Shall specify fees for accrediting lead training courses and approving lead instructors.

(3) The department shall maintain lists of all lead training courses accredited, and all lead instructors approved, under this section and shall make the lists available to the public. The department may charge a fee for lists provided under this subsection to cover the department's costs in providing the lists.

(4) After notice and opportunity for hearing, the department may revoke, suspend, deny or refuse to renew under this section

any accreditation or approval issued under this section in accordance with the procedures set forth in ch. 227.

History: 1993 a. 450; 1997 a. 191; 1999 a. 113.
Cross Reference: See also ch. HFS 163, Wis. adm. code.

254.179 Rules for dwellings and premises. (1) Subject to s. 254.174 and after review of ordinances of cities, towns and villages in this state, the department shall, by use of a research−based methodology, promulgate as rules all of the following:

(a) Except as provided in s. 254.18, the standards for a premises, dwelling or unit of a dwelling that must be met for issuance of a certificate of lead−free status or a certificate of lead−safe status to the owner of the premises, dwelling or unit of a dwelling, with the goal of long−term lead hazard reduction.

(b) The procedures by which a certificate of lead−free status or a certificate of lead−safe status may be issued or revoked.

(c) The period of validity of a certificate of lead−free status or a certificate of lead−safe status, including all of the following:

1. Authorization for the certificate of lead−free status to remain in effect unless revoked because of erroneous issuance or because the premises, dwelling or unit of the dwelling is not free of lead−bearing paint. The rules shall specify that the face of the certificate shall indicate that the certificate is valid unless revoked.

2. The standards limiting the length of validity of a certificate of lead−safe status, including the condition of a premises, dwelling or unit of a dwelling, the type of lead hazard reduction activity that was performed, if any, and any other requirements that must be met to maintain certification, unless the certificate is earlier revoked because of erroneous issuance or because the premises, dwelling or unit of the dwelling is not safe from lead−bearing paint hazards. The rules shall specify that the face of the certificate shall indicate the certificate's length of validity. The rules shall further specify that applications for certificates of lead−safe status for identical premises may be made only as follows:

a. A person may apply for no more than 2 successive certificates of lead−safe status that have a duration of less than 12 months and, if again applying for a certificate of lead−safe status, shall apply for a certificate that has a duration of 12 months or more.

b. A person to whom subd. 2. a. applies shall, if applying for a certificate of lead−safe status that is additional to the certificates specified in subd. 2. a. and that has a duration of less than 12 months, provide the department with a reason for the necessity for issuance of a certificate of that duration.

c. A person to whom subd. 2. a. and b. applies shall, if applying for a certificate of lead−safe status that is additional to the certificates specified in subd. 2. a. and b. and that has a duration of less than 12 months, provide the department with clear and convincing evidence of the necessity for issuance of a certificate of that duration.

(d) A mechanism for creating a registry of all premises, dwellings or units of dwellings for which a certificate of lead−free status or a certificate of lead−safe status is issued.

(e) The requirements for a course of up to 16 hours that a property owner or his or her employee or agent may complete in order to receive certification of completion and the scope of the lead investigation and lead hazard reduction activities that the owner, employee or agent may perform following certification, to the extent consistent with federal law.

(f) The interim lead hazard control measures under s. 254.173 (3) (c) 2.

(2) By January 1, 2003, and every 2 years thereafter, the department shall review the rules under sub. (1) and shall promulgate changes to the rules if necessary in order to maintain consistency with federal law.

(3) Subject to s. 254.174, the department may promulgate rules that set forth safe work practices that shall be followed in the demolition of a building constructed before January 1, 1978, to avoid exposure by persons to lead hazards in the area of the demolition.

History: 1999 a. 113.

254.18 Lead hazard reduction in dwellings and premises. Sampling or testing of dwellings, units of dwellings or premises for the presence of lead−bearing paint or a lead hazard is not required before lead hazard reduction activities are conducted if the presence of lead−bearing paint or a lead hazard is assumed and the lead hazard reduction activities are performed in a lead−safe manner.

History: 1999 a. 113.

254.181 Certificate of lead−free status and certificate of lead−safe status; fees and notification. (1) The department may impose a fee of $50 for issuance of a certificate of lead−free status and a fee of $25 for issuance of a certificate of lead−safe status. Fees under this section may not exceed actual costs of issuance and of s. 254.179. The department shall review the fees every 2 years and adjust the fees to reflect the actual costs.

(2) The department shall, at least quarterly, notify a local health department concerning issuance of certificates of lead−free status and certificates of lead−safe status in the area of jurisdiction of the local health department.

History: 1999 a. 113.

254.182 Repayment to general fund. The secretary of administration shall transfer from the appropriation account under s. 20.435 (1) (gm) to the general fund the amount of $735,000 when the secretary of administration determines that program revenues from fees imposed under ss. 254.176 (3) (e) and (4), 254.178 (2) (d) and 254.181 are sufficient to make the transfer.

History: 1999 a. 113.

254.19 Asbestos testing fees. Notwithstanding s. 36.25 (11) (f), the state laboratory of hygiene board shall impose a fee sufficient to pay for any asbestos testing services which it provides.

History: 1987 a. 396; 1993 a. 27 s. 317; Stats. 1993 s. 254.19.

254.20 Asbestos abatement certification. (2) CERTIFICATION REQUIREMENTS. (a) No person serving on the governing body of a school, employed by a school or acting under a contract with a school may perform any asbestos abatement activity or asbestos management activity unless he or she has a valid certification card issued to him or her under sub. (3).

(b) No public employee may perform any asbestos abatement activity unless he or she has a valid certification card issued to him or her under sub. (3).

(c) No public employee may supervise the performance of any asbestos abatement activity unless he or she has a valid supervisor's certification card issued to him or her under sub. (3).

(d) Except as provided in s. 250.041 and subject to s. 254.115, the department may establish by rule certification requirements for any person not certified under pars. (a) to (c) who performs any asbestos abatement activity or asbestos management activity or who supervises the performance of any asbestos abatement activity or asbestos management activity.

(3) CERTIFICATION PROCEDURE. (a) Except as provided in s. 250.041, the department may establish by rule eligibility requirements for persons applying for a certification card required under sub. (2). Any training required by the department under this paragraph may be approved by the department or provided by the department under sub. (8).

(b) Except as provided in s. 250.041, the department shall establish the procedure for issuing certification cards under this subsection. In establishing that procedure, the department shall prescribe an application form and establish an examination procedure and may require applicants to provide photographic identification.

(4) RENEWAL. A certification card issued under sub. (3) is valid for one year. Except as provided in s. 250.041 and subject to s. 254.115, the department may establish requirements for renewing such a card, including but not limited to additional training.

(5) FEES. (a) Except as provided under par. (b), the department shall charge the following fees for certification cards issued under sub. (3) or renewed under sub. (4):

1. For a certification card issued or renewed for the performance of any asbestos abatement activity, as required under sub. (2) (a), (b) or (d), $50.

2. For a certification card issued or renewed for performance of an inspection for asbestos−containing material or the design of an asbestos response action, as required under sub. (2) (a) or (d), $150.

3. For a certification card issued or renewed for supervising the performance of any asbestos abatement activity, as required under sub. (2) (c), $100.

4. For a certification card issued or renewed for performance of the development of an asbestos management plan, as required under sub. (2) (a) or (d), $100.

(b) The department may change by rule the fee amounts specified under par. (a). The fees received under this subsection shall be credited to the appropriation under s. 20.435 (1) (gm).

(6) SUSPENSION OR REVOCATION. The department may, under this section, suspend or revoke a certification card issued under sub. (3) if it determines that the holder of the card is not qualified to be certified.

(7) APPEALS. Any suspension, revocation or nonrenewal of a certification card required under sub. (2) or any denial of an application for such a certification card is subject to judicial review under ch. 227, except as provided in s. 250.041 and except that the only hearing rights available for a denial, revocation or nonrenewal of a certification card required under sub. (2) based on tax delinquency are those set forth in s. 73.0301 (5).

(8) TRAINING COURSES. The department may conduct or contract for any training course necessary to prepare persons for a certification card required under sub. (2). The department may establish a fee for any course offered under this subsection. The fee may not exceed the actual cost of the course. The fees received under this subsection shall be credited to the appropriation under s. 20.435 (1) (gm).

(9) RULES. The department may promulgate any rule it deems necessary to administer this section.

(10) ENFORCEMENT. (a) The department may enter, at any reasonable time, any property, premises or place in which any person required to have a certification card under sub. (2) is engaged in any asbestos abatement activity to determine if the department has issued that person a valid certification card. No person may refuse entry or access to any representative of the department authorized by the department to act under this paragraph if that representative requests entry for purposes of determining compliance with this section, if that representative presents a valid identification issued to the representative by the department and if that representative is complying with par. (b). No person may obstruct, hamper or interfere with the actions of that representative under this paragraph.

(b) Any representative of the department acting under par. (a) shall comply with any health and safety procedure established by law for persons engaged in asbestos abatement activities.

(c) If the department determines that any person required to have a certification card under sub. (2) has violated this section, the department may order that person to cease the violation. The order may require all asbestos abatement activities on the premises where the violation occurs to cease until the violation is corrected if there is no person on the premises with a valid certification card issued to him or her under sub. (3). The department shall give the order in writing to that person or that person's representative.

(d) Any other state agency, in the course of the performance of its duties, may determine compliance with the certification requirements of this section. If that agency determines that there is a violation of this section, it shall notify the department of that violation.

(e) The department may initiate an action in the name of this state against any person to require compliance with this section.

(11) PENALTY. Any person who violates this section or any rule promulgated or order issued under this section shall forfeit not less than $25 nor more than $100 for each violation. Each day of violation and each violation constitutes a separate offense.

History: 1987 a. 27, 1989 a 173; 1993 a. 27 ss. 188, 193; 1997 a. 191, 237.
Cross Reference: See also ch. HFS 159, Wis. adm. code.

254.21 Asbestos management. (2) The department shall promulgate rules to do all of the following:

(a) Establish building inspection requirements and procedures to protect students and employees from asbestos hazards in schools.

(b) Regulate asbestos abatement activities in schools.

(c) Establish requirements for the maintenance of asbestos−containing material in schools which contain asbestos−containing material.

(d) Establish priorities for asbestos abatement activities in schools which contain asbestos−containing materials.

(e) Require a management plan for asbestos−containing material in every school which contains asbestos−containing material.

(2m) No requirement under sub. (2) may be stricter than any requirement under 15 USC 2641 to 2654.

(3) A school district and any school which is not a public school may apply to the department for a variance to any standard adopted under this section under the provisions of s. 101.055 (4) (a) to (c).

(4) Any person who intentionally violates any rule promulgated under this section shall forfeit not less than $100 nor more than $1,000 for each violation. Each violation constitutes a separate offense and each day of continued violation is a separate offense.

History: 1987 a. 396; 1993 a. 27 s. 364, 366; Stats. 1993 s. 254.21.

254.22 Indoor air quality. The department shall do all of the following:

(1) Investigate illness or disease outbreaks suspected of being caused by poor indoor air quality. The department shall promote or require control measures if indoor air quality is established to be the cause of illness or disease outbreaks.

(2) Assist local health departments in the adoption of regulations that establish standards for indoor air quality in public buildings to protect the occupants from adverse health effects due to exposure to chemical or biological contaminants.

