

1989 Senate Bill 382

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1989 WISCONSIN ACT 284

AN ACT to amend 20.445 (1) (j), 23.50 (1), 23.65 (1), 144.423 (1) (a) 2, 144.426 (1), 144.426 (2) (a) and 144.98; and to create 20.115 (1) (hm), 20.370 (2) (cg), 100.45, 101.177, 144.422 and 341.10 (14) of the statutes, relating to: ozone-depleting refrigerant, granting rule-making authority, providing penalties and making appropriations.

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

SECTION 1. Legislative findings. The legislature finds that:

- (1) Stratospheric ozone shields the earth's surface from dangerous solar ultraviolet radiation.
- (2) Manufactured halocarbons such as chlorofluorocarbons and halons introduce additional chlorine and bromine into the stratosphere, increasing the rate of ozone destruction and reducing the stratospheric ozone concentration.
- (3) Reduction of the stratospheric ozone concentration is resulting in an increase in the intensity of dangerous solar ultraviolet radiation at the earth's surface.
- (4) Destruction of stratospheric ozone and the consequent increase in surface ultraviolet intensity could lead to millions of additional human skin cancer and cataract cases, suppression of people's immune systems, a decrease in crop yields and damage to marine phytoplankton, one of the earth's primary sources of vital oxygen.

(5) Halocarbons such as chlorofluorocarbons and halons contribute to the global greenhouse effect by interfering with the escape of heat to space, potentially increasing the average temperature of the earth by 8 degrees Fahrenheit or more and leading to cataclysmic global climate change.

(6) Chlorofluorocarbons are commonly used as solvents and as refrigerant fluids in an estimated 90,000,000 car and truck air conditioners, 100,000,000 refrigerators and 30,000,000 freezers in the United States.

(7) Over 25% of the total amount of chlorofluorocarbons produced in this country every year is lost to the atmosphere because of poor maintenance, inappropriate servicing practices and leaking mobile air conditioners.

(8) This state must take the lead in reducing emissions of ozone-depleting compounds by eliminating nonessential uses of these chemicals, requiring their recovery and recycling wherever possible and encouraging the development and use of nontoxic substitutes that are environmentally innocuous and do not contribute to the global greenhouse effect.

SECTION 2. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

1989-90 1990-91

20.115 Agriculture, trade and consumer protection, department of

(1) FOOD SAFETY AND CONSUMER PROTECTION

(hm) Mobile air conditioner fees PR A -0- 97,400

**20.370 Natural resources,
department of**

(2) ENVIRONMENTAL STANDARDS

(cg) Air management—recovery of
ozone-depleting
refrigerants PR A -0- -0-

SECTION 3. 20.115 (1) (hm) of the statutes is created to read:

20.115 (1) (hm) *Mobile air conditioner fees.* The amounts in the schedule for administration of the mobile air conditioner servicing and refrigerant recycling programs. All moneys received from fees under s. 100.45 (5) (a) 3. shall be credited to this appropriation.

SECTION 4. 20.370 (2) (cg) of the statutes is created to read:

20.370 (2) (cg) *Air management — recovery of ozone-depleting refrigerants.* The amounts in the schedule for administration of the recovery of ozone-depleting refrigerants program. All moneys received from fees under s. 144.422 (3) (a) 2 shall be credited to this appropriation.

SECTION 5. 20.445 (1) (j) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

20.445 (1) (j) *Safety and building operations.* The amounts in the schedule for the purposes of subchs. I, II, III and IV of ch. 101, chs. 145 and 168 and ss. 236.12 (2) (a), 236.13 (1) (d) and (2m) and 236.335. All moneys received under ch. 145 and ss. 101.177 (4) (a) 4. 101.19, 101.63 (9), 101.73 (12), 101.82 (4), 168.12 (1) and (2) to (6) and 236.12 (7) shall be credited to this appropriation. From the amounts received under s. 168.12, \$66,000 shall be transferred to the appropriation under s. 20.115 (1) (im) in each fiscal year. From the amounts received under s. 168.12, \$35,000 shall be transferred to the appropriation under s. 20.115 (1) (j) in fiscal year 1989-90 and \$11,200 in fiscal year 1990-91, for equipment to test the accuracy of fuel measuring devices. Beginning in fiscal year 1989-90, from the amounts received under s. 168.12, \$500,000 shall be credited to the environmental fund for environmental repair in each fiscal year.

