



wanted Fri. 8/31

State of Wisconsin  
2007 - 2008 LEGISLATURE

RM run

P3

LRB-0931/P2

RNK:wlj:rs

L + JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

regen cat

1 AN ACT *to amend* 101.145 (2); and *to create* 101.14 (2) (bg) and 101.149 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, bearing an Underwriters Laboratories, Inc., listing mark in the basement of the building *and, within 15 feet of each sleeping area*. 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 *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 but specifies that the owner is not

(Commerce)

establishes a \$50 forfeiture for failure to install and maintain carbon monoxide detectors as required in the bill. It also NOA

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.

insert analysis

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 the chief of every local fire department to ensure that fire safety inspections include inspections of 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:**

SECTION 1. 101.14 (2) (bg) of the statutes is created to read:

101.14 (2) (bg) The chief of every fire department shall ensure that the inspections required under par. (b) include inspections of sealed fuel combustion units for carbon monoxide emissions.

SECTION 2. 101.145 (2) of the statutes is amended to read:

101.145 (2) APPROVAL. A smoke detector required under this section shall be approved by underwriters laboratory Underwriters Laboratories, Inc.

SECTION 3. 101.149 of the statutes is created to read:

**101.149 Carbon monoxide detectors.** (1) DEFINITIONS. In this section:

(a) "Carbon monoxide detector" means an electronic or battery-operated device that sounds an alarm when an unsafe level of carbon monoxide is in the air.

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

(c) "Sleeping area" has the meaning given in s. 101.145 (1) (b).

Department of Commerce and the Department of Health and Family Services to inspect DHEES

1 (d) "Unit" means a part of a residential building that is occupied by one or more  
2 persons as a home, residence, or sleeping place.

3 ~~(2) INSTALLATION REQUIREMENTS. (a) Except as provided in sub. (5), the owner  
4 of a residential building the construction of which was initiated before the effective  
5 date of this paragraph .... [revisor inserts date], shall install a carbon monoxide  
6 detector in the basement of the building and within 15 feet of each sleeping area not  
7 later than the first day of the 18th month beginning after the effective date of this  
8 paragraph .... [revisors inserts date]~~

9 ~~(b) Except as provided in sub. (5), the owner of a residential building, the  
10 construction of which was initiated on or after the effective date of this paragraph  
11 .... [revisor inserts date], shall install a carbon monoxide detector in the basement  
12 of the building and within 15 feet of each sleeping area before occupancy.~~

\*\*\*NOTE: I have not changed these provisions that specify the location of the detectors, although I understand that this issue is still under discussion and additional changes may be required in the next version of the draft.

insert ✓  
3-12

13 <sup>(d)</sup> ~~(c)~~ Any carbon monoxide detector that bears an Underwriters Laboratories,  
14 Inc., listing mark satisfies the requirements of this subsection.

15 <sup>(e)</sup> ~~(d)~~ The owner shall install every carbon monoxide detector required by this  
16 subsection according to the directions and specifications of the manufacturer of the  
17 carbon monoxide detector.

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

INSERT  
A  
(move to page 4)

21 <sup>2.</sup> ~~(b)~~ The owner of a residential building is not liable for damages resulting from  
22 the failure of a carbon monoxide detector to operate properly if that failure was the  
23 result of tampering with, or removal or destruction of, the carbon monoxide detector



INSERT  
A  
Cont

1 by a person other than the owner or the result of a faulty detector that was reasonably  
2 maintained by the owner as required under <sup>✓</sup> par. (a). (end ins A)

3 <sup>✓</sup> (b) An occupant of a unit in a residential building, the department, or a building  
4 inspector certified by the department may give the owner of the residential building  
5 written notice that a carbon monoxide detector in the residential building is not  
6 functional or has been removed by a person other than the occupant. The owner of  
7 the residential building shall repair or replace the nonfunctional or missing carbon  
8 monoxide detector within 5 days after receipt of the notice.

9 <sup>✓</sup> (c) The owner of a residential building is not liable for damages resulting from  
10 any of the following <sup>✓</sup>:  
11 a false alarm from a carbon monoxide detector if the carbon monoxide detector was  
12 reasonably maintained by the owner of the residential building.

