

## Chapter Ind 72

## MINIMUM WAGES

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**History:** Chapter Ind 72 as it existed on December 31, 1972 was repealed, and a new chapter Ind 72 was created, Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.001 Declaration of policy.** (1) The department, in fulfilling its statutory mandate, has caused extensive studies to be made relative to the consideration of a "living wage" and how the wage should be computed. The concept of "cost of living" and "living wage" is very complex because of the many variables. Any single concept is difficult to apply because of different assumptions, techniques and local conditions.

(2) It is the determination of the department that the consumer's price index prepared by the U. S. Department of Labor, in spite of its limitations, is the best index available for keeping a "living wage rate" reasonably up to date.

(3) The rates adopted in this chapter reflect compensation that has been determined to be adequate to permit any employe to maintain herself or himself in minimum comfort, decency, physical and moral well-being.

(4) It shall be the policy of the department to review the National Consumer Price Index in January of each year. The department may revise upward or downward by a ratio of one cent for each .4 point change in the preceding December index release using the December 1972 release as a base for the computations, but in no case shall the state minimum wage for adult employes fall below 90% of the federal minimum wage. Any change in the state minimum wage due to an increase in the federal minimum wage shall take effect on the same day as the federal minimum wage change takes effect. The first review will be in January 1974.

(5) Employes 18 years of age and over:

(a) Effective on January 1, 1973 the hourly rate for employes 18 years of age and over shall be the same as presently required by the federal minimum wage act. In the future the rate shall be computed as provided under section Ind 72:001 (4).

(b) The minimum hourly rate for employes in agriculture 18 years of age and over shall remain at the present rate of \$1.45 per hour. In the future the rate shall be computed on the basis of 90% of the

rates for employes 18 years of age and over as provided in section Ind 72.001 (5) (a) rounded off to the nearest cent.

(6) Minors 17 years of age and under:

(a) The minimum hourly and weekly rates for minors 17 years of age and under shall be computed on the basis of 80%, rounded off to the nearest cent, of the minimum rates for employes 18 years of age and over.

(b) The minimum hourly rate for minor employes in agriculture 17 years of age and under shall be \$1.15 per hour. In the future the rate shall be computed on the basis of 80% of the agriculture rate for employes 18 years of age and over as established by section Ind 72.001 (5) (b) and rounded off to the nearest cent.

(7) Room allowances shall be computed on the basis of 20% of the prescribed minimum rate for employes based on a 40 hour week, rounded off to the nearest 5 cents.

(8) Meal allowance shall be computed on the basis of 30% of the prescribed minimum rate for employes based on a 40 hour week, rounded off to the nearest 5 cents.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.01 Definitions.** As used in this chapter:

(1) "Agriculture" will mean the same as "farm premises" as defined in section 102.04 (3), Wis. Stats., of the workmen's compensation act.

(2) "Bona fide school training program" means a program sponsored by an accredited school and authorized and approved by the state department of public instruction or the board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with a definitely organized plan of instruction and where proper scholastic credit is given by the school.

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

(4) "Employer." (a) The term "employer" shall mean and include every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another.

(b) The term "employer" shall also include any person, partnership, or corporation engaged in the processing of cucumbers into pickles, who is responsible directly or indirectly for the wages paid for the services of "workers" engaged in the harvesting of cucumbers providing:

1. That the processor or his agent directly or indirectly pays each "worker" performing services in the harvesting of cucumbers or,

2. That the processor or his agent has the right (whether exercised or not) to terminate the services of the "worker" or to transfer his services from one grower to another.

(5) "Evaluation program" means a program of not more than 6 months duration, except that longer periods may be approved in unusual circumstances, using the medium of work to determine a client's potential, and which meets the department of health and

social services, division of vocational rehabilitation or equivalent standards.

(6) "Handicapped worker" means an individual whose earning capacity is impaired by age, or physical, or mental, or social disability.

(7) "Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.

(8) A "minor" shall mean any person under 18 years of age.

(9) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(10) "Student learner" means a student of an accredited school who is employed on a part-time basis, under a bona fide written schoolwork training program agreement, to obtain both scholastic credit and employment training.

(11) "Training program" means a sheltered workshop program of not more than 12 months duration designed to (a) develop the patterns of behavior which will help a client adjust to a work environment, or (b) teach the skills and knowledge related to a specific occupational objective of a job family, and which meets the department of health and social services, division of vocational rehabilitation or equivalent standards.