(3) Provide training and technical support to local health departments for conducting indoor air quality testing and investigations.

(4) Assist the department of commerce with the enforcement of s. 101.123.

History: 1993 a. 27; 1995 a. 27 ss. 6331, 9116 (5).

254.30 Enforcement; penalties. (1) ENFORCEMENT. (a) The department may enter, at any reasonable time, a dwelling or premises undergoing any lead hazard reduction to determine if all persons engaged in lead hazard reduction have been appropriately certified if required under s. 254.176.

(b) The department may report any violation of ss. 254.11 to 254.178 or rules promulgated, or orders issued, under those sections to the district attorney of the county in which the dwelling is located. The district attorney shall enforce ss. 254.11 to 254.178 and rules promulgated, and orders issued, under those sections. If a circuit court determines that an owner of a rented or leased dwelling or premises has failed to comply with an order issued under ss. 254.11 to 254.178, the circuit court may order the occu-

pants of the affected dwelling or premises to withhold rent in escrow until the owner of the dwelling or premises complies with the order.

(c) Sections 254.11 to 254.178 do not limit the ability of the department to require abatement of human health hazards involving lead under s. 254.59.

(2) PENALTIES. (a) *Civil penalty.* Any person who violates ss. 254.11 to 254.178 or rules promulgated, or orders issued, under those sections may be required to forfeit not less than $100 nor more than $1,000. Each day of continued violation constitutes a separate offense.

(b) *Criminal penalty.* Any person who knowingly violates any provision of ss. 254.11 to 254.178 or any rule promulgated, or order issued, under those sections shall be fined not less than $100 nor more than $5,000. The court may place the person on probation under s. 973.09 for a period not to exceed 2 years.

History: 1979 c. 221; 1987 a. 332; 1993 a. 27 s. 439; Stats. 1993 s. 254.30; 1993 a. 450.

SUBCHAPTER III

RADIATION PROTECTION

254.31 Definitions. In this subchapter:

(1) "By−product material" means any of the following:

(a) Radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Decommissioning" means conducting final operational activities at a nuclear facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities necessary to prepare the site for postoperational care.

(2m) "General license" means a license, under requirements prescribed by the department by rule, to possess, use, transfer or acquire by−product material or devices or equipment utilizing by−product material without the filing of a license application by a person or issuance of licensing confirmation by the department.

(3g) "Ionizing radiation" means all radiations capable of producing ions directly or indirectly in their passage through matter, including all of the following:

(a) Electromagnetic radiations, including X−rays and gamma rays.

(b) Particulate radiations, including electrons, beta particles, protons, neutrons, alpha particles and other nuclear particles.

(3p) "Nonionizing radiation" means electromagnetic radiation, other than ionizing radiation, and any sonic, ultrasonic or infrasonic wave.

(4) "Nuclear facility" means any reactor plant, any equipment or device used for the separation of the isotopes of uranium or plutonium, the processing or utilizing of radioactive material or handling, processing or packaging waste; any premises, structure, excavation or place of storage or disposition of waste or by−product material; or any equipment used for or in connection with the transportation of such material.

(4p) "Radiation" means both ionizing and nonionizing radiation.

(5) "Radiation generating equipment" means a system, manufactured product or device or component part of such a product or device that, during operation, is capable of generating or emitting ionizing radiation without the use of radioactive material. "Radiation generating equipment" does not include a device that emits nonionizing radiation.

(6) "Radiation installation" is any location or facility where radiation generating equipment is used or where radioactive material is produced, transported, stored, disposed of or used for any purpose.

(9) "Radiation source" means radiation generating equipment or radioactive material.

(9m) "Radioactive material" includes any solid, liquid or gaseous substance which emits ionizing radiation spontaneously, including accelerator−produced material, by−product material, naturally occurring material, source material and special nuclear material.

(10) "Source material" means uranium, thorium, any combination thereof in any physical or chemical form, or ores that contain by weight 0.05% or more of uranium, thorium, or any combination thereof. "Source material" does not include special nuclear material.

(11) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the nuclear regulatory commission determines to be special nuclear material; or any material artificially enriched by any of the foregoing. Special nuclear material does not include source material.

(11g) "Specific license" means a license, under requirements prescribed by the department by rule, to possess, use, manufacture, produce, transfer or acquire radioactive material or devices or equipment utilizing radioactive material.

(11m) "Transuranic" means a radioactive material having an atomic number that is greater than 92.

(12) "X−ray tube" means any electron tube that is contained in a device and that is specifically designed for the conversion of electrical energy into X−ray energy.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491; 1999 a. 9; 2001 a. 16.

254.33 Public policy. Since radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to radiation in amounts which are or may be detrimental to health. It is further the policy for the department to advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules.

History: 1985 a. 29; 1993 a. 27 s. 225; Stats. 1993 s. 254.33; 1995 a. 27 ss. 6332, 9116 (5); 1999 a. 9.

Cross Reference: See also ch. HFS 157, Wis. adm. code.

254.335 Agreements with the U.S. nuclear regulatory commission transition. (1) The governor may, on behalf of the state, enter into agreements with the U.S. nuclear regulatory commission, as provided in 42 USC 2021 (b), to discontinue certain federal licensing and related regulatory authority with respect to by−product material, source material and special nuclear material and to assume state regulatory authority.

(2) Any person who, on the effective date of an agreement specified under sub. (1), possesses a license issued by the U.S. nuclear regulatory commission that is subject to the agreement is considered to possess a specific license issued under s. 254.365 (1) (a) or to fulfill requirements specified for a general license under s. 254.365 (1) (b). The specific license expires 90 days after the date of receipt by the person from the department of a notice of expiration of the license or on the date of expiration that was specified in the license issued by the U.S. nuclear regulatory commission, whichever is earlier.

History: 1999 a. 9.

254.34 Powers and duties. (1) The department is the state radiation control agency and shall do all of the following:

(a) Promulgate and enforce rules, including registration and licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent unnecessary radiation exposure. The rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21 (2). The rules for by−product material, source material and special nuclear material shall be in accordance with the requirements of 42 USC 2021 (o) and shall otherwise be compatible with the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

(am) A rule identical to a rule specified under par. (a) may be promulgated by a state agency other than the department and an ordinance identical to a rule specified under par. (a) may be enacted by a local governmental unit, but no rule may be promulgated or ordinance may be enacted that differs from a rule under par. (a) and relates to the same subject area except as provided under ss. 166.03 (2) (b) 6., 293.15 (8) and 293.25.

(b) Administer this subchapter and the rules promulgated under this subchapter.

(c) Develop comprehensive policies and programs for the evaluation, determination and reduction of hazards associated with the use of radiation that are compatible with requirements of the U.S. nuclear regulatory commission for the regulation of by−product material, source material and special nuclear material. The department shall maintain all of the following records:

1. Files of all license applications, issuances, denials, transfers, renewals, modifications, suspensions and revocations under s. 254.365.

2. Files of all registrants under s. 254.35 and any related administrative or judicial action.

(d) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries.

(e) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it deems necessary or advisable for the discharge of its duties under this subchapter.

(f) Collect and disseminate health education information relating to radiation protection as it deems proper.

(g) Review and approve plans and specifications for radiation sources submitted pursuant to rules promulgated under this subchapter; and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard.

(h) With respect to radon and with the department serving as the lead agency, do all of the following:

1. Develop and disseminate current radon information to the news media, builders, realtors and the general public.

2. Coordinate a program of measuring radon gas accumulation, including use of the radon canister counting system, in educational institutions, nursing homes, low−income housing, public buildings, homes, private industries and public service organizations.

3. Work with staff of local health departments to perform home surveys and diagnostic measurements and develop mitigation strategies for homes with elevated radon gas levels.

4. Develop training materials and conduct training of staff of local health departments, building contractors and others in radon diagnosis and mitigation methods.

5. Develop standards of performance for the regional radon centers and, from the appropriation under s. 20.435 (5) (ed), allocate funds based on compliance with the standards to provide radon protection information dissemination from the regional radon centers.

(2) The department may:

(a) Enter, at all reasonable times, any private or public property for the purpose of investigating conditions relating to radiation control.

(b) Accept and utilize grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out its functions under this subchapter. The studies, investigations, training and demonstration may be conducted independently, by contract, or in cooperation with any person or any public or private agency, including any political subdivision of the state.

(c) Develop requirements for qualification, certification, training, and experience of an individual who does any of the following:

1. Operates radiation generating equipment.

2. Utilizes, stores, transfers, transports, or possesses radioactive materials.

3. Acts as a radiation safety consultant to any person who possesses a license or registration issued by the department under this subchapter.

(d) Recognize certification by another state or by a nationally recognized certifying organization of an individual to perform acts under par. (c) 1. to 3. if the standards for the other state's certification or the organization's certification are substantially equivalent to the standards of the department for certification of individuals under par. (c).

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27; 1999 a. 9 ss. 2456 to 2462, 2475; 2001 a. 16.

Cross Reference: See also ch. HFS 157, Wis. adm. code.

254.345 Assessment of Fee. (1) The department may annually assess a fee of 36% of the U.S. nuclear regulatory commission license application fee and materials license annual fee, for any licensee of the U.S. nuclear regulatory commission in this state. The fee amounts shall be used by the department for the department's activities under this subchapter. The department may revise the fee amounts by rule.

(2) This section does not apply after December 31, 2002.

History: 1999 a. 9.

254.35 Registration of ionizing radiation installations. (1) APPLICATION. For every site in this state that has an ionizing radiation installation that is not exempted by this section or the rules of the department, the person in control of the installation, including installations in sites that are administered by a state agency or in an institution under the jurisdiction of a state agency, shall, prior to operation, register the ionizing radiation installation with the department. No ionizing radiation installation may be operated thereafter unless the site has been duly registered by January 1 of each year and a notice of the registration is possessed by the person in control. The application for registration shall be made on forms provided by the department which shall be devised to obtain any information that is considered necessary for evaluation of hazards. Multiple radiation sources at a single radiation installation and under the control of one person shall be listed on a single registration form. Registration fees shall be levied in accordance with sub. (3). Registration alone does not imply approval of manufacture, storage, use, handling, operation or disposal of the radiation installation or radioactive materials, but serves merely to inform the department of the location and character of radiation sources. Persons engaged in manufacturing, demonstration, sale, testing or repair of radiation sources are not required to list such sources on the registration form.

(2) AMENDED REGISTRATION. If the person in control increases the number of sources, source strength, rated output or energy of radiation produced in any installation, he or she shall notify the department of the increase prior to operation on the revised basis.

The department shall record the change in the registration. No registration is transferable from one premises to another or from one person to another. If the person in control intends to transfer control of ownership of the radiation installation to another person, at least 15 days before the final transfer the registrant shall notify the department of the transfer and the intended transferee shall file under sub. (1) an application for registration. If any installation is discontinued, the person in control shall notify the department within 30 days of the discontinuance.

(3) REGISTRATION FEES. (a) An annual registration fee under pars. (b) to (fm) shall be levied for each site registration under this section. An additional penalty fee of $25, regardless of the number of X−ray tubes or generally licensed devices, shall be required for each registration whenever the annual fee for renewal is not paid prior to expiration of the registration. No additional fee may be required for recording changes in the registration information.