SECTION 6. 23.50 (1) of the statutes, as affected by 1989 Wisconsin Act 79, is amended to read:

23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable natural resources assessments and applicable natural resources restitution payments for violations of ss. 77.09, 134.60, 144.422 (2) and (2m) (c). 167.10 (3) and 167.31 (2), subch. VI of ch. 77, this chapter and chs. 26 to 31 and 350, and any administrative rules promulgated thereunder and violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

SECTION 7. 23.65 (1) of the statutes is amended to read:

23.65 (1) When it appears to the district attorney that a violation of s. 134.60, 144.422 (2) or (2m) (c). this chapter or ch. 26, 27, 28, 29, 30, 31 or 350, or any administrative rule promulgated pursuant thereto, has been committed the district attorney may proceed by complaint and summons.

SECTION 8. 100.45 of the statutes is created to read:
100.45 Mobile air conditioners. (1) DEFINITIONS. In this section:

(a) “Approved refrigerant recycling equipment” means equipment that the department or an independent standards testing organization approved by the department determines will treat ozone-depleting refrigerant removed from a mobile air conditioner so that the ozone-depleting refrigerant meets the standard of purity for recycled refrigerant from mobile air conditioners established under sub. (5) (a) 1.

(ag) “Distributor” has the meaning given in s. 218.01 (1) (e).

(ar) “Manufacturer” has the meaning given in s. 218.01 (1) (L).

(b) “Mobile air conditioner” means mechanical vapor compression refrigeration equipment used to cool the driver or passenger compartment of a motor vehicle.

(c) “Motor vehicle” has the meaning given in s. 340.01 (35).

(d) “Ozone-depleting refrigerant” means a substance used in refrigeration that is one of the following:

1. A chemical with an ozone depletion weight of 0.1 or more, as set out in 40 CFR part 82, appendix A.

2. A mixture of chemicals with an ozone depletion weight of 0.1 or more, as determined by multiplying the ozone depletion weight of each component, as set out in 40 CFR part 82, appendix A, by the proportion of that component in the mixture and adding the products.

(2) DISTRIBUTION OF MOBILE AIR CONDITIONERS. (a) 1. Beginning on January 1, 1994, and ending on December 31, 1994, a manufacturer or distributor may not distribute for sale in this state a mobile air conditioner that contains ozone-depleting refrigerant and that is original equipment in a new motor vehicle unless at least 25% of the new motor vehicles distributed in the United States by that manufacturer or distributor during November and December 1993 are not equipped with mobile air conditioners that contain ozone-depleting refrigerant.

2. Beginning on January 1, 1995, and ending on December 31, 1995, a manufacturer or distributor may not distribute for sale in this state a mobile air conditioner that contains ozone-depleting refrigerant and that is original equipment in a new motor vehicle unless at least 50%

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of the new motor vehicles distributed in the United States by that manufacturer or distributor during November or December 1994 are not equipped with mobile air conditioners that contain ozone-depleting refrigerant.

3. After December 31, 1995, a manufacturer or distributor may not distribute for sale in this state a mobile air conditioner that contains ozone-depleting refrigerant and that is original equipment in a new motor vehicle.

(b) After December 31, 1991, the department may waive the application of par. (a) to a manufacturer or distributor for a period of one year if any of the following applies:

1. All substitutes for ozone-depleting refrigerant are toxic and their use is not safe for consumers, industry or the environment.

2. Substitutes for ozone-depleting refrigerant will not be available in sufficient quantities in time for the manufacturer or distributor to meet the requirements under par. (a).

3. An acceptable mobile air conditioner cannot be manufactured in sufficient quantities in time for the manufacturer to meet the requirements under par. (a) and the progress made by the manufacturer or distributor toward meeting the requirements under par. (a) is comparable with the progress made by other manufacturers and distributors toward meeting the requirements under par. (a).