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

16 (5) EXCEPTIONS. Subsections (2) and (3) <sup>✓</sup> do not apply to the owner of a  
17 residential building if the residential building does not have an attached garage and  
18 any of the following <sup>applies</sup> apply:

19 (a) The residential building does not have any <sup>✓</sup> fuel-burning appliances.

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

22 (c) All of the fuel-burning appliances in the residential building have sealed  
23 combustion units that are inspected annually by a person who is qualified to conduct  
such inspections as determined by the department.

For the department of health  
and family services as  
provided in the rules  
promulgated under sub. <sup>1m</sup>  
or s. 254.74(1) <sup>am</sup>

(6)(b)

INSERT  
A  
(insert from pg. 3)

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

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

(a) The common area of a residential building.

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

~~(8) PENALTIES. (a) A person who violates sub. (2) or (3) shall be subject to a warning by the department or a certified building inspector for a first offense. A person who violates sub. (2) or (3) shall forfeit not more than \$25 for a 2nd offense and not more than \$50 for a 3rd or subsequent offense.~~

\*\*\*NOTE: I have not inserted the term "ensuing" in this provision as requested because I am not sure what the intent of that language is. Instead, I have removed the sentence that provided that each violation and each day of violation constitutes a separate offense because I'm not sure that this language accomplishes your objective. For example, if a building owner fails to install 20 detectors, does this constitute 20 offenses? And if those 20 detectors are still not installed after 7 days, does this now constitute 140 offenses? In other words, how do you want the violations to be counted? You may wish to provide that the penalty applies for each day of violation as under the smoke detector law (s. 101.145 (5), stats.)

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

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

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

**SECTION 4. Nonstatutory provisions.**

(1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes, the department of commerce shall promulgate as emergency rules the rules required under section 101.149 (6) of the statutes, as created by this act. Notwithstanding

and the department of health and family services shall promulgate as emergency rules the rules required under s. 254.74(1)(am) of the statutes, as created by this act

insert 5-3

insert 5-12

insert 5-16

section

1 section 227.24 (1) (c) and (2) of the statutes, the emergency rules promulgated under  
2 this subsection may remain in effect until the date on which the permanent rules  
3 required under section<sup>s</sup> 101.149 (6) <sup>and 254.74(1)(am)</sup> of the statutes, as created by this act, take effect.  
4 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, <sup>neither</sup> the department of  
5 commerce <sup>or</sup> ~~is not~~ <sup>the department of health and family services</sup> required to provide evidence that promulgating rules under this  
6 subsection as emergency rules is necessary for the preservation of the public peace,  
7 health, safety, or welfare and is not required to provide a finding of emergency for the  
8 rules promulgated under this subsection.

9 **SECTION 5. Effective dates.** This act takes effect on the first day of the 6th  
10 month beginning after publication, except as follows:

11 (1) EMERGENCY RULES. SECTION 4 (1) of this act takes effect on the day after  
12 publication.

13 (END)

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0931/P3ins.  
RNK:.....

INSERT ANALYSIS

The bill requires the <sup>✓</sup>Department of Health and Family Services<sup>✓</sup> 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 ~~the Department of~~ <sup>(DHFS)</sup> Commerce to promulgate rules requiring the annual inspection of such units in other residential buildings.

INSERT 3-12

(2) INSTALLATION REQUIREMENTS. <sup>✓</sup>(a) Except as provided in par. <sup>✓</sup>(b), the owner of a residential building shall install a carbon monoxide detector in all of the following places not later than the date specified under <sup>✓</sup>par. (c):

1. In the basement of the building.
2. Within 15<sup>✓</sup> feet of each sleeping area of a unit that has a fuel-burning appliance. <sup>↑</sup>
3. Within 15<sup>✓</sup> feet of each sleeping area of a unit that is immediately adjacent to a unit that has a fuel-burning appliance. <sup>↑</sup>
4. Within 15 feet of each fuel-burning appliance that is located in a room that is not used as a sleeping area. <sup>↑</sup> <sup>△</sup>

\*\*\*\*NOTE: Is the 15<sup>↑</sup> feet requirement in par. <sup>a</sup>(b) consistent with your intent? <sup>↑</sup>

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

(b) If a unit is not part of a multi-unit building, the owner of the residential building need not install more than <sup>✓</sup>one carbon monoxide detector in the unit.

\*\*\*\*NOTE: Your instructions for "stand-alone" units referred only to "new construction" but I have assumed that <sup>⊙</sup>you intended this provision to apply to any "stand-alone" unit, whether existing or new. Am I correct?