(b) For a site having an ionizing radiation installation serving physicians and clinics, osteopaths and clinics, chiropractors or hospitals that possesses radioactive materials in any quantity, the fee shall be at least $36 for each site and at least $44 for each X−ray tube.

(c) For a podiatric or veterinary site having an ionizing radiation installation, the fee shall be at least $36 for each site and at least $44 for each X−ray tube.

(d) For a dental site having an ionizing radiation installation, the fee shall be at least $36 for each site and at least $30 for each X−ray tube.

(f) For an industrial, school, research project or other site having an ionizing radiation installation, the fee shall be at least $36 for each site and at least $44 for each X−ray tube.

(fm) For any site that has generally licensed devices that are not exempted by the department, the fee shall be at least $100 for each site and at least $50 for each device that contains at least 370 MBq or 10 mCi of cesium−137; 37 MBq or 1.0 mCi of cobalt−60; 3.7 MBq or 0.1 mCi of strontium−90; or 37 MBq or 1.0 mCi of a transuranic.

(g) The fees under this subsection shall be as stated unless the department promulgates rules to increase the annual registration fee for a site having an ionizing radiation installation, for an X−ray tube or for generally licensed devices that are not exempted by the department.

(4) EXEMPTIONS. After initial registration under sub. (1), the department may exempt from annual registration any source of radiation that the department finds to be without undue radiation hazard.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5); 1999 a. 9.

254.365 Licensing of radioactive material. (1) LICENSE REQUIRED. No person may possess, use, manufacture, transport, store, transfer or dispose of radioactive material or a device or item of equipment that uses radioactive material or may operate a site that uses radioactive material that is not under the authority of the U.S. nuclear regulatory commission unless one of the following applies:

(a) The person has a specific license issued by the department.

(b) The person meets general license requirements.

(c) The person possesses a license issued by another state or by the U.S. nuclear regulatory commission that is reciprocally recognized by the department.

(d) The person is exempted from licensure under sub. (7).

(2) APPLICATION. Application for a license under sub. (1) (a) or for reciprocal recognition under sub. (1) (c) shall be made on forms provided by the department.

(3) MODIFICATION OR TERMINATION OF LICENSE. Within 30 days after any change to the information on a license issued under this section, the licensee shall inform the department of the change and the department shall record the changed information. Within 30 days after termination of an activity licensed under this section, the person in control of the activity shall notify the department. The department may require that the person in control submit to the department for approval a plan for decommissioning the activity.

(4) RULES. The department shall promulgate rules for all of the following:

(a) The issuance, modification, suspension, termination and revocation of specific licenses under sub. (1) (a) under the standards specified in s. 254.34 (1) (a).

(b) The requirements for a general license under sub. (1) (b).

(5) FEES AND CHARGES. (a) The department may assess fees, the amounts of which are prescribed by the department by rule, for any of the following:

1. Issuance of an initial or renewal specific license under sub. (1) (a).
2. Annual license maintenance.
3. Issuance of a license amendment.
4. Termination of a license.
5. Issuance of reciprocal recognition of a license for radioactive materials of another state or the U.S. nuclear regulatory commission.

(b) The department may assess a late payment charge of 25% of the specific license renewal fee, in addition to the fee under par. (a) for renewal of a specific license, if payment for renewal of a specific license is not made within 30 days after the license expiration date.

(6) DENIAL, SUSPENSION OR REVOCATION OF LICENSURE. The department may, after a hearing under ch. 227, refuse to issue a license or suspend or revoke a license for failure by the licensee to comply with this subchapter, rules promulgated by the department under this subchapter or any condition of the license.

(7) EXEMPTION. The department may exempt from licensing requirements of this section radioactive material that the department finds is without undue radiation hazard.

History: 1999 a. 9.

254.37 Enforcement. (1) NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT. Whenever the department finds, upon inspection and examination, that a source of radiation as constructed, operated or maintained results in a violation of this subchapter or of any rules promulgated under this subchapter, the department shall do all of the following:

(a) Notify the person in control that is causing, allowing or permitting the violation as to the nature of the violation.

(b) Order that, prior to a specified time, the person in control shall cease and abate causing, allowing or permitting the violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with this subchapter and rules promulgated under this subchapter.

(2) ORDERS. The department shall issue and enforce such orders or modifications of previously issued orders as may be required in connection with proceedings under this subchapter. The orders shall be subject to review by the department upon petition of the persons affected. Whenever the department finds that a condition exists that constitutes an immediate threat to health due to violation of this subchapter or any rule or order promulgated under this subchapter, it may issue an order reciting the existence of the threat and the findings pertaining to the threat. The department may summarily cause the abatement of the violation.

(3) RULES. The department shall promulgate and enforce the rules pertaining to ionizing radiation.

(4) JURISDICTION. The circuit court of Dane county shall have jurisdiction to enforce the orders by injunctional and other appropriate relief.

History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27; 1999 a. 9.

254.38 Emergency authority. (1) IMPOUNDING MATERIALS. The department may impound or order the sequestration of

sources of radiation in the possession of any person who is not equipped to observe or who fails to observe safety standards to protect health that are established in rules promulgated by the department.

(2) EMERGENCY ORDERS. If the department finds that an emergency exists concerning a matter subject to regulation under this subchapter that requires immediate action to protect the public health or safety, the department may issue an emergency order without notice or hearing that recites the existence of the emergency and requires such action as is necessary to mitigate the emergency. Any person to whom the order is issued shall immediately comply with the order. A person to whom an emergency order is issued shall be afforded a hearing within 30 days after receipt by the department of a written request for the hearing. An emergency order is effective upon issuance and remains in effect for up to 90 days after issuance, except that the order may be revoked or modified based on the results of the hearing.

History: 1985 a. 29; 1993 a. 27 s. 232; Stats. 1993 s. 254.38; 1995 a. 27 ss. 6339, 9116 (5); 1999 a. 9.

254.39 Exceptions. (1) Nothing in this subchapter may be interpreted as limiting intentional exposure of persons to radiation for the purpose of analysis, diagnosis, therapy, and medical, chiropractic or dental research as authorized by law.

(2) This subchapter does not apply to on−site activities of any nuclear reactor plant licensed by the U.S. nuclear regulatory commission.

History: 1977 c. 29; 1991 a. 178; 1993 a. 27 s. 233; Stats. 1993 s. 254.39; 1999 a. 9.

254.41 Radiation monitoring of nuclear power plants. The department shall take environmental samples to test for radiation emission in any area of the state within 20 miles of a nuclear power plant. The department shall charge the owners of each nuclear power plant in the state an annual fee of $30,000 per plant, commencing in fiscal year 1983−84, to finance radiation monitoring under this section. The department may change this annual fee by rule.

History: 1979 c. 221; 1983 a. 27; 1993 a. 27 s. 235; Stats. 1993 s. 254.41.
Cross Reference: See also ch. HFS 158, Wis. adm. code.

254.45 Penalties. (1) GENERAL. (a) Any person who violates this subchapter or a rule promulgated under this subchapter or a condition of a license or registration issued by the department under this subchapter may be required to forfeit not less than $100 nor more than $100,000. Each day of continued violation constitutes a separate offense.

(b) The amount of the forfeiture assessed under par. (a) shall be determined by considering all of the following:

1. The willfulness of the violation.

2. The person's previous violations, if any, of this subchapter, rules promulgated under this subchapter or conditions of a license or registration issued by the department under this subchapter.

3. The potential danger or actual or potential injury to the environment or to public health caused by the violation.

4. The actual or potential costs of the damage or injury caused by the violation.

(2) ASSESSMENT OF FORFEITURES; NOTICE. The department may directly assess forfeitures provided for in sub. (1). If the department determines that a forfeiture should be assessed for a particular violation, the department shall send a notice of assessment to the person. The notice shall specify the amount of the forfeiture assessed and the violation and the statute or rule alleged to have been violated and shall inform the person of the right to hearing under sub. (3).

(3) HEARING. A person upon whom a forfeiture is imposed may contest the action by sending, within 10 days after receipt of notice of a contested action, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227.

(4) FORFEITURE PAYMENT AND DISPOSITION. (a) A person against whom the department has assessed a forfeiture shall pay the forfeiture to the department within 10 days after receipt of the notice under sub. (2) or, if the person contests the assessment, within 10 days after receipt of the final decision after exhaustion of administrative review. If the person petitions for judicial review under ch. 227, the person shall pay the forfeiture within 10 days after receipt of the final judicial decision.

(b) The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(5) ENFORCEMENT. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid as required under sub. (4). The only issue to be contested in an action under this subsection is whether the forfeiture has been paid.

History: 1993 a. 27 s. 234; Stats. 1993 s. 254.45; 1995 a. 27 ss. 6340, 9116 (5); 1999 a. 9; 2003 a. 33.

SUBCHAPTER IV

RECREATIONAL SANITATION

254.46 Beaches. The department or a local health department shall close or restrict swimming, diving and recreational bathing if a human health hazard exists in any area used for those purposes on a body of water and on associated land and shall require the posting of the area.

History: 1993 a. 27.

254.47 Recreational permits and fees. (1) Except as provided in sub. (1g) and ss. 250.041 and 254.115, the department or a local health department granted agent status under s. 254.69 (2) shall issue permits to and regulate campgrounds and camping resorts, recreational and educational camps and public swimming pools. No person or state or local government who has not been issued a permit under this section may conduct, maintain, manage or operate a campground and camping resort, recreational camp and educational camp or public swimming pool, as defined by departmental rule.

(1g) A campground permit is not required for camping at county or district fairs at which 4−H Club members exhibit, for the 4 days preceding the county or district fair, the duration of the county or district fair, and the 4 days following the county or district fair.

(1m) The department or a local health department granted agent status under s. 254.69 (2) may not, without a preinspection, grant a permit to a person intending to operate a new public swimming pool, campground, or recreational or educational camp or to a person intending to be the new operator of an existing public swimming pool, campground, or recreational or educational camp.

(2) A separate permit is required for each campground, camping resort, recreational or educational camp and public swimming pool. No permit issued under this section is transferable from one premises to another or from one person, state or local government to another, except that the permit may be transferred from an individual to an immediate family member, as defined in s. 254.64 (4) (a), if the individual is transferring operation of the campground, camping resort, recreational or educational camp or public swimming pool to the immediate family member.

(2m) Except as provided in ss. 250.041 and 254.115, the initial issuance, renewal or continued validity of a permit issued under this section may be conditioned upon the requirement that the permittee correct a violation of this section, rules promulgated

by the department under this section or ordinances adopted under s. 254.69 (2) (g), within a period of time that is specified. If the condition is not met within the specified period of time, the permit is void.

(3) Anyone who violates this section or any rule of the department under this section shall be fined not less than $25 nor more than $250. Anyone who fails to comply with an order of the department shall forfeit $10 for each day of noncompliance after the order is served upon or directed to him or her. The department may also, after a hearing under ch. 227, refuse to issue a permit under this section or suspend or revoke a permit under this section for violation of this section or any rule or order the department issues to implement this section.

(4) Permits issued under this section expire on June 30, except that permits initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year. Except as provided in s. 254.69 (2) (d) and (e), the department shall promulgate rules that establish, for permits issued under this section, amounts of permit fees, preinspection fees, reinspection fees, fees for operating without a license, and late fees for untimely permit renewal.