(12) "Work activity center" means a workshop or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.02 Applicability of orders.** (1) The rates prescribed in this chapter shall apply to all employes employed at private employments including nonprofit organizations, whether paid on a time, piece rate, commission, or other basis.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.03 Minimum rates.** (1) **MINIMUM RATES.** Except as provided for in sections Ind 72.06 through Ind 72.09, no employer shall employ any employe in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

- (a) Adult employes 18 years of age and over: 1.60 per hour
- (b) Minors 17 years of age and under: 1.28 per hour

(2) **TIPS.** Where tips or gratuities are received by the employe from patrons or others, the employer may pay as a minimum 75% of the wage rate prescribed in section Ind 72.03 (1) providing he can establish by his records that for each week where credit is taken, when adding the tips received to the wages paid, no less than the minimum rate prescribed in section Ind 72.03 (1) was received by the employe.

(3) **ALLOWANCE FOR BOARD AND LODGING.** Where board and/or lodging are furnished by the employer in accordance with section Ind

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72.04, and accepted and received by the employe, an allowance may be made not to exceed the following amounts:

- (a) Lodging—adults 18 years of age and over \_\_\_12.80 per week or 1.85 per day  
minors 17 years of age and under\_\_\_10.25 per week or 1.45 per day
- (b) Meals—adults 18 years of age and over \_\_\_19.20 per week or .90 per meal  
minors 17 years of age and under\_\_\_15.35 per week or .75 per meal

(4) PAYMENT OF WAGES ON OTHER THAN TIME BASIS. Where payment of wages is made upon a basis or system other than time rate, the actual wage paid per payroll period shall not be less than provided for in this order.

(5) HOMEWORK. Wages paid to homeworkers shall be not less than the rates prescribed in this order.

(6) DETERMINATION OF COMPLIANCE. The payroll period shall be taken as the unit of determining compliance with the minimum rates prescribed in this order.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.04 Deductions for meals and lodging.** (1) A meal means an adequate well-balanced serving of a variety of wholesome and nutritious foods.

(a) Deductions may be made only for bona fide meals consistent with employe's work shift. No deductions shall be made or credit given for meals not eaten except in employments where weekly room and board is provided and accepted.

(b) An employer shall not require that meals be accepted as part payment of wages.

(c) Employer must pay all employes for "on duty" meal periods. Such periods are to be counted as work time. An "on duty" meal period is one where the employer does not provide at least 30 minutes free from work. Any meal period where the employe is not free to leave the premises of the employer will also be considered an "on duty" meal period.

(d) Authorized rest periods or breaks of less than 30 consecutive minutes per shift shall be counted as work time for which there shall be no deduction from wages.

(2) Lodging means living accommodations which are adequate, decent and sanitary, according to usual and customary standards. Employes shall not be required to share a bed.

(3) Room and board deductions may not be made from the wages of a seasonal nonresident agricultural employe that would result in the employe receiving less than the prescribed minimum rate.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.05 Agriculture.** (1) MINIMUM RATES. The minimum wage of employes employed in agriculture shall be as follows:

- (a) Adult employes 18 years of age and over: 1.45 per hour
- (b) Minors 17 years of age and under: 1.15 per hour

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(2) ALLOWANCE FOR BOARD AND LODGING. Where board and/or lodging are furnished by the employer in accordance with section Ind 72.04, and accepted and received by the employe, an allowance may be made not to exceed the following amounts:

- (a) Lodging—adults 18 years of age and over \_\_11.60 per week or 1.65 per day  
 minors 17 years of age and under\_\_ 9.20 per week or 1.30 per day
- (b) Meals—adults 18 years of age and over \_\_17.40 per week or .85 per meal  
 minors 17 years of age and under\_\_13.80 per week or .65 per meal

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.06 Casual employment in private homes.** The minimum rates prescribed by section Ind 72.03 shall not apply to casual employment in or around a home in work usual to the home of the employer, and not in connection with or part of the business, trade, or profession of the employer. This applies to the following: baby-sitters, mowing lawns, raking leaves, shoveling snow or other similar odd jobs. For the purpose of this paragraph "casual" employment shall mean employment for not more than 15 hours per week for any one employer.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.07 Nonprofit seasonal recreational camps. (1) WEEKLY BASIS.** The minimum wage of employes employed in nonprofit seasonal recreational camps on a weekly basis shall be computed as follows:

- (a) Adult employes 18 years of age and over:
  - 1. If board and lodging are not furnished -----\$72.00
  - 2. If board only is furnished -----\$52.80
  - 3. If board and lodging are furnished -----\$40.00
- (b) Minors 17 years of age and under:
  - 1. If board and lodging are not furnished -----\$57.60
  - 2. If board only is furnished -----\$42.25
  - 3. If board and lodging are furnished -----\$32.00

(2) HOURLY BASIS. The minimum wage of employes employed in nonprofit seasonal recreational camps on an hourly basis shall be computed as prescribed in section Ind 72.03 (1).