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

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

\*\*\*\*NOTE: You may want to have the appropriate person at the department of commerce review this provision. I am not sure whether all plans for construction must be reviewed by the department of commerce under s. 101.12.

INSERT 5-3

(b) The department shall promulgate rules, in consultation with the department of health and family services, under which the department shall conduct annual inspections of sealed combustion units for carbon monoxide emissions in residential buildings other than hotels, tourist rooming houses, and bed and breakfast establishments. The rules may not require the department to inspect sealed combustion units during the period in which the sealed fuel combustion units are covered by a manufacturer's warranty against defects.

INSERT 5-12

(8) PENALTIES. (a) Except as provided in par. (b), a person who violates sub. (2) or (3) shall forfeit not more than \$50 for each day of violation.

(b) If the department of commerce determines after an inspection of a building under this section that the owner of the building has violated sub. (2) or (3), the department shall issue an order requiring the person to correct the violation within a reasonable time established by the department. If the person does not correct the





violation within the time required, he or she shall forfeit \$50<sup>✓</sup> for each day of violation occurring after the date on which the department finds that the violation was not corrected.

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

INSERT 5-16

**SECTION 1.** 254.74<sup>✓</sup> (1) (am) of the statutes is created to read:

254.74 (1) (am) Promulgate rules, in consultation with the<sup>✓</sup> department of commerce, under which the department<sup>✓</sup> shall conduct annual inspections of sealed combustion units for carbon monoxide emissions in hotels, tourist rooming houses, and bed and breakfast establishments.<sup>✓</sup> The rules may not require the department to inspect sealed combustion units during the period in which the sealed fuel combustion units are covered by a manufacturer's warranty against defects.<sup>✓</sup>

*of health and family services*



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS: please  
delete all  
\*\*\* NOTES.

Regen

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, bearing an Underwriters Laboratories, Inc. listing mark 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

Approved by an independent product safety certification organization

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 establishes a \$50 forfeiture for failure to install and maintain carbon monoxide detectors as required in the bill. It also 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.

8           (b) "Residential building" has the meaning given in s. 101.145 (1) (a).

9           (c) "Sleeping area" has the meaning given in s. 101.145 (1) (b).

SA except 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 the penalty is imposed

1 (d) "Unit" means a part of a residential building that is occupied by one or more  
2 persons as a home, residence, or sleeping place.

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

6 1. In the basement of the building. *if the basement has a fuel-burning  
appliance*

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

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

11 4. Within 15 feet of each fuel-burning appliance that is located in a room that  
12 *has a fuel-burning appliance and that is not used as a sleeping area. A carbon monoxide detector shall be installed under this subdivision not more than 75 feet from the fuel-burning appliance.*

*\*\*\*NOTE: Is the 15-foot requirement in par. (a) consistent with your intent?\*\*\**

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

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

*\*\*\*NOTE: Your instructions for "stand-alone" units referred only to "new construction" but I have assumed that you intended this provision to apply to any "stand-alone" unit, whether existing or new. Am I correct?\*\*\**

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

21 2. The owner of a residential building shall comply with the requirements of  
22 this subsection not later than the first day of the 18th month beginning after the

1 effective date of this subdivision .... [revisor inserts date], if construction of the  
2 building was initiated before the effective date of this subdivision .... [revisor inserts  
3 date], or if the department approved the plans for the construction of the building  
4 under s. 101.12 before the effective date of this subdivision .... [revisor inserts date].

\*\*\*\*NOTE: You may want to have the appropriate person at the department of  
commerce review this provision. I am not sure whether all plans for construction must  
be reviewed by the department of commerce under s. 101.12.

5 (d) Any carbon monoxide detector that bears an Underwriters Laboratories,  
6 Inc., listing mark <sup>or similar mark from an independent product safety certification organization</sup> satisfies the requirements of this subsection.

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

10 (3) MAINTENANCE REQUIREMENTS. (a) The owner of a residential building shall  
11 reasonably maintain every carbon monoxide detector in the residential building in  
12 the manner specified in the instructions for the carbon monoxide detector.

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

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

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

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 may not require the department of

1 commerce to inspect sealed combustion units during the period in which the sealed  
2 fuel combustion units are covered by a manufacturer's warranty against defects.