(5) No permit may be issued under this section until all applicable fees have been paid. If the payment is by check or other draft drawn upon an account containing insufficient funds, the permit applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier's check or other certified draft, money order or cash the fees from the department, late fees and processing charges that are specified by rules promulgated by the department. If the permit applicant fails to pay all applicable fees, late fees and the processing charges within 15 days after the applicant receives notice of the insufficiency, the permit is void. In an appeal concerning voiding of a permit under this subsection, the burden is on the permit applicant to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning payment dispute, operation of the establishment in question is deemed to be operation without a permit.

History: 1993 a. 16 ss. 2399 to 2401i; 1993 a. 27 ss. 182, 477; 1993 a. 183, 490; 1993 a. 491 s. 280; 1997 a. 191, 237; 2001 a. 16.

Cross Reference: See also chs. HFS 172, 175, and 178, Wis. adm. code.

SUBCHAPTER V

ANIMAL−BORNE AND VECTOR−BORNE DISEASE CONTROL

254.50 Definition. In this subchapter, "vector" means a carrier, including an arthropod or an insect, that transfers an infective agent from one host to another.

History: 1993 a. 27.

254.51 Powers and duties. (1) The state epidemiologist for communicable disease shall take those measures that are necessary for the prevention, surveillance and control of human disease outbreaks associated with animal−borne and vector−borne transmission.

(2) The department shall enter into memoranda of understanding with the department of agriculture, trade and consumer protection, the department of commerce and the department of natural resources regarding the investigation and control of animal−borne and vector−borne disease.

(3) The department shall promulgate rules that establish measures for prevention, surveillance and control of human disease that is associated with animal−borne and vector−borne disease transmission.

(4) The local health department shall enforce rules that are promulgated under sub. (3).

(5) The local board of health may adopt regulations and recommend enactment of ordinances that set forth requirements for animal−borne and vector−borne disease control to assure a safe level of sanitation, human health hazard control or health protection for the community, including the following:

(a) The control of rats, stray animals, noise and rabies and other diseases.

(b) The control of wildlife, including the keeping of dangerous wild animals, disease transmission and human health hazard control and eradication.

(c) Pest control, including community sanitation, rodent and vector control, resident responsibilities and the health impact of pesticide use.

History: 1993 a. 27; 1995 a. 27 ss. 6341, 9116 (5).

Cross Reference: See also ch. HFS 145, Wis. adm. code.

254.52 Lyme disease; treatment, information and research. (1) The department shall perform research relating to Lyme disease in humans.

(2) The department, in consultation with the department of public instruction, the department of natural resources and the department of agriculture, trade and consumer protection, shall do all of the following:

(a) Monitor the spread and incidence of Lyme disease.

(b) Investigate suspected and confirmed cases of Lyme disease.

(c) Review materials, activities and epidemiologic investigations prepared or conducted in other states in which Lyme disease is endemic and recommend a statewide strategy for dealing with Lyme disease.

(d) Develop, update and disseminate information for use by clinicians, laboratory technicians and local health departments that diagnose or treat Lyme disease or investigate cases or suspected cases of Lyme disease.

(e) Develop and distribute information through offices of physicians and local health departments and by newsletters, public presentations or other releases of information. That information shall include all of the following:

1. A description of Lyme disease.

2. Means of identifying whether or not individuals may be at risk of contracting Lyme disease.

3. Measures that individuals may take to protect themselves from contracting Lyme disease.

4. Locations for procuring additional information or obtaining testing services.

(f) Conduct research on the serological prevalence of Lyme disease.

History: 1989 a. 31; 1993 a. 27 s. 49; Stats. 1993 s. 254.52; 1995 a. 27 s. 9145 (1); 1997 a. 27.

SUBCHAPTER VI

HUMAN HEALTH HAZARDS

254.55 Definitions. In this subchapter:

(1) "Dwelling" means any structure, all or part of which is designed or used for human habitation.

(2) "Owner" means any of the following:

(a) A person who has legal title to a dwelling.

(b) A person who has charge, care, or control of a dwelling or unit of a dwelling as an agent of or as personal representative, trustee, or guardian of the estate of a person under par. (a).

History: 1993 a. 27; 2001 a. 102.

254.56 Public places. The owner and occupant and everyone in charge of a public building, as defined in s. 101.01 (12), shall keep the building clean and sanitary.

History: 1971 c. 185 s. 7; 1993 a. 27 s. 352; Stats. 1993 s. 254.56; 1995 a. 27.

254.57 Smoke. The common council of any city or the board of any village may regulate or prohibit the emission of dense

smoke into the open air within its limits and one mile from its limits.

History: 1993 a. 27 s. 357; Stats. 1993 s. 254.57.

The social and economic roots of judge−made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

254.58 Powers of villages, cities and towns. Section 95.72 may not be construed as depriving any city or village from enacting any ordinance prohibiting the rendering of dead animals within the boundaries specified in s. 66.0415, as nullifying any existing law or ordinance prohibiting the rendering of dead animals within the area or as prohibiting any city or village from licensing, revoking the license, and regulating the business of rendering and transporting dead animals under sanitary conditions no less stringent than provided under s. 95.72 and the rules of the department of agriculture, trade and consumer protection. Any licensing and regulation by a city or village is supplementary to the provisions of this section and the rules of the department and may not be construed as excusing or justifying any failure or neglect to comply with this section and the rules of the department. Section 95.72 shall be expressly construed as modifying the powers granted to towns and any city, village or town may take any action permitted under s. 254.59, may institute and maintain court proceedings to prevent, abate or remove any human health hazards under s. 254.59 and may institute and maintain any action under ss. 823.01, 823.02 and 823.07.

History: 1973 c. 206; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1977 c. 29 s. 1650m (4); 1993 a. 27 s. 358; Stats. 1993 s. 254.58; 1999 a. 150 s. 672.

254.59 Human health hazards. (1) If a local health officer finds a human health hazard, he or she shall order the abatement or removal of the human health hazard on private premises, within a reasonable time period, and if the owner or occupant fails to comply, the local health officer may enter upon the premises and abate or remove the human health hazard.

(2) If a human health hazard is found on private property, the local health officer shall notify the owner and the occupant of the property, by registered mail with return receipt requested, of the presence of the human health hazard and order its abatement or removal within 30 days of receipt of the notice. If the human health hazard is not abated or removed by that date, the local health officer shall immediately enter upon the property and abate or remove the human health hazard or may contract to have the work performed. The human health hazard shall be abated in a manner which is approved by the local health officer. The cost of the abatement or removal may be recovered from the person permitting the violation or may be paid by the municipal treasurer and the account, after being paid by the treasurer, shall be filed with the municipal clerk, who shall enter the amount chargeable to the property in the next tax roll in a column headed "For Abatement of a Nuisance" as a special tax on the lands upon which the human health hazard was abated, and the tax shall be collected as are other taxes. In case of railroads or other lands not taxed in the usual way, the amount chargeable shall be certified by the clerk to the secretary of administration who shall add the amount designated in the certificate to the sum due from the company owning, occupying, or controlling the land specified, and the secretary of administration shall collect the amount as prescribed in subch. I of ch. 76 and return the amount collected to the town, city, or village from which the certificate was received. Anyone maintaining such a human health hazard may also be fined not more than $300 or imprisoned for not more than 90 days or both. The only defenses an owner may have against the collection of a tax under this subsection are that no human health hazard existed on the owner's property, that no human health hazard was corrected on the owner's property, that the procedure outlined in this subsection was not followed or any applicable defense under s. 74.33.

(4) In cities under general charter, the local health officer may enter into and examine any place at any time to ascertain health conditions, and anyone refusing to allow entrance at reasonable hours shall be fined not less than $10 nor more than $100. If the local health officer deems it necessary to abate or remove a human health hazard found on private property, the local health officer shall serve notice on the owner or occupant to abate or remove within a reasonable time that is not less than 24 hours; and if he or she fails to comply, or if the human health hazard is on property whose owner is a nonresident, or cannot be found, the local health officer shall cause abatement or removal.

(5) The cost of abatement or removal of a human health hazard under this section may be at the expense of the municipality and may be collected from the owner or occupant, or person causing, permitting, or maintaining the human health hazard, or may be charged against the premises and, upon certification of the local health officer, assessed as are other special taxes. In cases of railroads or other lands not taxed in the usual way, the amount chargeable shall be certified by the clerk to the secretary of administration who shall add the amount designated in the certificate to the sum due from the company owning, occupying, or controlling the land specified, and the secretary of administration shall collect the amount as prescribed in subch. I of ch. 76 and return the amount collected to the town, city, or village from which the certificate was received. Anyone maintaining such a human health hazard may also be fined not more than $300 or imprisoned for not more than 90 days or both. The only defenses an owner may have against the collection of a tax under this subsection are that no human health hazard existed on the owner's property, that no human health hazard was corrected on the owner's property, that the procedure outlined in this subsection was not followed, or any applicable defense under s. 74.33.

(6) A 1st class city may, but is not required to, follow the provisions of this section. A 1st class city may follow the provisions of its charter.

History: 1979 c. 102 s. 237, 176; 1981 c. 20 s. 2200; 1987 a. 378; 1993 a. 27 ss. 361, 363, 477; Stats. 1993 s. 254.59; 2003 a. 33.

254.593 Authority of the department and local health departments. The department or a local health department may declare housing that is dilapidated, unsafe or unsanitary to be a human health hazard.

History: 1993 a. 27.

254.595 Property violating codes or health orders. (1) If real property is in violation of those provisions of a municipal building code that concern health or safety, the city, village, or town in which the property is located may commence an action to declare the property a nuisance. If real property is in violation of an order or a regulation of the local board of health, the city, village, or town in which the property is located may commence an action to declare the property a human health hazard. A tenant or class of tenants of property that is in violation of the municipal building code or of an order or regulation of the local board of health or any other person or class of persons whose health, safety or property interests are or would be adversely affected by property that is in violation of the municipal building code or of an order or regulation of the local board of health may file a petition with the clerk of the city, village, or town requesting the governing body to commence an action to declare the property a nuisance or human health hazard. If the governing body refuses or fails to commence an action within 20 days after the filing of the petition, a tenant, class of tenants, other person or other class of persons may commence the action directly upon the filing of security for court costs. The court before which the action of the case is commenced shall exercise jurisdiction in rem or quasi in rem over the property and the owner of record of the property, if known, and all other persons of record holding or claiming any interest in the property shall be made parties defendant and service of process may be had upon them as provided by law. Any change of ownership after the commencement of the action shall not affect the jurisdiction of the court over the property. At the time that the action is commenced, the municipality or other parties plaintiff shall file a lis pendens. If the court finds that a violation exists, it shall adjudge the property a nuisance or human health hazard and the entry of judgment shall be a lien upon the premises.

(2) A property owner or any person of record holding or claiming any interest in the property shall have 60 days after entry of judgment to eliminate the violation. If, within 60 days after entry of judgment under sub. (1), an owner of the property presents evidence satisfactory to the court, upon hearing, that the violation has been eliminated, the court shall set aside the judgment. It may not be a defense to this action that the owner of record of the property is a different person, partnership or corporate entity than the owner of record of the property on the date that the action was commenced or thereafter if a lis pendens has been filed prior to the change of ownership. No hearing under this subsection may be held until notice has been given to the municipality and all the plaintiffs advising them of their right to appear. If the judgment is not so set aside within 60 days after entry of judgment, the court shall appoint a disinterested person to act as receiver of the property for the purpose of abating the nuisance or human health hazard.

