

Chapter HSS 197

BED AND BREAKFAST ESTABLISHMENTS

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HSS 197.01 Authority and purpose. Section 254.74, Stats., gives the department authority to prescribe rules for bed and breakfast establishments and to enforce these rules for the purpose of protecting public health and safety.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; correction made under s. 13.93 (2m) (b) 7, Stats., Register, January, 1995, No. 469.

HSS 197.02 Scope. (1) APPLICABILITY. The provisions of this chapter apply to the operator of any bed and breakfast establishment.

(2) APPROVED COMPARABLE COMPLIANCE. When it appears to the department that strict adherence to a provision of this chapter is impractical for a particular bed and breakfast establishment, the department may approve a modification in that rule for that facility if the department is provided with satisfactory proof that the grant of a variance will not jeopardize the public's health, safety or welfare.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85.

HSS 197.03 Definitions. In this chapter:

(1) "Agent" means the city or county designated by the department to issue permits to and make investigations or inspections of bed and breakfast establishments.

(2) "Approved" means acceptable to the department, based on its determination of conformance to this chapter and good public health practices.

(3) "Bed and breakfast establishment" means any place of lodging that provides 8 or fewer rooms for rent to no more than a total of 20 tourists or other transients for more than 10 nights in a 12-month period, is the owner's personal residence, is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast.

(4) "Department" means the department of health and social services.

(5) "Furnishings" means, in connection with the operation of a bed and breakfast establishment, linens, beds, bedding, chairs, tables, shelves, drapes, carpeting, curtains, decorations, fixtures and similar items provided in the sleeping rooms and common areas of the facility.

(6) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form cap-

able of supporting rapid and progressive growth of infectious or toxigenic microorganisms. "Potentially hazardous food" does not include clean, whole, uncracked, and odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.

(7) "Premises" means the tract of land on which the bed and breakfast establishment is located.

(7m) "Tourist or transient" means a person who travels to a location away from his or her permanent address for a short period of time for vacation, pleasure, recreation, culture, business or employment.

(8) "Utensil" means any kitchenware, tableware, glassware, cutlery, container or similar item with which food or drink comes in contact during storage, preparation or serving.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (3), cr. (7m), Register, November, 1986, No. 371, eff. 12-1-86.

HSS 197.04 Permits. (1) APPLICATION. Before opening for business, the operator of a bed and breakfast establishment shall obtain a permit from the department or its agent by application made upon a form furnished by the department or its agent. An application for a permit submitted to the department shall be accompanied by the fees required under sub. (1m) (a) and (d).

Note: To obtain a copy of the application form, write: Bureau of Environmental Health, P.O. Box 309, Madison, Wisconsin 53701.

(1m) DEPARTMENT FEES. (a) Fees. Before July 1, 1995, the operator of a bed and breakfast establishment shall pay a biennial permit fee of \$75 to the department. Beginning July 1, 1995, the operator of a bed and breakfast establishment shall pay a biennial permit fee of \$85 to the department.

(b) Penalty fee. Before July 1, 1995, if the operator of a bed and breakfast establishment does not pay to the department the biennial permit fee required under par. (a) within the first 15 days of the permit renewal period, the department shall require the operator of the bed and breakfast establishment to pay a penalty fee of \$20, in addition to the biennial permit fee, for renewal of the permit. Beginning July 1, 1995, if the biennial fee is not paid within the first 15 days of the permit period, the operator of the bed and breakfast facility shall pay to the department a penalty fee of \$50, in addition to the biennial permit fee, for renewal of the permit.

(c) Fee for duplicate permit. Before July 1, 1995, the department shall charge the operator of a bed and break-

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fast establishment \$5 for a duplicate permit. Beginning July 1, 1995, the department shall charge a bed and breakfast operator \$10 for a duplicate permit.

(d) *Preinspection fee.* Until July 1, 1995, the operator of a bed and breakfast shall pay to the department a preinspection fee of \$18 before issuance of the initial permit. Beginning July 1, 1995, the operator of a bed and breakfast establishment shall pay to the department a preinspection fee of \$20 before issuance of the initial permit.

(2) **ACTION BY THE DEPARTMENT.** Within 30 days after receiving a complete application for a permit, the department or its agent shall either approve the application and issue a permit or deny the application. If the application for a permit is denied, the department or its agent shall give the applicant reasons, in writing, for the denial. A permit shall not be issued to an operator of a new bed and breakfast establishment or to a new operator of an existing bed and breakfast establishment without prior inspection of the facility by the department or its agent to ensure that the facility complies with this chapter.

(3) **DISPLAY OF PERMIT.** The permit issued by the department or its agent shall be conspicuously displayed in the bed and breakfast establishment.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; emerg. am. (1), cr. (1m), eff. 7-1-94; am. (1), cr. (1m), Register, January, 1995, No. 469.

HSS 197.05 Water supply and waste disposal. (1) SERVICE AVAILABILITY. The requirements covering water supply and sewage disposal facilities for all bed and breakfast establishments are based on the availability of public utilities as well as the practicability of connection to public utilities.

(2) **PUBLIC UTILITIES.** If an approved public water supply and approved public sewerage facilities are available to the bed and breakfast establishment, connection and use are required, as specified in chs. ILHR 82 and 83, rules of the department of industry, labor and human relations and ch. NR 812, rules of the department of natural resources.