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

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

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

8 (8) PENALTIES. (a) Except as provided in par. (b), a person who violates sub. (2)  
9 or (3) shall forfeit not more than \$50 for each day of violation.

10 (b) If the department of commerce <sup>or the department of health and family services</sup> determines after an inspection of a building  
11 under this section that the owner of the building has violated sub. (2) or (3), the  
12 <sup>respective</sup> department shall issue an order requiring the person to correct the violation within

13 ~~a reasonable time established by the department.~~ If the person does not correct the  
14 violation within the time required, he or she shall forfeit \$50 for each day of violation  
15 occurring after the date on which the <sup>respective</sup> department finds that the violation was not  
16 corrected.

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

21 (d) Whoever violates sub. (4) is subject to the following penalties:

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

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

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

*5 days or within such shorter period as the  
respective department determines is necessary to protect  
protect public health and safety*

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

8           **SECTION 4. Nonstatutory provisions.**

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

23           **SECTION 5. Effective dates.** This act takes effect on the first day of the 6th  
24 month beginning after publication, except as follows:





## Kite, Robin

---

**From:** Kite, Robin  
**Sent:** Wednesday, September 19, 2007 11:15 AM  
**To:** McGuire, Paula  
**Subject:** LRB-0931

Paula:

I wanted to clarify some issues with regard to penalties in the referenced bill draft. At our meeting today, there was a discussion about whether the forfeiture in the draft (proposed 101.149 (8) (a)) could apply retroactively. I believe that in some cases it would. For example, if someone became ill at a hotel because of carbon monoxide exposure, and a police officer noticed that there was no carbon monoxide detector at the hotel, the police might report this to the district attorney. If the district attorney decided to pursue a forfeiture, and if the district attorney had sufficient evidence that the carbon monoxide detectors had never been installed, then he or she might seek a forfeiture for the entire period in which the hotel failed to have carbon monoxide detectors.

You will find that it is typical in the statutes where a violation is subject to a forfeiture, for the provision to simply provide that a violation is subject to a forfeiture. It is then up to the enforcing authority to decide how to charge the violator with a violation. If the authority has sufficient evidence of prior violations, then I believe that the authority could seek a forfeiture for these prior violations.

As you know, these issues do not arise under the bill draft where a violation is discovered as the result of an inspection. In those instances, the inspector gives the violator an opportunity to correct the violation before a forfeiture would apply.

I will assume that you do not want the general penalty provision under proposed s. 101.149 (8) (a) to be redrafted. If I am incorrect, or if you would like to discuss this issue in more detail, feel free to contact me.

Robin

---

Robin Kite, Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
1 East Main Street, Suite 200  
Madison, WI 53703  
(608) 266-7291

**Kite, Robin**

---

**From:** McGuire, Paula  
**Sent:** Monday, September 24, 2007 1:15 PM  
**To:** Kite, Robin  
**Subject:** FW: LRB-0931

Hey Robin--I haven't heard any negative comments regarding removing (a) and (b) as we discussed on Friday--So, I think we are a go with the legislation with that small change.

---

**From:** Popp, Sarah  
**Sent:** Monday, September 24, 2007 9:18 AM  
**To:** McGuire, Paula  
**Subject:** RE: LRB-0931

Sorry for my delay, we are good with the language.

*Sarah Popp*  
*Office of State Representative Samantha Kerkman*  
*103 West State Capitol*  
*Madison, WI 53708*  
*(608) 266-2530*  
*1-888-534-0066*  
*sarah.popp@legis.wisconsin.gov*

---

**From:** McGuire, Paula  
**Sent:** Friday, September 21, 2007 12:39 PM  
**To:** 'Trisha A. Pugal'; Henderson, Patrick W - DOA; Popp, Sarah; Kathi Kilgore; David Bloom  
**Cc:** Kite, Robin  
**Subject:** RE: LRB-0931

Trisha, Robin Kite and I spoke on a conference call this morning to see if we could clarify Trisha's concerns. I think we have a solution, but everyone needs to agree--**let me know your response by Monday, September 24, 2007 at 9:00 a.m. If I don't hear from you, I will assume that you approve the change below.**

Page 6 lines 6-7--Penalties

**Remove (8) Penalties (a) Except as provided in par. (b), a person who violates sub.(2) or (3) shall forfeit not more than \$50 for each had of violation.**

I am not a lawyer, but my understanding that under Penalties by having both (a)--lines 6-8) and (b)--lines 8-15) there could be a potential problem that everyone isn't treated equally. The situation under (a) is fairly limited--a violation is brought to the attention of the DA not as a result of an inspection. The DA takes the case to trial, and under (a) they could recover \$50.00 per day for as long as the violation was detected. By removing (a) they would get 5 days to remedy the problem in that situation just as if the violation had been discovered in a routine inspection.