(3) (a) Any receiver appointed under sub. (2) shall collect all rents and profits accruing from the property, pay all costs of management, including all general and special real estate taxes or assessments and interest payments on first mortgages on the property, and make any repairs necessary to meet the standards required by the building code or the order or regulation of the local board of health. The receiver may, with the approval of the circuit court, borrow money against and encumber the property as security for the money, in the amounts necessary to meet the standards.

(b) At the request of and with the approval of the owner, the receiver may sell the property at a price equal to at least the appraisal value plus the cost of any repairs made under this section for which the selling owner is or will become liable. The receiver shall apply moneys received from the sale of the property to pay all debts due on the property in the order set by law, and shall pay over any balance with the approval of the court, to the selling owner.

(4) The receiver appointed under this section shall have a lien, for the expenses necessarily incurred to abate the nuisance or in the execution of the order, upon the premises upon or in respect of which the work required by the order has been done or expenses incurred. The municipality that sought the order declaring the property to be a nuisance or human health hazard may also recover its expenses and the expenses of the receiver under subs. (3) (a) and (5), to the extent that the expenses are not reimbursed under s. 632.103 (2) from funds withheld from an insurance settlement, by maintaining an action against the property owner under s. 74.53.

(5) The court shall set the fees and bond of the receiver, and may discharge the receiver when the court deems appropriate.

(6) Nothing in this section relieves the owner of any property for which a receiver has been appointed from any civil or criminal responsibility or liability otherwise imposed by law, except that the receiver shall be civilly and criminally responsible and liable for all matters and acts directly under his or her authority or performed by him or her or at his or her direction.

(7) This section shall not apply to owner−occupied one or 2−family dwellings.

(8) The commencement of an action by a tenant under this section is not just cause for eviction.

History: 1973 c. 306; Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.22; 1983 a. 476; 1987 a. 378; 1989 a. 347; 1993 a. 27 s. 493; Stats. 1993 s. 254.595; 2001 a. 86.

In an action alleging a public nuisance, it was sufficient to allege that the defendants knowingly caused the lowering of the ground water table from which the area residents drew water from private wells, which caused numerous citizens great hardship. State v. Michels Pipeline Construction, Inc. 63 Wis. 2d 278, 217 N.W.2d 339, 219 N.W.2d 308 (1974).

SUBCHAPTER VII

LODGING AND FOOD PROTECTION

254.61 Definitions. In this subchapter:

(1) "Bed and breakfast establishment" means any place of lodging that:

(a) Provides 8 or fewer rooms for rent to no more than a total of 20 tourists or transients;

(b) Provides no meals other than breakfast and provides the breakfast only to renters of the place;

(c) Is the owner's personal residence;

(d) Is occupied by the owner at the time of rental;

(e) Was originally built and occupied as a single−family residence, or, prior to use as a place of lodging, was converted to use and occupied as a single−family residence; and

(f) Has had completed, before May 11, 1990, any structural additions to the dimensions of the original structure, including by renovation, except that this limit does not apply to any of the following:

1. A structural addition, including a renovation, made to a structure after May 11, 1990, within the dimensions of the original structure.

2. A structural addition, made to a structure that was originally constructed at least 50 years before an initial or renewal application for a permit under s. 254.64 (1) (b) is made and for which no use other than as a bed and breakfast establishment is proposed. The structural addition under this subdivision shall comply with the rules under s. 101.63 (1) and (1m).

(2) "Establishment" means a hotel, tourist rooming house, bed and breakfast establishment, restaurant, temporary restaurant or vending machine commissary.

(3) "Hotel" means all places wherein sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all places used in connection therewith. "Hotelkeeper", "motelkeeper" and "innkeeper" are synonymous and "inn", "motel" and "hotel" are synonymous.

(4) "Public health and safety" means the highest degree of protection against infection, contagion or disease and freedom from the danger of fire or accident that can be reasonably maintained in the operation of a hotel, restaurant, tourist rooming house, bed and breakfast establishment, vending machine or vending machine commissary.

(5) "Restaurant" means any building, room or place where meals are prepared or served or sold to transients or the general public, and all places used in connection with it and includes any public or private school lunchroom for which food service is provided by contract. "Meals" does not include soft drinks, ice cream, milk, milk drinks, ices and confections. "Restaurant" does not include:

(a) Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter.

(b) Churches, religious, fraternal, youths' or patriotic organizations, service clubs and civic organizations which occasionally prepare, serve or sell meals to transients or the general public.

(c) Any public or private school lunchroom for which food service is directly provided by the school, or a private individual selling foods from a movable or temporary stand at public farm sales.

(d) Any bed and breakfast establishment that serves breakfasts only to its lodgers.

(e) The serving of food or beverage through a licensed vending machine.

(f) Any college campus, as defined in s. 36.05 (6m), institution as defined in s. 36.51 (1) (b) or technical college that serves meals only to the students enrolled in the college campus, institution or school or to authorized elderly persons under s. 36.51 or 38.36.

(g) A concession stand at a locally sponsored sporting event, such as a little league game.

(5m) "Temporary restaurant" means a restaurant that operates at a fixed location in conjunction with a single event such as a fair, carnival, circus, public exhibition, anniversary sale or occasional sales promotion.

(5r) "Tourist or transient" means a person who travels from place to place away from his or her permanent residence for vacation, pleasure, recreation, culture, business or employment.

(6) "Tourist rooming house" means any lodging place or tourist cabin or cottage where sleeping accommodations are offered for pay to tourists or transients. "Tourist rooming house" does not include:

(a) A private boarding or rooming house, ordinarily conducted as such, not accommodating tourists or transients.

(b) A hotel.

(c) Bed and breakfast establishments.

(7) "Vending machine" means any self−service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. "Vending machine" does not include a device which dispenses only bottled, prepackaged or canned soft drinks, a one cent vending device, a vending machine dispensing only candy, gum, nuts, nut meats, cookies or crackers or a vending machine dispensing only prepackaged Grade A pasteurized milk or milk products.

(8) "Vending machine commissary" means any building, room or place where the food, beverage, ingredients, containers, transport equipment or supplies for vending machines are kept, handled, prepared or stored by a vending machine operator. "Vending machine commissary" does not mean any place at which the operator is licensed to manufacture, distribute or sell food products under ch. 97.

(9) "Vending machine location" means the room, enclosure, space or area where one or more vending machines are installed and operated.

(10) "Vending machine operator" means the person maintaining a place of business in the state and responsible for the operation of one or more vending machines.

History: 1973 c. 190; 1975 c. 189; 1975 c. 413 s. 13; Stats. 1975 s. 50.50; 1983 a. 163, 189, 203, 538; 1985 a. 135; 1987 a. 27, 307; 1989 a. 269, 354, 359; 1993 a. 27 s. 65; Stats. 1993 s. 254.61; 1993 a. 399; 1997 a. 27, 237; 1999 a. 135.

A city health department may inspect and license public school lunchrooms pursuant to a specific ordinance even though s. 50.50 (3) [now sub. (5)] excludes public school lunchrooms from state regulation as restaurants. The authority in the department of public instruction under s. 115.33 to ensure a sanitary facility is not precluded by sub. (3). 65 Atty. Gen. 54.

254.62 Coordination; certification. (1) The department shall enter into memoranda of understanding with other state agencies to establish food protection measures.

(2) The department shall promulgate rules that establish a food sanitation manager certification program.

History: 1993 a. 27.

254.63 Motels. Upon the written request of the hotel operator made on forms furnished by the department, the department may classify a hotel as a "motel", if the operator of the hotel furnishes on−premises parking facilities for the motor vehicles of the hotel guests as a part of the room charge, without extra cost.

History: 1983 a. 203 ss. 3, 5; 1983 a. 538 s. 67; 1993 a. 27 s. 66; Stats. 1993 s. 254.63.

254.64 Permit. (1) (a) No person may conduct, maintain, manage or operate a hotel, restaurant, temporary restaurant, tourist rooming house, vending machine commissary or vending machine if the person has not been issued an annual permit by the department or by a local health department that is granted agent status under s. 254.69 (2).

(b) No person may maintain, manage or operate a bed and breakfast establishment for more than 10 nights in a year without having first obtained an annual permit from the department.

(c) Except as provided in s. 250.041, no permit may be issued under this section until all applicable fees have been paid. If the payment is by check or other draft drawn upon an account containing insufficient funds, the permit applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier's check or other certified draft, money order or cash the fees, late fees and processing charges that are specified by rules promulgated by the department. If the permit applicant fails to pay all applicable fees, late fees and processing charges within 15 days after the applicant receives notice of the insufficiency, the permit is void. In an appeal concerning voiding of a permit under this paragraph, the burden is on the permit applicant to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning payment dispute, operation of the establishment in question is deemed to be operation without a permit.

(d) If a person or establishment licensed under ch. 97 is incidentally engaged in an activity for which a permit is required under this section, the department may, by rule, exempt the person or establishment from the permit requirement under this section. Rules under this paragraph shall conform to a memorandum of understanding between the department and the department of agriculture, trade and consumer protection.

(1m) No county, city, village or town may require any permit of, or impose any permit or inspection fee on, a vending machine operator, vending machine commissary or vending machine permitted under this subchapter.

(1p) Except as provided in s. 250.041, the department may condition the initial issuance, renewal or continued validity of a permit issued under this section on correction by the permittee of a violation of this subchapter, rules promulgated by the department under this subchapter or ordinances or regulations adopted under s. 254.69 (2) (g), within a specified period of time. If the permittee fails to meet the condition within the specified period of time, the permit is void.

(2) Except as provided in sub. (3), a separate permit is required for each establishment.

(3) (a) A bulk milk dispenser may be operated in a restaurant without a vending machine or vending machine operator permit.

(b) A restaurant may operate as a vending machine commissary without a vending machine commissary permit.

(4) (a) In this subsection "immediate family member" means one of the following:

1. A spouse.

2. A grandparent, parent, sibling, child, stepchild or grandchild.

3. The spouse of a person under subd. 2.

(b) Except as provided in par. (d), no permit is transferable from one premises to another or from one person to another.

(d) The holder of a permit issued under this section may transfer the permit to an individual who is an immediate family member if the holder is transferring operation of the establishment or vending machine to the immediate family member.

(5) All permits expire on June 30, except that permits initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year.

History: 1975 c. 413 ss. 13, 18; Stats. 1975 s. 50.51; 1983 a. 163, 203; 1987 a. 27, 81, 399; 1989 a. 31; 1993 a. 16 ss. 1491, 1492; 1993 a. 27 s. 67; Stats. 1993 s. 254.64; 1993 a. 183, 491; 1997 a. 191; 2001 a. 16.

254.65 Preinspection. (1) The department or a local health department granted agent status under s. 254.69 (2) may not grant a permit to a person intending to operate a new hotel, tourist rooming house, bed and breakfast establishment, restaurant or vending machine commissary or to a person intending to be the new operator of an existing hotel, tourist rooming house, bed and breakfast establishment, restaurant or vending machine commissary without a preinspection. This section does not apply to a temporary restaurant or when a permit is transferred under s. 254.64 (4) (d).

