

2007 SENATE BILL 289

October 11, 2007 – Introduced by Senators WIRCH and PLALE, cosponsored by Representatives KERKMAN, BERCEAU, A. WILLIAMS, GUNDERSON, A. OTT and HAHN. Referred to Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection.

1 **AN ACT** *to amend* 101.145 (2); and *to create* 101.149 and 254.74 (1) (am) of the
2 statutes; **relating to:** the installation of carbon monoxide detectors in certain
3 buildings, providing an exemption from emergency rule procedures, granting
4 rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

Current law requires the owner of a residential building to install smoke detectors in specified locations within the building. A “residential building” is any public building that is used for sleeping or lodging purposes. The term includes an apartment building, a rooming house, a hotel, a children’s home, a community-based residential facility, or a dormitory. The term does not include a hospital or a nursing home.

This bill creates a similar requirement concerning carbon monoxide detectors. The bill generally directs an owner of a residential building to install an electronic or battery-operated carbon monoxide detector, approved by an independent product safety certification organization, in the basement of the building, within 15 feet of each sleeping area, and in certain hallways and adjacent rooms. The requirement does not apply under certain limited circumstances, including where the building has no attached garage and no fuel-burning appliances. The bill also requires the Department of Commerce (Commerce) to promulgate rules establishing a procedure under which the owner of a residential building may apply for a waiver of the requirement to install carbon monoxide detectors. The bill requires the owner to maintain reasonably every carbon monoxide detector that is located in the building

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but specifies that the owner is not liable for damages resulting from the failure of the carbon monoxide detector to operate properly if someone other than the owner tampered with, removed, or destroyed it. The bill allows occupants to notify an owner of a defective or missing carbon monoxide detector and requires the owner to repair or replace the carbon monoxide detector within five days after receipt of the notice.

The bill requires the Department of Health and Family Services (DHFS) to promulgate rules requiring the annual inspection of sealed combustion units for carbon monoxide emissions in hotels, tourist rooming houses, and bed and breakfast establishments. It requires Commerce to promulgate rules requiring the annual inspection of such units in other residential buildings.

The bill provides that if Commerce or DHFS discovers a violation upon inspection of a building, the respective department must give the building owner an opportunity to correct the violation before a penalty is imposed. If the owner does not correct the violation, he or she is subject to a \$50 forfeiture for each day of violation occurring after the date on which the correction was required to be made.

The bill prohibits tampering with an installed carbon monoxide detector and specifies that a person convicted of tampering is subject to a fine not to exceed \$10,000 or imprisonment for not more than nine months, or both, for a first offense and is guilty of a Class I felony for a second or subsequent offense. The bill also requires Commerce and DHFS to inspect sealed combustion units for carbon monoxide emissions.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 101.145 (2) of the statutes is amended to read:
- 2 101.145 (2) APPROVAL. A smoke detector required under this section shall be
- 3 approved by ~~underwriters laboratory~~ Underwriters Laboratories, Inc.
- 4 **SECTION 2.** 101.149 of the statutes is created to read:
- 5 **101.149 Carbon monoxide detectors. (1) DEFINITIONS.** In this section:
- 6 (a) “Carbon monoxide detector” means an electronic or battery-operated device
- 7 that sounds an alarm when an unsafe level of carbon monoxide is in the air.

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1 (b) “Residential building” has the meaning given in s. 101.145 (1) (a).

2 (c) “Sleeping area” has the meaning given in s. 101.145 (1) (b).

3 (d) “Unit” means a part of a residential building that is occupied by one or more
4 persons as a home, residence, or sleeping place.

5 **(2) INSTALLATION REQUIREMENTS.** (a) Except as provided in par. (b), the owner
6 of a residential building shall install a carbon monoxide detector in all of the
7 following places not later than the date specified under par. (c):

8 1. In the basement of the building if the basement has a fuel-burning
9 appliance.

10 2. Within 15 feet of each sleeping area of a unit that has a fuel-burning
11 appliance.

12 3. Within 15 feet of each sleeping area of a unit that is immediately adjacent
13 to a unit that has a fuel-burning appliance.

14 4. In each room that has a fuel-burning appliance and that is not used as a
15 sleeping area. A carbon monoxide detector shall be installed under this subdivision
16 not more than 75 feet from the fuel-burning appliance.

17 5. In each hallway leading from a unit that has a fuel-burning appliance, in
18 a location that is within 75 feet from the unit, except that, if there is no electrical
19 outlet within this distance, the owner shall place the carbon monoxide detector at the
20 closest available electrical outlet in the hallway.

21 (b) If a unit is not part of a multiunit building, the owner of the residential
22 building need not install more than one carbon monoxide detector in the unit.

23 (c) 1. Except as provided under subd. 2., the owner of a residential building
24 shall comply with the requirements of this subsection before the building is occupied.

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1 2. The owner of a residential building shall comply with the requirements of
2 this subsection not later than the first day of the 18th month beginning after the
3 effective date of this subdivision [revisor inserts date], if construction of the
4 building was initiated before the effective date of this subdivision [revisor inserts
5 date], or if the department approved the plans for the construction of the building
6 under s. 101.12 before the effective date of this subdivision [revisor inserts date].

7 (d) Any carbon monoxide detector that bears an Underwriters Laboratories,
8 Inc., listing mark or similar mark from an independent product safety certification
9 organization satisfies the requirements of this subsection.

10 (e) The owner shall install every carbon monoxide detector required by this
11 subsection according to the directions and specifications of the manufacturer of the
12 carbon monoxide detector.