If you have any questions, I am happy to arrange a phone call with drafter Robin Kite to clarify any concerns.

Paula McGuire

09/25/2007

Office of Senator Wirch

---

**From:** Trisha A. Pugal [mailto:pugal@wisconsinlodging.info]  
**Sent:** Wednesday, September 19, 2007 2:57 PM  
**To:** McGuire, Paula; Henderson, Patrick W - DOA; Popp, Sarah; Kathi Kilgore; David Bloom  
**Subject:** Re: LRB-0931

Paula:

From our perspective, we would appreciate refining the language under (8) (a) on page 6 to also note the penalty would not apply any sooner than 5 days after the date the violation was discovered and reported in writing. Again, we have concerns about detectors being stolen or damaged without the knowledge of the operator, so the reporting component is important as well as the time for replacement.

We ask for the group's consideration on this change.

Thanks,

Trisha Pugal, CAE  
President, CEO  
Wisconsin Innkeepers Association  
1025 S. Moorland Road - Suite 200  
Brookfield, Wi. 53005  
Phone: 262-782-2851  
Fax: 262-782-0550  
E-Mail: pugal@wisconsinlodging.info  
For Lodging Information Visit: [www.wisconsinlodging.info](http://www.wisconsinlodging.info)

---

**From:** "McGuire, Paula" <Paula.McGuire@legis.wisconsin.gov>  
**Date:** Wed, 19 Sep 2007 13:35:59 -0500  
**To:** "Henderson, Patrick W - DOA" <Patrick.Henderson@Wisconsin.gov>, "Popp, Sarah" <Sarah.Popp@legis.wisconsin.gov>, Kathi Kilgore <Kilgore@swandby.com>, "Trisha A. Pugal" <pugal@wisconsinlodging.info>, David Bloom <bloomd@town.madison.wi.us>  
**Conversation:** LRB-0931  
**Subject:** FW: LRB-0931

Hello everyone--Below are comments from drafter Robin Kite regarding the discussion this morning on penalties.

---

**From:** Kite, Robin  
**Sent:** Wednesday, September 19, 2007 11:15 AM  
**To:** McGuire, Paula  
**Subject:** LRB-0931

Paula:

I wanted to clarify some issues with regard to penalties in the referenced bill draft. At our meeting today, there was a discussion about whether the forfeiture in the draft (proposed 101.149 (8) (a)) could apply retroactively. I believe that in some cases it would. For example, if someone became ill at a hotel because of carbon monoxide exposure, and a police officer noticed that there was no carbon monoxide detector at the hotel, the police might report this to the district attorney. If the district attorney decided to pursue a forfeiture, and if the district attorney had sufficient evidence that the carbon monoxide detectors had never been installed, then he or she might seek a forfeiture for the entire period in which the hotel failed to have carbon monoxide detectors.

You will find that it is typical in the statutes where a violation is subject to a forfeiture, for the provision to simply provide that a

09/25/2007

violation is subject to a forfeiture. It is then up to the enforcing authority to decide how to charge the violator with a violation. If the authority has sufficient evidence of prior violations, then I believe that the authority could seek a forfeiture for these prior violations.

As you know, these issues do not arise under the bill draft where a violation is discovered as the result of an inspection. In those instances, the inspector gives the violator an opportunity to correct the violation before a forfeiture would apply.

I will assume that you do not want the general penalty provision under proposed s. 101.149 (8) (a) to be redrafted. If I am incorrect, or if you would like to discuss this issue in more detail, feel free to contact me.

Robin

---

Robin Kite, Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
1 East Main Street, Suite 200  
Madison, WI 53703  
(608) 266-7291



(soon)  
State of Wisconsin  
2007 - 2008 LEGISLATURE

RM num  
2  
LRB-0931/F  
RNK:wlj&jld:rs  
↑↑  
stays

2007 BILL

D-Note

Regen

1 AN ACT <sup>Regen</sup> 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

**BILL**

*The bill provides*

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.