(2) Agents designated by the department under s. 254.69 (1) shall make preinspections of vending machine commissaries as required under this subsection and shall be reimbursed for those services at the rate of 80% of the preinspection fee designated in this subsection. Agents designated by the department under s.

254.69 (2) shall make preinspections of hotels, restaurants and tourist rooming houses and establish and collect preinspection fees under s. 254.69 (2) (d).

History: 1983 a. 203 ss. 10, 16, 19; 1983 a. 538; 1987 a. 27, 81; 1993 a. 27 s. 68; Stats. 1993 s. 254.65.

254.66 Average annual surveys. The department or a local health department granted agent status under s. 254.69 (2) shall annually make a number of inspections of restaurants in this state that shall equal the number of restaurants for which annual permits are issued under s. 254.64 (1) (a).

History: 1987 a. 27; 1993 a. 27 s. 69; Stats. 1993 s. 254.66.

254.67 Vending machine commissary outside the state. Foods, beverages and ingredients from commissaries outside the state may be sold within the state if such commissaries conform to the provisions of the food establishment sanitation rules of this state or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the department may accept reports from the responsible authority in the jurisdiction where the commissaries are located.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.52; 1993 a. 27 s. 70; Stats. 1993 s. 254.67.

254.68 Fees. Except as provided in s. 254.69 (2) (d) and (e), the department shall promulgate rules that establish, for permits issued under s. 254.64, permit fees, preinspection fees, reinspection fees, fees for operating without a permit, late fees for untimely permit renewal, fees for comparable compliance or variance requests, and fees for pre−permit review of restaurant plans.

History: 1973 c. 333; 1975 c. 224; 1975 c. 413 s. 13; Stats. 1975 s. 50.53; 1977 c. 222; 1979 c. 34; 1981 c. 20; 1983 a. 27, 163, 203, 538; 1985 a. 135; 1987 a. 27, 399; 1991 a. 178; 1993 a. 16 s. 1493; 1993 a. 27 s. 71; Stats. 1993 s. 254.68; 1993 a. 183; 2001 a. 16.

254.69 Agent status for local health departments. (1) VENDING OPERATIONS. In the administration and enforcement of this subchapter, the department may use local health departments as its agents in making inspections and investigations of vending machine commissaries, vending machine operators and vending machines if the jurisdictional area of the local health department has a population greater than 5,000. If the designation is made and the services are furnished, the department shall reimburse the local health department furnishing the service at the rate of 80% of the net license fee per license per year issued in the jurisdictional area.

(2) HOTELS, RESTAURANTS, TOURIST ROOMING HOUSES AND OTHER ESTABLISHMENTS. (am) In the administration of this subchapter or s. 254.47, the department may enter into a written agreement with a local health department with a jurisdictional area that has a population greater than 5,000, which designates the local health department as the department's agent in issuing permits to and making investigations or inspections of hotels, restaurants, temporary restaurants, tourist rooming houses, bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps and public swimming pools. In a jurisdictional area of a local health department without agent status, the department of health and family services may issue permits, collect fees established by rule under s. 254.68 and make investigations or inspections of hotels, restaurants, temporary restaurants, tourist rooming houses, bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps and public swimming pools. If the department designates a local health department as its agent, the department or local health department may require no permit for the same operations other than the permit issued by the local health department under this subsection. The department shall coordinate the designation of agents under this subsection with the department of agriculture, trade and consumer protection to ensure that, to the extent feasible, the same local health department is granted agent status under this subsection and under s. 97.41. Except as otherwise provided by the department, a local health department granted agent status shall regulate all types of establishments for which this subchapter permits the department of health and family services to delegate regulatory authority.

(b) A local health department granted agent status under this subsection shall meet standards promulgated, by rule, by the department of health and family services. The department shall annually evaluate the licensing, investigation and inspection program of each local health department granted agent status. If, at any time, a local health department granted agent status fails to meet the standards, the department of health and family services may revoke its agent status.

(c) The department shall provide education and training to agents designated under this subsection to ensure uniformity in the enforcement of this subchapter, s. 254.47 and rules promulgated under this subchapter and s. 254.47.

(d) Except as provided in par. (dm), a local health department granted agent status under this subsection shall establish and collect the permit fee for each type of establishment. The local health department may establish separate fees for preinspections of new establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate permits. No fee may exceed the local health department's reasonable costs of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under par. (e). A local health department granted agent status under this subsection or under s. 97.41 may issue a single permit and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment for which it is granted agent status under this subsection or under s. 97.41.

(dm) A local health department granted agent status under this subsection may contract with the department of health and family services for the department of health and family services to collect fees and issue permits. The department shall collect from the local health department the actual and reasonable cost of providing the services.

(e) The department shall establish state fees for its costs related to setting standards under this subchapter and s. 254.47 and monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Agent local health departments shall include the state fees in the permit fees established under par. (d), collect the state fees and reimburse the department for the state fees collected. For each type of establishment, the state fee may not exceed 20% of the permit fees charged under ss. 254.47 and 254.68.

(f) If, under this subsection, a local health department becomes an agent or its agent status is discontinued during a permittee's permit year, the department of health and family services and the local health department shall divide any permit fee paid by the permittee for that permit year according to the proportions of the permit year occurring before and after the local health department's agent status is granted or discontinued. No additional fee may be required during the permit year due to the change in agent status.

(g) A village, city or county may adopt ordinances and a local board of health may adopt regulations regarding the permittees and premises for which the local health department is the designated agent under this subsection, which are stricter than this subchapter, s. 254.47 or rules promulgated by the department of health and family services under this subchapter or s. 254.47. No such provision may conflict with this subchapter or with department rules.

(h) This subsection does not limit the authority of the department to inspect establishments in jurisdictional areas of local health departments where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the local health department's licensing, inspection and

enforcement program or at the request of the local health department.

(j) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging either of the following:

1. A permit fee established by a local health department granted agent status exceeds the reasonable costs described under par. (d).

2. The person issuing, refusing to issue, suspending or revoking a permit or making an investigation or inspection of the appellant has a financial interest in a regulated establishment which may interfere with his or her ability to properly take that action.

History: 1983 a. 203 ss. 15, 21; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27 ss. 1074m to 1076m, 3200 (24); 1987 a. 307; 1989 a. 31; 1991 a. 39, 315; 1993 a. 16; 1993 a. 27 s. 72; Stats. 1993 s. 254.69; 1993 a. 183; 1995 a. 27 s. 9126 (19); 2001 a. 16.

Cross Reference: See also ch. HFS 192, Wis. adm. code.

254.70 Application. (1) An applicant for a permit under this subchapter shall complete the application prepared by the department or the local health department granted agent status under s. 254.69 (2) and provide, in writing, any additional information the department of health and family services or local health department issuing the permit requires.

(2) Upon receipt of an application for a vending machine operator permit, the department may cause an investigation to be made of the applicant's commissary, servicing and transport facilities, if any, and representative machines and machine locations. The operator shall maintain at his or her place of business within this state a list of all vending machines operated by him or her and their location. This information shall be kept current and shall be made available to the department upon request. The operator shall notify the department of any change in operations involving new types of vending machines or conversion of existing machines to dispense products other than those for which such machine was originally designed and constructed.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.54; 1983 a. 163, 203, 538; 1987 a. 27 s. 3200 (24) (am); 1993 a. 27 s. 73; Stats. 1993 s. 254.70; 1995 a. 27 s. 9126 (19).

254.71 Certificate of food protection practices. (1) After January 1, 1995, no person may conduct, maintain, manage or operate a restaurant unless the operator or manager of the restaurant holds a current, valid certificate of food protection practices issued by the department.

(2) Except as provided in s. 250.041, the department may issue a certificate of food protection practices to an individual who satisfactorily completes a written examination, approved by the department, that demonstrates the individual's basic knowledge of food protection practices or who has achieved comparable compliance.

(3) Each certificate is valid for 5 years from the date of issuance and, except as provided in s. 250.041, may be renewed by the holder of the certificate if he or she satisfactorily completes a recertification training course approved by the department.

(5) The department shall conduct evaluations of the effect that the food protection practices certification program has on compliance by restaurants with requirements established under s. 254.74 (1).

(6) The department shall promulgate rules concerning all of the following:

(a) Establishing a fee for certification and recertification of food protection practices.

(b) Specifying standards for approval of training courses for recertification of food protection practices.

(c) Establishing procedures for issuance, except as provided in s. 250.041, of certificates of food protection practices, including application submittal and review.

History: 1991 a. 39; 1993 a. 16; 1993 a. 27 s. 74; Stats. 1993 s. 254.71; 1997 a. 27, 191.

Cross Reference: See also ch. HFS 196, Wis. adm. code.

254.72 Health and safety; standard. Every hotel, tourist rooming house, bed and breakfast establishment, restaurant, temporary restaurant, vending machine commissary and vending machine shall be operated and maintained with a strict regard to the public health and safety and in conformity with this subchapter and the rules and orders of the department.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.55; 1983 a. 163, 203, 538; 1987 a. 27; 1993 a. 27 s. 75; Stats. 1993 s. 254.72.

Cross Reference: See also chs. HFS 195, 196, 197, and 198, Wis. adm. code.

254.73 Hotel safety. (1) Every hotel with sleeping accommodations with more than 12 bedrooms above the first story shall, between the hours of 12 midnight and 6 a.m. provide a system of security personnel patrol, or of mechanical and electrical devices, or both, adequate, according to standards established by the department of commerce, to warn all guests and employees in time to permit their evacuation in case of fire.

(2) Every hotel shall offer to every guest, at the time of registration for accommodation and of making a reservation for accommodation, an opportunity to identify himself or herself as a person needing assistance in an emergency because of a physical condition and shall keep a record at the registration desk of where each person so identified is lodged. No hotel may lodge any person so identified in areas other than those designated by the local fire department as safe for persons so identified, based on the capabilities of apparatus normally available to the fire company or companies assigned the first alarm. A person who does not identify himself or herself as permitted in this subsection may be lodged in the same manner as any other guest. Violation of this subsection shall be punished by a forfeiture of not more than $50 for the first violation and not more than $100 for each subsequent violation.

History: 1975 c. 112, 199; 1975 c. 413 s. 13; Stats. 1975 s. 50.56; 1985 a. 135; 1993 a. 27 s. 76; Stats. 1993 s. 254.73; 1995 a. 27 ss. 6343, 9116 (5).

254.74 Powers of the department and local health departments. (1) The department shall do all of the following:

(a) Administer and enforce this subchapter, the rules promulgated under this subchapter and any other rules or laws relating to the public health and safety in hotels, tourist rooming houses, bed and breakfast establishments, restaurants, vending machine commissaries, vending machines and vending machine locations.

(b) Require hotels, tourist rooming houses, restaurants, vending machine operators and vending machine commissaries to file reports and information the department deems necessary.

(c) Ascertain and prescribe what alterations, improvements or other means or methods are necessary to protect the public health and safety on those premises.

(d) Prescribe rules and fix standards, including rules covering the general sanitation and cleanliness of premises regulated under this subchapter, the proper handling and storing of food on such premises, the construction and sanitary condition of the premises and equipment to be used and the location and servicing of equipment. The rules relating to the public health and safety in bed and breakfast establishments may not be stricter than is reasonable for the operation of a bed and breakfast establishment, shall be less stringent than rules relating to other establishments regulated by this subchapter and may not require 2nd exits for a bed and breakfast establishment on a floor above the first level.