(3) ALLOWANCE FOR BOARD AND LODGING. Where board and/or lodging are furnished by the employer in accordance with section Ind 72.04, and accepted and received by the employe, an allowance may be made not to exceed the amounts specified in section Ind 72.03 (3).

(4) RECORDS. Nonprofit seasonal recreational camps will not have to keep the daily and weekly time records required by section Ind 72.11 (1) (d), (e) and (f) for those employes employed and paid on a weekly basis.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.08 Caddies. (1)** The minimum wage of employes employed as caddies shall be \$2 for 9 holes or \$3.50 for 18 holes.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

Ind 72.09 Subminimum wage licenses. (1) SHELTERED WORKSHOPS. Licenses may be issued for: the entire workshop, a department of the workshop, a work activities center, a training or evaluation program, and an individual handicapped worker or any combination thereof.

(a) *Application for a workshop license.* 1. Applications for licenses may be filed with the department.

2. The application shall contain answers to all questions presented on the form supplied by the department, including among other things, a description of the nature of the disabilities of the persons served by the workshop, a description of the type of employment and the programs and services provided by the workshop.

3. The application shall be signed by the president of the board of directors and by a duly authorized officer of the workshop.

(b) *Renewal of license.* Applications for renewal shall be filed 30 days prior to the expiration date.

(c) *Criteria for issuance of a license.* 1. The following criteria may be considered by the department in determining the necessity of issuing a license and the conditions to be specified therein.

a. The present and previous earnings of handicapped workers of the workshop.

b. Whether the individual handicapped workers are being paid wage rates commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality and quantity of work.

c. The nature and extent of the disabilities of individuals served by the workshop.

d. The types and duration of medical, educational, therapeutic, social work, and other rehabilitative services given to handicapped workers.

e. The extent to which the handicapped workers share, through wages, in the receipts for work done in the workshop.

f. The extent to which the handicapped workers may be learners or otherwise inexperienced.

g. The extent to which earned operating income, other than normal depreciation allowances, is used for capital expenditures for equipment, buildings or expansion of activities in situations where the adequacy of the wage rates proposed by the workshop cannot clearly be established.

h. Whether there exists any workshop/customer arrangement or subcontract agreement which constitutes an unfair method of competition in commerce and which tends to spread or perpetuate substandard wage levels.

i. Whether, in the case of nongovernment operated workshops, the organization has obtained an exemption under section 501 (c) (3) of the internal revenue code of 1954 [26 U.S.C. 501 (c) (3)] and has registered as a nonprofit organization with the appropriate state or local agencies providing for such registration.

2. In addition, the following criteria will be considered in determining the advisability of issuing a special certificate for a training or evaluation program.

a. Whether there is competent instruction or supervision.

b. Whether there is a written curriculum or job description or plan of procedures designed to obtain the objectives of the program for the individuals.

c. Whether there are written records made at periodic intervals of not more than 3 months, showing progress of individual clients, and,

d. Whether in the case of a training program, there is a provision for rate increases as the trainee advances through the steps of the program.

(d) *Terms and conditions of license.* 1. The license shall specify the terms and conditions under which it is granted.

2. The license shall apply to every handicapped worker in the workshop or department thereof, for which the license is granted.

3. The license shall be effective for the period designated thereon. Handicapped workers may be paid wages lower than the rates prescribed in section Ind 72.03 only during the effective period of the license.

4. Except for licenses for work activities centers and for training or evaluation programs, and unless a lower special individual wage has been authorized, the license shall provide a minimum wage, or different minimum wages for different departments, but none of them shall be less than 50% of the rates prescribed in section Ind 72.03.

5. A license issued to a work activities center or for a training or evaluation program need not set a minimum rate except the rate paid must be commensurate with the individual's ability as provided under paragraphs 6. and 7. of this section.

6. The wage rates paid handicapped workers working at time rates shall be commensurate with those paid nonhandicapped workers in the vicinity in industry maintaining approved labor standards for essentially the same type, quality, and quantity of work.

7. The wage rates paid handicapped workers working at piece rates shall not be less than the prevailing piece rates paid nonhandicapped employes in the same work in the vicinity in industry maintaining approved labor standards. In the absence of industry piece rates, time studies or other tests may be used by the workshop to establish piece rates. Such time studies should be made with nonhandicapped persons, although handicapped workers may be used in those situations where they are not handicapped for the type of work being tested and their production is comparable to that of nonhandicapped persons of minimum ability. The base hourly rate used in making time studies must not be less than the prevailing rate in industry for work requiring similar skill. Each handicapped worker working at piece rates must be paid his full piece rate earnings. Pooling of earnings is not permitted except where piece rates cannot be established for each individual worker, in a team operation where each worker's individual contribution to the finished product cannot be separately tallied.