SET

~~The bill establishes a \$50 forfeiture for failure to install and maintain carbon monoxide detectors as required in the bill, except 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 the penalty is imposed. It also 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.~~

6/6/07  
The bill

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.

8           (b) "Residential building" has the meaning given in s. 101.145 (1) (a).

6/6/07

*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*

**BILL**

1 (c) "Sleeping area" has the meaning given in s. 101.145 (1) (b).

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

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

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

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

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

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

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

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

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

24 2. The owner of a residential building shall comply with the requirements of  
25 this subsection not later than the first day of the 18th month beginning after the



**BILL**

1 effective date of this subdivision .... [revisor inserts date], if construction of the  
2 building was initiated before the effective date of this subdivision .... [revisor inserts  
3 date], or if the department approved the plans for the construction of the building  
4 under s. 101.12 before the effective date of this subdivision .... [revisor inserts date].

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

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

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

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

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

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

23 2. The failure of a carbon monoxide detector to operate properly if that failure  
24 was the result of tampering with, or removal or destruction of, the carbon monoxide

**BILL**

1 detector by a person other than the owner or the result of a faulty detector that was  
2 reasonably maintained by the owner as required under par. (a).

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

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

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

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

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

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

19 (b) The department shall promulgate rules, in consultation with the  
20 department of health and family services, under which the department of commerce  
21 shall conduct annual inspections of sealed combustion units for carbon monoxide  
22 emissions in residential buildings other than hotels, tourist rooming houses, and bed  
23 and breakfast establishments. The rules may not require the department of  
24 commerce to inspect sealed combustion units during the period in which the sealed  
25 fuel combustion units are covered by a manufacturer's warranty against defects.

*No* The rules shall ~~also~~ specify conditions under which it may issue orders as specified under sub. (6) (a)

**BILL**

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

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

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

6 (8) PENALTIES. ~~(a) Except as provided in par. (b), a person who violates sub. (2)~~  
7 ~~or (3) shall forfeit not more than \$50 for each day of violation.~~

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

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

20 ~~(d)~~ <sup>(c)</sup> ~~(d)~~ <sup>(c)</sup> Whoever violates sub. (4) is subject to the following penalties:

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

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

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

**BILL**

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

*Not* The rules shall ~~also~~  
 specify conditions  
 under which it may  
 issue orders as specified  
 under 50.106 149 (8)(a)

**SECTION 4. Nonstatutory provisions.**

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

23           **SECTION 5. Effective dates.** This act takes effect on the first day of the 6th  
 24 month beginning after publication, except as follows:



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0931/2dn

RNK:.....

Wlj

This redraft revises the penalties in the draft to clarify that a forfeiture may be imposed only after the Department of Commerce or the Department of Health and Family Services discovers a violation after an inspection. Please note that I also added language in the rule-making provisions of the draft (see proposed ss. ~~254.71 (1) (am)~~ and ~~101.49 (6) (b)~~) to clarify that the rules must specify conditions under which either department may issue an order. This is not a substantive change but is intended to ensure that there are adequate cross-references to the respective obligations of each department.

and  
254.74  
(1) (am)

Please feel free to contact me if you have any questions with regard to this version of the draft.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0931/2dn  
RNK:wlj:pg

September 26, 2007

This redraft revises the penalties in the draft to clarify that a forfeiture may be imposed only after the Department of Commerce or the Department of Health and Family Services discovers a violation after an inspection. Please note that I also added language in the rule-making provisions of the draft (see proposed ss. 101.49 (6) (b) and 254.74 (1) (am)) to clarify that the rules must specify conditions under which either department may issue an order. This is not a substantive change but is intended to ensure that there are adequate cross-references to the respective obligations of each department.

Please feel free to contact me if you have any questions with regard to this version of the draft.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: [robin.kite@legis.wisconsin.gov](mailto:robin.kite@legis.wisconsin.gov)

## **Barman, Mike**

---

**From:** Kite, Robin  
**Sent:** Tuesday, October 02, 2007 3:36 PM  
**To:** Barman, Mike  
**Subject:** LRB-0931

Mike:

Paula, from Senator Wirch's office, left me a message asking that the referenced draft be jacketed.

Thanks.

---

Robin Kite, Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
1 East Main Street, Suite 200  
Madison, WI 53703  
(608) 266-7291