(e) Hold a hearing under ch. 227 if, in lieu of proceeding under ch. 68, any interested person in the jurisdictional area of a local health department not granted agent status under s. 254.69 appeals to the department of health and family services alleging that a permit fee for a hotel, restaurant, temporary restaurant, tourist rooming house, campground, camping resort, recreational or educational camp or public swimming pool exceeds the permit issuer's reasonable costs of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to the establishment.

(1m) (a) The department may grant an applicant for a permit to maintain, manage or operate a bed and breakfast establishment a waiver from the requirement specified under s. 254.61 (1) (f) if the department determines that all of the following are true:

1. The public health, safety or welfare would not be jeopardized.

2. The establishment seeking the waiver is in compliance with the requirements under s. 254.61 (1) (a) to (e).

(b) A waiver granted under par. (a) is valid for the period of validity of a permit that is issued to the applying bed and breakfast establishment under s. 254.64 (1) (b).

(1p) (a) The department may grant the holder of a permit for a bed and breakfast establishment a waiver from the requirement specified under s. 254.61 (1) (b) to allow the holder of a permit for a bed and breakfast establishment to serve breakfast to other tourists or transients if all of the following conditions are met:

1. The department determines that the public health, safety or welfare would not be jeopardized.

2. The other tourists or transients are provided sleeping accommodations in a tourist rooming house for which the permit holder for the bed and breakfast establishment is the permit holder.

3. The tourist rooming house is located on the same property as the bed and breakfast establishment or on property contiguous to the property on which the bed and breakfast establishment is located.

4. The number of rooms offered for rent in the bed and breakfast establishment combined with the number of rooms offered for rent in the tourist rooming house does not exceed 8.

5. The number of tourists or transients who are provided sleeping accommodations in the bed and breakfast establishment combined with the number of tourists or transients who are provided sleeping accommodations in the tourist rooming house does not exceed 20.

(b) A waiver granted under par. (a) is valid for the period of validity of a permit that is issued for the bed and breakfast establishment under s. 254.64 (1) (b).

(2) A local health department designated as an agent under s. 254.69 (2) may exercise the powers specified in sub. (1) (a) to (d), consistent with s. 254.69 (2) (g).

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.57; 1983 a. 163, 203, 538; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27; 1991 a. 39; 1993 a. 27 s. 77; Stats. 1993 s. 254.74; 1995 a. 27 ss. 6343m, 9126 (19); 1995 a. 417; 1997 a. 43.

Cross Reference: See also chs. HFS 195, 196, 197, and 198, Wis. adm. code.

254.76 Causing fires by tobacco smoking. (1) Any person who, by smoking, or attempting to light or to smoke cigarettes, cigars, pipes or tobacco, in any manner in which lighters or matches are employed, shall, in a careless, reckless or negligent manner, set fire to any bedding, furniture, curtains, drapes, house or any household fittings, or any part of any building specified in sub. (2), so as to endanger life or property in any way or to any extent, shall be fined not less than $50 nor more than $250, together with costs, or imprisoned not less than 10 days nor more than 6 months or both.

(2) In each sleeping room of all hotels, rooming houses, lodging houses and other places of public abode, a plainly printed notice shall be kept posted in a conspicuous place advising tenants of the provisions of this section.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.58; 1993 a. 27 s. 79; Stats. 1993 s. 254.76.

254.78 Authority of department of commerce. Nothing in this chapter shall affect the authority of the department of commerce relative to places of employment, elevators, boilers, fire escapes, fire protection, or the construction of public buildings.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.60; 1993 a. 27 s. 81; Stats. 1993 s. 254.78; 1995 a. 27 ss. 6344, 9116 (5).

254.79 Joint employment. The department and the department of commerce may employ experts, inspectors or other assistants jointly.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.61; 1993 a. 27 s. 82; Stats. 1993 s. 254.79; 1995 a. 27 ss. 6345, 9116 (5).

254.80 Hotelkeeper's liability. (1) A hotelkeeper who complies with sub. (2) is not liable to a guest for loss of money, jewelry, precious metals or stones, personal ornaments or valuable papers which are not offered for safekeeping.

(2) To secure exemption from liability the hotelkeeper shall do all of the following:

(a) Have doors on sleeping rooms equipped with locks or bolts.

(b) Offer, by notice printed in large plain English type and kept conspicuously posted in each sleeping room, to receive valuable articles for safekeeping, and explain in the notice that the hotel is not liable for loss unless articles are tendered for safekeeping.

(c) Keep a safe or vault suitable for keeping the articles and receive them for safekeeping when tendered by a guest, except as provided in sub. (3).

(3) A hotelkeeper is liable for loss of articles accepted for safekeeping up to $300. The hotelkeeper need not receive for safekeeping property over $300 in value. This subsection may be varied by written agreement between the parties.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.80; 1991 a. 316; 1993 a. 27 s. 85; Stats. 1993 s. 254.80.

Notwithstanding the hotelkeepers' liability laws, a hotel continues to have a duty to exercise reasonable care to protect its guests from injury at the hands of third persons who are not hotel employees, and to protect a guest who is subjected to a criminal act during the process of checking in. As the provisions for notice and a safe are no longer useful for a guest who has checked out, they cannot help a guest who has not even penetrated the interior of his room and had a chance to use them. H.K. Mallak, Inc. v. Fairfield FMC Corp. 209 F.3d 960 (2000).

254.81 Hotelkeeper's liability for baggage; limitation. Every guest and intended guest of any hotel upon delivering to the hotelkeeper any baggage or other property for safekeeping, elsewhere than in the room assigned to the guest, shall demand and the hotelkeeper shall give a check or receipt, to evidence the delivery. No hotelkeeper shall be liable for the loss of or injury to the baggage or other property of a hotel guest, unless it was delivered to the hotelkeeper for safekeeping or unless the loss or injury occurred through the negligence of the hotelkeeper.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.81; 1991 a. 316; 1993 a. 27 s. 86; Stats. 1993 s. 254.81.

254.82 Liability of hotelkeeper for loss of property by fire or theft; owner's risk. A hotelkeeper is not liable for the loss of baggage or other property of a hotel guest by a fire unintentionally produced by the hotelkeeper. Every hotelkeeper is liable for loss of baggage or other property of a guest caused by theft or gross negligence of the hotelkeeper. The liability may not exceed $200 for each trunk and its contents, $75 for each valise and its contents and $10 for each box, bundle or package and contents, so placed under the care of the hotelkeeper; and $50 for all other effects including wearing apparel and personal belongings, unless the hotelkeeper has agreed in writing with the guest to assume a greater liability. When any person permits his or her baggage or property to remain in any hotel after the person's status as a guest has ceased, or forwards the baggage or property to a hotel before becoming a guest and the baggage or property is received into the hotel, the hotelkeeper holds the baggage or property at the risk of the owner.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.82; 1991 a. 316; 1993 a. 27 s. 87; Stats. 1993 s. 254.82.

254.83 Hotel rates posted; rate charges; special rates. (1) Every hotelkeeper shall keep posted in a conspicuous place in each sleeping room in his or her hotel, in type not smaller than 12−point, the rates per day for each occupant. Such rates shall not be changed until notice to that effect has been posted, in a similar

manner, for 10 days previous to each change. Any hotelkeeper who fails to have the rates so posted or who charges, collects or receives for the use of any room a sum different from the authorized charge shall be fined not less than $50 nor more than $100. A hotelkeeper may permit a room to be occupied at the rate of a lower priced room when all of the lower priced rooms are taken and until one of them becomes unoccupied. Special rates may be made for the use of sleeping rooms, either by the week, month or for longer periods or for use by families or other collective groups. The department or its representatives may enforce the posting of rates as provided in this subsection.

(2) (a) A hotelkeeper shall post, in each sleeping room in the hotel with a telephone, a notice of any fee imposed by the hotelkeeper for using the telephone.

(b) The notice required under par. (a) shall be all of the following:

1. In type not smaller than 12−point.

2. Conspicuously posted on the telephone or within 3 feet of the telephone's normal location.

(c) The department or its agents may inspect hotels to ensure compliance with pars. (a) and (b).

(d) A hotelkeeper who fails to post the notice required under par. (a) or who posts an inaccurate notice shall be fined not less than $50 nor more than $100.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.84; 1989 a. 31; 1993 a. 27 s. 89; Stats. 1993 s. 254.83.

254.84 Motel rates. (1) DEFINITIONS. (a) "Operator" includes a manager or any person in charge of the operation of motels and like establishments. "Operator" or "owner" includes natural persons, firms and corporations.

(b) "Outdoor sign" or "outside sign" means any sign visible to passersby, regardless of whether the sign is located in or outside of buildings.

(c) "Room rates" means the rates at which rooms or other accommodations are rented to occupants.

(2) RENTAL POSTED. No owner or operator of any establishment that is held out as a motel, motor court, tourist cabin or like accommodation may post or maintain posted on any outdoor or outside advertising sign for the establishment rates for accommodations in the establishment unless the sign has posted on it both the minimum and maximum room or other rental unit rates for accommodations offered for rental. All posted rates and descriptive data required by this section shall be in type and material of the same size and prominence as the minimum and maximum room or other rental unit rates. Signs that only state the rate per person or bear the legend "and up" do not comply with the requirements of this subsection.

(3) ACCOMMODATIONS MUST EXIST. No owner or operator of any motel, motor court, tourist cabin or like accommodation may post or maintain posted on outdoor or outside advertising signs rates for accommodations in the establishment unless there is available, when vacant, accommodations in the establishment for immediate occupancy to meet the posted rates on the advertising signs.

(4) MISREPRESENTATION. No owner or operator of any motel, motor court, tourist cabin or like accommodation may post or maintain outdoor or outside advertising signs in connection with the establishment relating to rates which have any untrue, misleading, false, or fraudulent representations.

(5) CONSTRUCTION. Nothing in this section may be construed to require establishments to have outdoor or outside signs. This section shall be liberally construed so as to prevent untrue, misleading, false, or fraudulent representations relating to rates placed on outdoor or outside signs of the establishments.

(6) PENALTY. Whoever violates this section shall be fined not more than $300 or imprisoned not more than 6 months or both.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.85; 1983 a. 189; 1993 a. 27 s. 90; Stats. 1993 s. 254.84.

254.85 Enforcement. (1) The department may enter, at reasonable hours, any premises for which a permit is required under this subchapter or s. 254.47 to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed to enforce this subchapter or s. 254.47. If samples of food are taken, the department shall pay or offer to pay the market value of the samples taken. The department shall examine the samples and specimens secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this subchapter, s. 254.47 or rules promulgated by the department under this subchapter or s. 254.47.

(2) (a) Whenever, as a result of an examination, the department has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation or method of operation of the premises or equipment used on the premises creates, an immediate danger to health, the administrator of the division of the department responsible for public health may issue a temporary order and cause it to be delivered to the permittee, or to the owner or custodian of the food, or to both. The order may prohibit the sale or movement of the food for any purpose, prohibit the continued operation or method of operation of specific equipment, require the premises to cease other operations or methods of operation which create the immediate danger to health, or set forth any combination of these requirements. The administrator may order the cessation of all operations authorized by the permit only if a more limited order does not remove the immediate danger to health. Except as provided in par. (c), no temporary order is effective for longer than 14 days from the time of its delivery, but a temporary order may be reissued for one additional 14−day period, if necessary to complete the analysis or examination of samples, specimens or other evidence.