13 **(3) MAINTENANCE REQUIREMENTS.** (a) The owner of a residential building shall
14 reasonably maintain every carbon monoxide detector in the residential building in
15 the manner specified in the instructions for the carbon monoxide detector.

16 (b) An occupant of a unit in a residential building may give the owner of the
17 residential building written notice that a carbon monoxide detector in the residential
18 building is not functional or has been removed by a person other than the occupant.
19 The owner of the residential building shall repair or replace the nonfunctional or
20 missing carbon monoxide detector within 5 days after receipt of the notice.

21 (c) The owner of a residential building is not liable for damages resulting from
22 any of the following:

23 1. A false alarm from a carbon monoxide detector if the carbon monoxide
24 detector was reasonably maintained by the owner of the residential building.

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1 2. The failure of a carbon monoxide detector to operate properly if that failure
2 was the result of tampering with, or removal or destruction of, the carbon monoxide
3 detector by a person other than the owner or the result of a faulty detector that was
4 reasonably maintained by the owner as required under par. (a).

5 **(4) TAMPERING PROHIBITED.** No person may tamper with, remove, destroy,
6 disconnect, or remove batteries from an installed carbon monoxide detector, except
7 in the course of inspection, maintenance, or replacement of the detector.

8 **(5) EXCEPTIONS.** Subsections (2) and (3) do not apply to the owner of a
9 residential building if the residential building does not have an attached garage and
10 any of the following applies:

11 (a) The residential building does not have any fuel-burning appliances.

12 (b) All of the fuel-burning appliances in the residential building have sealed
13 combustion units that are covered by the manufacturer's warranty against defects.

14 (c) All of the fuel-burning appliances in the residential building have sealed
15 combustion units that are inspected annually by the department or the department
16 of health and family services as provided in the rules promulgated under sub. (6) (b)
17 or s. 254.74 (1) (am).

18 **(6) RULES.** (a) The department shall promulgate rules establishing a procedure
19 under which the owner of a residential building may apply to the department for a
20 waiver of the requirements under sub. (2).

21 (b) The department shall promulgate rules, in consultation with the
22 department of health and family services, under which the department of commerce
23 shall conduct annual inspections of sealed combustion units for carbon monoxide
24 emissions in residential buildings other than hotels, tourist rooming houses, and bed
25 and breakfast establishments. The rules shall specify conditions under which it may

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1 issue orders as specified under sub. (8) (a). The rules may not require the department
2 of commerce to inspect sealed combustion units during the period in which the sealed
3 fuel combustion units are covered by a manufacturer's warranty against defects.

4 (7) INSPECTION. To ensure compliance with subs. (2) and (3), the department,
5 or a building inspector certified by the department, may inspect all of the following:

6 (a) The common area of a residential building.

7 (b) A unit within a residential building, at the request of the owner of the
8 residential building or an occupant of the unit to be inspected.

9 (8) PENALTIES. (a) If the department of commerce or the department of health
10 and family services determines after an inspection of a building under this section
11 that the owner of the building has violated sub. (2) or (3), the respective department
12 shall issue an order requiring the person to correct the violation within 5 days or
13 within such shorter period as the respective department determines is necessary to
14 protect public health and safety. If the person does not correct the violation within
15 the time required, he or she shall forfeit \$50 for each day of violation occurring after
16 the date on which the respective department finds that the violation was not
17 corrected.

18 (b) If a person is charged with more than one violation of sub. (2) or (3) arising
19 out of an inspection of a building owned by that person, those violations shall be
20 counted as a single violation for the purpose of determining the amount of a forfeiture
21 under par. (a).

22 (c) Whoever violates sub. (4) is subject to the following penalties:

23 1. For a first offense, the person may be fined not more than \$10,000 or
24 imprisoned for not more than 9 months, or both.

25 2. For a 2nd or subsequent offense, the person is guilty of a Class I felony.

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1 **SECTION 3.** 254.74 (1) (am) of the statutes is created to read:

2 254.74 **(1)** (am) Promulgate rules, in consultation with the department of
3 commerce, under which the department of health and family services shall conduct
4 annual inspections of sealed combustion units for carbon monoxide emissions in
5 hotels, tourist rooming houses, and bed and breakfast establishments. The rules
6 shall specify conditions under which it may issue orders as specified under s. 101.149
7 (8) (a). The rules may not require the department of health and family services to
8 inspect sealed combustion units during the period in which the sealed fuel
9 combustion units are covered by a manufacturer’s warranty against defects.

10 **SECTION 4. Nonstatutory provisions.**

11 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
12 the department of commerce shall promulgate as emergency rules the rules required
13 under section 101.149 (6) of the statutes, as created by this act and the department
14 of health and family services shall promulgate as emergency rules the rules required
15 under section 254.74 (1) (am) of the statutes, as created by this act. Notwithstanding
16 section 227.24 (1) (c) and (2) of the statutes, the emergency rules promulgated under
17 this subsection may remain in effect until the date on which the permanent rules
18 required under sections 101.149 (6) and 254.74 (1) (am) of the statutes, as created
19 by this act, take effect. Notwithstanding section 227.24 (1) (a) and (3) of the statutes,
20 neither the department of commerce or the department of health and family services
21 is required to provide evidence that promulgating rules under this subsection as
22 emergency rules is necessary for the preservation of the public peace, health, safety,
23 or welfare and is not required to provide a finding of emergency for the rules
24 promulgated under this subsection.