(3) **SALE OF REFRIGERANT.** (a) After December 31, 1990, no person may sell or offer to sell any ozone-depleting refrigerant in a container holding less than 15 pounds of ozone-depleting refrigerant.

(b) After February 28, 1991, no business establishment may sell used ozone-depleting refrigerant removed from a mobile air conditioner unless the business establishment certifies all of the following to the department:

1. That the business establishment or another person recycles the ozone-depleting refrigerant using approved refrigerant recycling equipment.

2. That the individuals who use the approved refrigerant recycling equipment under subd. 1 have the qualifications established under sub. (5) (a) 2.

(4) **SERVICING.** After February 28, 1991, no business establishment may perform motor vehicle repair that releases or may release ozone-depleting refrigerant from a mobile air conditioner or may install or service a mobile air conditioner that contains ozone-depleting refrigerant unless the business establishment certifies all of the following to the department:

(a) That the business establishment does not use ozone-depleting refrigerant to clean the exterior surfaces of mobile air conditioners.

(b) That whenever the business establishment removes ozone-depleting refrigerant from a mobile air conditioner the business establishment pumps the ozone-depleting refrigerant into storage tanks.

(c) That the business establishment uses approved refrigerant recycling equipment.

(d) That the individuals who use the equipment under par. (c) have the qualifications established under sub. (5) (a) 2.

(5) **DEPARTMENT DUTIES.** The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. A standard of purity for recycled refrigerant from mobile air conditioners that is based on recognized national industry standards.

2. Qualifications, which may include training or certification requirements, for individuals who use approved refrigerant recycling equipment to ensure that those individuals use procedures for containment of ozone-depleting refrigerant.

3. Fees to cover the costs of administering subs. (2) (b), (3) (b) and (4).

(b) Identify approved refrigerant recycling equipment or approve independent testing organizations that may identify approved refrigerant recycling equipment.

(6) **PENALTIES.** (a) Any person who violates sub. (2) shall be required to forfeit \$1,000. Each motor vehicle distributed in violation of sub. (2) constitutes a violation.

(b) Any person who violates sub. (3) shall be required to forfeit not less than \$50 nor more than \$1,000. Each sale in violation of sub. (3) constitutes a violation.

(c) Any person who violates sub. (4) shall be required to forfeit not less than \$50 nor more than \$1,000. Each repair, installation or servicing in violation of sub. (4) constitutes a violation.

SECTION 9. 101.177 of the statutes is created to read:

101.177 Refrigeration equipment and ozone-depleting refrigerant. (1) **DEFINITIONS.** In this section:

(a) "Approved refrigerant recycling equipment" means equipment that the department or an independent standards testing organization approved by the department determines will treat ozone-depleting refrigerant removed from refrigeration equipment so that the ozone-depleting refrigerant meets the standard of purity for recycled refrigerant established under sub. (4) (a) 1.

(b) "Ozone-depleting refrigerant" has the meaning given in s. 100.45 (1) (d).

(c) "Refrigeration equipment" means mechanical vapor compression refrigeration equipment except for a mobile air conditioner, as defined in s. 100.45 (1) (b).

(2) **SERVICING.** (a) After December 31, 1991, no business establishment may install or service a piece of refrigeration equipment that contains 5 pounds or more of ozone-depleting refrigerant unless the business establishment certifies all of the following to the department:

1. That the business establishment does not use ozone-depleting refrigerant to clean the exterior surfaces of refrigeration equipment.

2. That the business establishment transfers the ozone-depleting refrigerant from refrigeration equipment to storage containers using equipment that is approved by the department whenever the business establishment removes ozone-depleting refrigerant from refrigeration equipment.

3. That the individuals who use the equipment to transfer ozone-depleting refrigerant under subd. 2 have, or are under the supervision of individuals who have, the qualifications established under sub. (4) (a) 2.

(b) After December 31, 1992, no business establishment may install or service a refrigerator or freezer that contains less than 5 pounds of ozone-depleting refrigerant unless the business establishment certifies all of the items under par. (a) 1. to 3. to the department.