(b) No food described in a temporary order issued and delivered under par. (a) may be sold or moved and no operation or method of operation prohibited by the temporary order may be resumed without the approval of the department, until the order has terminated or the time period specified in par. (a) has run out, whichever occurs first. If the department, upon completed analysis and examination, determines that the food, construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health, the permittee, owner or custodian of the food or premises shall be promptly notified in writing and the temporary order shall terminate upon his or her receipt of the written notice.

(c) If the analysis or examination shows that the food, construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health, the permittee, owner or custodian shall be notified within the effective period of the temporary order issued under par. (a). Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under sub. (3), and no food described in the temporary order may be sold or moved and no operation or method of operation prohibited by the order may be resumed without the approval of the department.

(3) A notice issued under sub. (2) (c) shall be accompanied by a statement which informs the permittee, owner or custodian that he or she has a right to request a hearing in writing within 15 days after issuance of the notice. The department shall hold a hearing no later than 15 days after the department receives the written request for a hearing, unless both parties agree to a later date. A final decision shall be issued under s. 227.47 within 10 days of the conclusion of the hearing. The decision may order the destruction of food, the diversion of food to uses which do not pose a danger to health, the modification of food so that it does not create a danger to health, changes to or replacement of equipment or construction, other changes in or cessations of any operation or method of operation of the equipment or premises, or any combination of these actions necessary to remove the danger to health. The decision may order the cessation of all operations authorized by the

permit only if a more limited order will not remove the immediate danger to health.

(4) A proceeding under this section, or the issuance of a permit for the premises after notification of procedures under this section, does not constitute a waiver by the department of its authority to rely on a violation of this subchapter, s. 254.47 or any rule promulgated under this subchapter or s. 254.47 as the basis for any subsequent suspension or revocation of the permit or any other enforcement action arising out of the violation.

(5) (a) Except as provided in par. (b), any person who violates this section or an order issued under this section may be fined not more than $10,000 plus the retail value of any food moved, sold or disposed of in violation of this section or the order, or imprisoned not more than one year in the county jail, or both.

(b) Any person who does either of the following may be fined not more than $5,000 or imprisoned not more than one year in a county jail, or both:

1. Assaults, restrains, threatens, intimidates, impedes, interferes with or otherwise obstructs a department inspector, employee or agent in the performance of his or her duties under this section.

2. Gives false information to a department inspector, employee or agent engaged in the performance of his or her duties under this section, with the intent to mislead the inspector, employee or agent.

History: 1983 a. 203; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1); 1987 a. 307; 1993 a. 27 s. 78; Stats. 1993 s. 254.85.

254.86 Suspension or revocation of permit. The department or a local health department designated as an agent under s. 254.69 (2) may refuse or withhold issuance of a permit or may suspend or revoke a permit for violation of this subchapter or any rule or order of the department of health and family services, ordinance of the village, city or county or regulation of the local board of health.

History: 1975 c. 413 s. 14; Stats. 1975 s. 50.70; 1983 a. 203; 1987 a. 27; 1993 a. 27 s. 83; Stats. 1993 s. 254.86; 1995 a. 27 s. 9126 (19).

254.87 Court review. Orders of the department shall be subject to review in the manner provided in ch. 227.

History: 1975 c. 413 s. 14; Stats. 1975 s. 50.71; 1993 a. 27 s. 84; Stats. 1993 s. 254.87.

254.88 Penalty. Anyone who violates this subchapter, except s. 254.83, 254.84 or 254.85, or any rule of the department promulgated under this subchapter shall be fined not less than $100 nor more than $1,000. Anyone who fails to comply with an order of the department under this subchapter except s. 254.85 shall forfeit $50 for each day of noncompliance after the order is served upon or directed to him or her, and in case of action under s. 254.87, after lapse of a reasonable time after final determination.

History: 1975 c. 413 ss. 13, 18; Stats. 1975 s. 50.59; 1983 a. 203; 1985 a. 332 s. 251 (1); 1989 a. 31; 1993 a. 27 s. 80; Stats. 1993 s. 254.88.

SUBCHAPTER IX

SALE OR GIFT OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS

254.911 Definitions. In this subchapter:

(1) "Cigarette" has the meaning given in s. 139.30 (1).

(2) "Governmental regulatory authority" means the department, a local health department, a state agency or a state or local law enforcement agency; or a person with whom the local health department, state agency, or state or local law enforcement agency contracts to conduct investigations authorized under s. 254.916 (1) (a).

(3) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(4) "Retailer" has the meaning given in s. 134.66 (1) (g).

(5) "Retail outlet" means a place of business from which cigarettes or tobacco products are sold at retail to consumers.

(6) "State agency" has the meaning given in s. 1.12 (1) (b).

(7) "Tobacco products" has the meaning given in s. 139.75 (12).

(8) "Tobacco vending machine" is any mechanical device that automatically dispenses cigarettes or tobacco products when money or tokens are deposited in the device in payment for the cigarettes or tobacco products.

(9) "Tobacco vending machine operator" means a person who acquires tobacco products or stamped cigarettes from manufacturers, as defined in s. 134.66 (1) (e), or permittees, stores them and sells them through the medium of tobacco vending machines that he or she owns, operates or services and that are located on premises that are owned or under the control of other persons.

(10) "Tobacco vending machine premises" means any area in which a tobacco vending machine is located.

History: 1999 a. 9; 2001 a. 75.

254.916 Investigations. (1) (a) A governmental regulatory authority may conduct unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with s. 134.66 (2) (a) and (am) or a local ordinance adopted under s. 134.66 (5). The department may contract with a local health department, a state agency, or a state or local law enforcement agency to conduct investigations authorized under this section, and a local health department, state agency, or state or local law enforcement agency may contract with any other person to conduct those investigations. A person who contracts to conduct investigations authorized under this section shall agree in the contract to train all individuals conducting investigations under the contract in accordance with the standards established under par. (b) and to suspend from conducting any further investigations for not less than 6 months any individual who fails to meet the requirements of sub. (3) (a) to (f) and the standards established by the department.

(b) The department, in consultation with other governmental regulatory authorities and with retailers, shall establish standards for procedures and training for conducting investigations under this section.

(c) No retailer may be subjected to an unannounced investigation more than twice annually unless the retailer is found to have violated s. 134.66 (2) (a) or (am), or a local ordinance adopted under s. 134.66 (5), during the most recent investigation.

(2) With the permission of his or her parent or guardian, a person under 18 years of age, but not under 15 years of age, may buy, attempt to buy or possess any cigarette or tobacco product if all of the following are true:

(a) The person commits the act for the purpose of conducting an investigation under this section.

(b) The person is directly supervised during the conducting of the investigation by an adult employee of a governmental regulatory authority.

(c) The person has prior written authorization to commit the act from a governmental regulatory authority or a district attorney or from an authorized agent of a governmental regulatory authority or a district attorney.

(3) All of the following, unless otherwise specified, apply in conducting investigations under this section:

(a) If questioned about his or her age during the course of an investigation, the minor shall state his or her true age.

(b) A minor may not be used for the purposes of an investigation at a retail outlet at which the minor is a regular customer.

(c) The appearance of a minor may not be materially altered so as to indicate greater age.

(d) A photograph or videotape of the minor shall be made before or after the investigation or series of investigations on the day of the investigation or series of investigations. If a prosecu-

tion results from an investigation, the photograph or videotape shall be retained until the final disposition of the case.

(e) A governmental regulatory authority shall make a good faith effort to make known to the retailer or the retailer's employee or agent, within 72 hours after the occurrence of the violation, the results of an investigation, including the issuance of any citation by a governmental regulatory authority for a violation that occurs during the conduct of the investigation. This paragraph does not apply to investigations conducted under a grant received under 42 USC 300x−21.

(f) Except with respect to investigations conducted under a grant received under 42 USC 300x−21, all of the following information shall be reported to the retailer within 10 days after the conduct of an investigation under this section:

1. The name and position of the governmental regulatory authority employee who directly supervised the investigation.

2. The age of the minor.

3. The date and time of the investigation.

4. A reasonably detailed description of the circumstances giving rise to a violation, if any, or, if there is no violation, written notice to that effect.

(5) No evidence obtained during or otherwise arising from the course of an investigation under this section that is used to prosecute a person for a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5) may be used in the prosecution of an alleged violation of s. 125.07 (3).

(6) The department shall compile the results of investigations performed under this section and shall prepare an annual report that reflects the results for submission with the state's application for federal funds under 42 USC 300x−21. The report shall be published for public comment at least 60 days before the beginning of negotiations under sub. (7).

(7) The department shall strive annually to negotiate with the federal department of health and human services realistic and attainable interim performance targets for compliance with 42 USC 300x−26.

(8) A governmental regulatory agency that conducts an investigation under this section shall meet the requirements of sub. (3) (a) to (f) and the standards established by the department.

(9) The department shall provide education and training to governmental regulatory authorities to ensure uniformity in the enforcement of this subchapter.

(10) This section does not limit the authority of the department to investigate establishments in jurisdictional areas of governmental regulatory authorities if the department investigates in response to an emergency, for the purpose of monitoring and evaluating the governmental regulatory authority's investigation and enforcement program or at the request of the governmental regulatory authority.

(11) A person conducting an investigation under this section may not have a financial interest in a regulated cigarette and tobacco product retailer, a tobacco vending machine operator, a tobacco vending machine premises, or a tobacco vending machine that may interfere with his or her ability to properly conduct that investigation. A person who is investigated under this section may request the local health department or local law enforcement agency that contracted for the investigation to conduct a review under ch. 68 to determine whether the person conducting the investigation is in compliance with this subsection or, if applicable, may request the state agency or state law enforcement agency that contracted for the investigation to conduct a contested case hearing under ch. 227 to make that determination. The results of an investigation that is conducted by a person who is not in compliance with this subsection may not be used to prosecute a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5).

History: 1999 a. 9, 84, 185; 2001 a. 75.

254.92 Purchase or possession of cigarettes or tobacco products by person under 18 prohibited.

(1) No person under 18 years of age may falsely represent his or her age for the purpose of receiving any cigarette or tobacco product.

(2) No person under 18 years of age may purchase, attempt to purchase or possess any cigarette or tobacco product except as follows:

(a) A person under 18 years of age may purchase or possess cigarettes or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.

(b) A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess cigarettes or tobacco products in the course of his or her participation in an investigation under s. 254.916 that is conducted in accordance with s. 254.916 (3).

(3) A law enforcement officer shall seize any cigarette or tobacco product that has been sold to and is in the possession of a person under 18 years of age.

(4) A county, town, village, or city may enact an ordinance regulating the conduct regulated by this section only if the ordinance strictly conforms to this section. A county ordinance enacted under this subsection does not apply within a town, village, or city that has enacted or enacts an ordinance under this subsection.

History: 1987 a. 336; 1991 a. 32, 95, 315; 1995 a. 352, s. 20; Stats. 1995 s. 938.983; 1999 a. 9 ss. 2485L, 3176m, 3176p to 3176s; 2001 a. 75.

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations that are not in strict conformity with those of the state. U.S. Oil, Inc. v. City of Fond du Lac, 199 Wis. 2d 333, 544 N.W.2d 589 (Ct. App. 1995), 95−0213.