8. An individual license may provide a lower minimum rate for a handicapped worker unable to earn the workshop or applicable department minimum rate. Such individual minimum rates may not be set at less than 50% of the rates in section Ind 72.03, except for a handicapped worker whose earning capacity is so severely impaired that he is unable to engage in competitive employment. The individual

minimum rate for a handicapped worker so certified may not be less than 25% of the minimum rates in section Ind 72.03.

9. The workshop may not compete unfairly in obtaining subcontract work or in the sale of its products.

10. The terms of any license may be amended for cause, upon request of the workshop, handicapped worker, or upon the initiative of the department.

(e) *Records to be kept.* Every workshop shall maintain for 3 years, and have available for inspection by the department, records of:

1. Disability, which shows the nature of the handicapped worker's disability. Disabilities must be substantiated by medical or psychiatric reports or results of psychological tests, as appropriate.

2. Productivity, which shows the productivity of each handicapped worker on a continuing basis or at periodic intervals not exceeding 6 months. Where productivity is measured by means of progress reports, records must relate the worker's performance to that of a non-handicapped person receiving the prevailing wage in industry for similar work requiring similar skills. Records of time studies made to establish piece rates must be kept.

3. Learning periods, when such periods are authorized by the certificate, which shows the daily hours worked by each handicapped worker during the learning period(s), and the cumulative total of such hours.

4. Pricing of work, which shows that part of the unit prices which are allocated to direct labor (labor rate) and the average expected earnings of nonhandicapped workers at a normal expected production rate. Records of time studies made to establish prices must be kept.

5. Records for all employes including those who are not handicapped workers or clients shall be kept as required in section Ind 72.11.

6. Certification of state agencies, including copies of training or evaluation agreements, authorizations for extensions of such periods, progress reports made during such periods and evaluation of other reports on which a judgment relating to certification was made.

(f) *Posting of license.* Every workshop having a license shall post the license, or a copy of it, in a conspicuous place where it may be readily observed by all workers.

(2) **HANDICAPPED WORKER.** A license may be issued for a handicapped employe engaged in work whose earning capacity is so impaired that they are unable to earn the rate prescribed in section Ind 72.03.

(a) *Application for an individual handicapped worker license.*

1. Applications shall be filed with the department by the employer.

2. The application must be signed by the employer, the employe, and the appropriate sponsoring agency official if an agency is involved. It shall contain answers to all of the questions presented on the form furnished by the department, including: a description of the employe's disabilities, type of work to be performed, schedule of the hours to be worked per day and per week, and proposed hourly rate or progressive wage schedule. If room or board are to be provided as part payment of wages, the number of meals and nights' lodging to be furnished must be stated.



(b) *Terms and conditions of license.* 1. The license shall specify the terms and conditions under which it is granted.

2. The rate shall not be less than 75% of the rates in section Ind 72.03.

3. The license shall be issued only on the basis of an hourly rate.

4. The license shall be effective for the period designated thereon, and no license shall be issued retroactively, nor shall a license be issued for more than one year unless a longer period is found to be justified by extraordinary circumstances.

5. The department may set a rate of less than 75% of the rates in section Ind 72.03 based on justification of extraordinary circumstances. The rate set shall be commensurate with his or her ability. No licensee shall be employed at a rate less than the rate established.

6. The department may request an evaluation or reevaluation of the worker's abilities by the department of health and social services, division of vocational rehabilitation.

7. Where room and board are furnished by the employer as part of wages, the allowance may not exceed the amounts in section Ind 72.03 (3).

(c) *Employment records to be kept.* Permanent records shall be kept by the employer as required in section Ind 72.11.

(3) **STUDENT LEARNERS.** A license may be issued for a student who is enrolled in a bona fide school training program.

(a) *Application for a student learner license.* 1. Applications shall be filed with the department by the school on behalf of the employer.

2. The application must be made on a form provided by the department, and accompanied by a copy of the training agreement, or, in the absence of such agreement, a copy of the program or curriculum may be submitted. The application must be signed by the employer, the appropriate school official, the student, and the student's parent or guardian.

(b) *Conditions for issuing a license for a student.* 1. Each program must be a bona fide school training program.