(3) SALE OF USED REFRIGERANT. (a) After December 31, 1991, no business establishment may sell used ozone-depleting refrigerant removed from refrigeration equipment for reuse unless the business establishment certifies all of the following to the department:

1. That the business establishment or another person recycles the ozone-depleting refrigerant using approved refrigerant recycling equipment.

2. That the individuals who use the approved refrigerant recycling equipment under subd. 1 have the qualifications established under sub. (4) (a) 3.

(b) Paragraph (a) does not apply to a business establishment that sells used ozone-depleting refrigerant removed from refrigeration equipment to another person for recycling, as provided in par. (a) 1., by that other person if the business establishment informs the other person that the ozone-depleting refrigerant has not been recycled as provided in par. (a) 1.

(4) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. A standard of purity for recycled refrigerant that is based on recognized national industry standards.

2. Qualifications, which may include training or certification requirements, for individuals who use equipment to transfer ozone-depleting refrigerant from refrigeration equipment to storage containers.

3. Qualifications, which may include training or certification requirements, for individuals who use approved refrigerant recycling equipment.

4. Fees to cover the cost of administering subs. (2) and (3).

(b) Identify approved refrigerant recycling equipment or approve independent testing organizations that may identify approved refrigerant recycling equipment.

(c) Approve equipment for the transfer of ozone-depleting refrigerant from refrigeration equipment to storage containers.

(5) PENALTIES. (a) Any person who violates sub. (2) shall be required to forfeit not less than \$50 nor more than

\$1,000. Each installation or servicing in violation of sub. (2) constitutes a violation.

(b) Any person who violates sub. (3) shall be required to forfeit not less than \$50 nor more than \$1,000. Each sale in violation of sub. (3) constitutes a violation.

SECTION 10. 144.422 of the statutes is created to read:

144.422 Recovery of ozone-depleting refrigerants. (1) DEFINITION. In this section, “ozone-depleting refrigerant” has the meaning given in s. 100.45 (1) (d).

(2) CERTIFICATION. After June 30, 1992, except as provided in sub. (2m), no business establishment or municipality may perform salvaging or dismantling of mechanical vapor compression refrigeration equipment in the course of which ozone-depleting refrigerant is or may be released or removed unless the business establishment or municipality certifies all of the following to the department:

(a) That the business establishment or municipality uses equipment that is approved by the department to transfer ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks whenever it performs those activities.

(b) That the individuals who use the equipment under par. (a) have, or are under the supervision of individuals who have, the qualifications established under sub. (3) (a) 1.

(2m) SCRAP METAL PROCESSORS. (a) In this subsection, “scrap metal processor” has the meaning given in s. 218.20 (2).

(b) Subsection (2) does not apply to a scrap metal processor.

(c) After June 30, 1992, any person who sells mechanical vapor compression refrigeration equipment to a scrap metal processor shall do all of the following:

1. Transfer ozone-depleting refrigerant from the mechanical vapor compression refrigeration equipment into a storage tank as provided in sub. (2) (a) and (b).

2. Certify to the scrap metal processor that it has complied with subd. 1.

(3) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. Qualifications, which may include training or certification requirements, for individuals who use equipment to transfer ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks.

2. Fees to cover the cost of administering sub. (2).

(b) Approve equipment for the transfer of ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks.

(3m) CITATIONS. The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2) or (2m) (c).

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(4) PENALTIES. (a) Any person who violates sub. (2) shall be required to forfeit not less than \$100 nor more than \$1,000. Each act of salvaging or dismantling in violation of sub. (2) constitutes a violation.

(b) Any person who violates sub. (2m) (c) shall be required to forfeit not less than \$100 nor more than \$1,000. Each sale in violation of sub. (2m) (c) constitutes a violation.

SECTION 11. 144.423 (1) (a) 2. of the statutes is amended to read:

144.423 (1) (a) 2. Initiate action under s. 144.422 (4) or 144.426.

SECTION 12. 144.426 (1) of the statutes, as affected by 1989 Wisconsin Act (1989 Senate Bill 147), is amended to read:

144.426 (1) ~~Any~~ Except as provided in s. 144.422 (4), ~~any~~ person who violates ss. 144.30 to 144.426 or any rule promulgated, any permit issued or any special order issued under those sections shall forfeit not less than \$10 or more than \$25,000 for each violation. Each day of continued violation is a separate offense.