2. The employment at subminimum rates is necessary to provide employment opportunities under the program.

3. The student must be at least 14 years of age and obtain a work permit if under 18 years of age.

4. The occupation for which the student is receiving preparatory training must require a sufficient degree of skill to necessitate a learning period.

5. The training must not be for the specific purpose of acquiring manual dexterity and high production speed in repetitive operation.

6. The employment must not have the effect of displacing a worker employed in the establishment.

7. The employment must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character.

8. The issuance of such license must not tend to prevent the development of apprenticeship nor impair established apprenticeship standards in the occupation or industry involved.

(c) *Terms and conditions of license.* 1. The license shall specify, among other things:

a. The name and address of the student.

- b. The name and address of the employer.
  - c. The name and address of the school which provides the related school instructions.
  - d. The effective and expiration dates of the license.
2. The rate shall not be less than 75% of the applicable rates in section Ind 72.03.
  3. The license shall be effective for the period designated thereon, and no license shall be issued retroactively.
  4. A student may work a number of hours in addition to the daily and weekly hours of employment training authorized by the license provided the total hours of work shall not exceed the limits set forth in section Ind 70.05, and that the pay for such hours is not less than that prescribed in section Ind 72.03.
  5. Students under 18 years of age may not serve at any job prohibited by statute, or orders of the department. (See section Ind 70.03.)
  6. A training agreement shall set down the scheduled duties and responsibilities of the local school, the employer, the student, and the student's parent or guardian. The training agreement shall be signed by an appropriate school official, the employer, the student, and the student's parent or guardian.
  7. The department may set a rate of less than 75% of the rates in section Ind 72.03 for handicapped student learners if justified by extraordinary circumstances. The rate granted shall be commensurate with the student's ability.

(d) *Employment records to be kept.* In addition to the records required in section Ind 72.11 the employer shall keep the following for each student employed at a subminimum wage rate.

1. The student shall be identified on the payroll records, showing his occupation and rate of pay.
2. The employer's copy of the license and training agreement must be available at all times for inspection for a period of three years.

(4) **REFUSAL TO ISSUE AND REVOCATION OF LICENSE.** The department may refuse to issue a license or may revoke, amend or modify any license it has issued, if, in its opinion, conditions or extraordinary circumstances warrant such action.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.10 Listing deductions from wages.** An employer shall state clearly on the employe's paycheck, pay envelope, or paper accompanying the wage payment the number of hours worked, the rate of pay and the amount of and reason for each deduction from the wages due or earned by the employe, except such miscellaneous deductions as may have been authorized by request of individual employes for reasons personal to himself. A reasonable coding system may be used by the employer.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.11 Permanent records to be kept by the employer.** (1) Every employer shall make and keep for at least 2 years payroll or other records for each of his employes which contain:

- (a) Name and address.
- (b) Date of birth.

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- (c) Dates of entering and leaving employ.
  - (d) Time of beginning and ending of work each day.
  - (e) Time of beginning and ending of meal periods:
    1. When employe's meal periods are required or when such meal periods are to be deducted from work time.
    2. This requirement shall not apply when work is of such a nature that production or business activity ceases on a regularly scheduled basis.
  - (f) Total number of hours worked per day and per week.
  - (g) Rate of pay and wages paid each payroll period.
  - (h) The amount of and reason for each deduction from the wages earned.
  - (i) Output of employe, if paid on other than time basis.
- (2) The required records or a duplicate copy thereof shall be kept safe and accessible at the place of employment or business at which the employe is employed, or at one or more established central record keeping office in the State of Wisconsin.
- (3) The required records shall be made available for inspection and transcription by a duly authorized deputy of the department during the business hours generally observed by the office at which they are kept or in the community generally.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.12 Posting of order.** A summary of the provisions of this chapter must be posted in a conspicuous place in all places of employment except domestic employments on a form prescribed by the department.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

**Ind 72.13 Forms.** The following forms are listed in accordance with section 227.013, Wis. Stats. These forms are issued by and may be obtained from the Equal Rights Division, Department of Industry, Labor and Human Relations, P. O. Box 2209, Madison, Wisconsin, 53701.

(1) LS-39 Minimum Wage (Summary for posting—see section Ind 72.12).

(2) LS-37, Application for Subminimum Wage License. This particular form is used for both handicapped workers and student learners.

LS-37a is the application for a sheltered workshop to employ handicapped workers at a subminimum wage.

LS-37b is a supplement data sheet for sheltered workshop certificate.

LS-37c is an application for a certificate for a training or evaluation program in a sheltered workshop.

LS-37d is an application for a special individual rate in a sheltered workshop.

**History:** Cr. Register, December, 1972, No. 204, eff. 1-1-73.

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