SECTION 13. 144.426 (2) (a) of the statutes, as created by 1989 Wisconsin Act (1989 Senate Bill 147), is amended to read:

144.426 (2) (a) Except as provided in par. (b), any person who intentionally commits an act that violates, or fails to perform an act required by, ss. 144.30 to 144.426, except s. 144.422, or any rule promulgated, any permit issued or any special order issued under those sections, except s. 144.422, shall be fined not more than \$25,000 per day of violation or imprisoned for not more than 6 months or both.

SECTION 14. 144.98 of the statutes is amended to read:

144.98 Enforcement; duty of department of justice; expenses. The attorney general shall enforce this chapter, except s. 144.422, and all rules, special orders, licenses, plan approvals and permits of the department, except those promulgated or issued under s. 144.422. The circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce this chapter or the rule, special order, license, plan approval or permit by injunctive and other relief appropriate for enforcement. For purposes of this proceeding where this chapter or the rule, special order, license, plan approval or permit prohibits in whole or in part any pollution, a violation is deemed a public nuisance. The expenses incurred by the department of justice in assisting with the administration of this chapter shall be charged to the appropriation made by s. 20.370 (2) (ma).

SECTION 15. 341.10 (14) of the statutes is created to read:

341.10 (14) After December 31, 1993, the vehicle has a mobile air conditioner, as defined in s. 100.45 (1)

(b), the distribution of which in this state would be prohibited under s. 100.45 (2).

SECTION 16. Nonstatutory provisions. (1) AGRICULTURE, TRADE AND CONSUMER PROTECTION; RULES. The department of agriculture, trade and consumer protection shall submit proposed rules required under section 100.45 (5) (a) of the statutes, as created by this act, to the legislative council staff for review under section 227.15 (1) of the statutes no later than January 1, 1991.

(1m) AGRICULTURE, TRADE AND CONSUMER PROTECTION; POSITIONS. The authorized FTE positions for the department of agriculture, trade and consumer protection are increased by 4.0 PR positions to be funded from the appropriation under section 20.115 (1) (hm) of the statutes, as created by this act.

(2) INDUSTRY, LABOR AND HUMAN RELATIONS; RULES. The department of industry, labor and human relations shall submit proposed rules required under section 101.177 (4) (a) of the statutes, as created by this act, to the legislative council staff for review under section 227.15 (1) of the statutes no later than July 1, 1991.

(3) NATURAL RESOURCES; RULES. The department of natural resources shall submit proposed rules required under section 144.422 (3) (a) of the statutes, as created by this act, to the legislative council staff for review under section 227.15 (1) of the statutes no later than January 1, 1992.

(4) NATURAL RESOURCES; POSITIONS. (a) The authorized FTE positions for the department of natural resources are increased by 4.0 PR positions on July 1, 1992, to be funded from the appropriation under section 20.370 (2) (cg) of the statutes, for the recovery of ozone-depleting refrigerants program.

(b) The authorized FTE positions for the department of natural resources are increased by 2.0 GPR 4-year project positions to be funded from the appropriation under section 20.370 (2) (ma) of the statutes, for the recovery of ozone-depleting refrigerants program.

SECTION 17. Appropriation changes; natural resources. The dollar amounts in the schedule under section 20.005 (3) of the statutes for the appropriation to the department of natural resources under section 20.370 (2) (ma) of the statutes, as affected by the acts of 1989, are increased by \$132,000 for fiscal year 1990-91 to fund the 2.0 FTE GPR project positions authorized under SECTION 16 (4) (b) of this act, staff and computer support for those positions, and other items for the recovery of ozone-depleting refrigerants program.

SECTION 18. Appropriation changes; industry, labor and human relations. The dollar amount in the schedule under section 20.005 (3) of the statutes for the appropriation to the department of industry, labor and human relations under section 20.445 (1) (j) of the statutes, as affected by the acts of 1989, is increased by \$45,700 for fiscal year 1990-91 to increase the autho-

rized FTE positions for the department by 1.02 PR positions for the refrigeration equipment servicing and refriger-

erant recycling programs.