(3) **PRIVATE WELLS.** A private well is permitted as a source of water when a public water facility is not available to the premises. The well shall be located on the premises and shall be constructed and the pump installed in accordance with ch. NR 812, rules of the department of natural resources governing well drilling and pump installation. A water sample shall be submitted annually to a certified laboratory for bacterial analysis, and a copy of the report giving the results of the analysis shall be made available to the department or its agent upon request. Whenever safe water cannot be obtained consistently from a well constructed in apparent compliance with ch. NR 812, as evidenced by laboratory reports, the well shall be reconstructed or a new well constructed in accordance with the requirements of the department of natural resources except that if the reconstruction or new construction is determined to be impractical or is found to be ineffective, the use of the well shall be discontinued and water shall be transported on a temporary basis from a source and in a manner approved by the department.

(4) **PLUMBING.** All plumbing and fixtures shall meet the requirements for one-family and two-family dwellings contained in chs. ILHR 82 and 84, the applicable state

plumbing codes, and shall be maintained in good repair and in a sanitary condition.

(5) **PRIVATE SEWAGE DISPOSAL.** (a) A private sewage disposal system, as defined in s. 145.01 (12), Stats., is permitted when a public sewer facility is not available to the premises. The system shall be located on the premises and shall be designed, constructed and operated in accordance with s. 144.245, Stats., and the applicable state plumbing codes, chs. ILHR 82 and 83.

(b) Failed on-site private waste disposal systems shall be replaced or rehabilitated. In this paragraph, "failed system" has the meaning prescribed for "failing private sewage system" in s. 144.245 (4), Stats.

(c) Plans and installation details covering the design and construction, alteration or extension of private sewage disposal systems shall have the approval of the department of industry, labor and human relations or its designated agent.

(d) All plumbing fixtures shall be connected to the building drainage system, with discharge to a public sewer or private sewage disposal system.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; corrections in (2) and (3) made under s. 13.93 (2m) (b) 7, Stats., Register, January, 1995, No. 469.

HSS 197.06 Toilet, handwashing and bathing facilities. (1) GENERAL. Bed and breakfast establishments shall be provided with clean and sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast establishments, shall be cleaned at least daily, if used, and maintained in good repair.

(2) **FIXTURES.** One toilet, lavatory and shower or bathtub shall be provided for every 10 guests or fraction thereof.

(3) **HOT AND COLD WATER.** All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean, individual bath cloths and towels.

(4) **LINENS.** Clean towels and bath cloths shall be stored and handled in a manner which avoids contamination.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85.

HSS 197.07 Furnishings, equipment and utensils. (1) DESIGN. All equipment, utensils and furnishings shall be designed, made of a kind of material and constructed to be easily cleanable and to be durable. Surfaces with which food or drink comes into contact shall be easily accessible for cleaning and shall be nontoxic, corrosion-resistant, nonabsorbent, and free of defects. Disposable articles shall be made from nontoxic materials.

(2) **INSTALLATION OF FURNISHINGS AND EQUIPMENT.** All furnishings and equipment shall be installed in a way that facilitates the cleaning of the furnishings and equipment and all adjacent areas.

(3) **CONDITION OF FURNISHINGS AND EQUIPMENT.** Furnishings and equipment shall be kept clean and in good repair.

(4) **UTENSIL SANITATION.** (a) Utensils shall be kept clean and in good repair.

(b) Multi-use eating and drinking utensils shall be thoroughly cleaned after each use. Facilities needed for the operations of washing, rinsing and sanitizing shall be provided.

(c) Pots, pans and other utensils used in the preparation or serving of food or drink and all food storage utensils shall be thoroughly cleaned after each use. Cooking surfaces of equipment, if any, shall be cleaned at least once each day. Non-food contact surfaces of equipment shall be cleaned at intervals that will keep them in a clean and sanitary condition.

(d) Residential sinks and home-style mechanical dishwashing machines are acceptable facilities for washing multi-use eating and drinking utensils, and pots, pans and other cooking utensils.

(e) Immediately following either manual or mechanical washing of eating and drinking utensils, and pots, pans and other cooking utensils, these utensils shall be effectively sanitized by being submerged in a hypochlorite solution with a chlorine concentration continuously maintained at 100 parts per million, or another approved sanitizing solution which shall be used at the concentration at which tested and approved by the department. Dishpans may be used to accomplish the final sanitizing rinse.

(5) **SINGLE-SERVICE UTENSILS.** The reuse of single-service utensils is prohibited.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85.

HSS 197.08 Food. (1) STORAGE. All food storage facilities shall be kept clean and free of vermin. Residential kitchen cabinets are acceptable storage facilities.

(2) **FOOD SUPPLIES.** Food, including milk and milk products, shall be clean, wholesome, free from spoilage, free from adulteration and misbranding and safe for human consumption. Milk of only pasteurized Grade A quality may be used. Use of home-canned food is prohibited except for jams and jellies.

(3) **FOOD PROTECTION (a)** Foods shall be protected from contamination while being stored, prepared and served, and during transportation. Perishable foods shall be stored at temperatures that will protect them against spoilage. Potentially hazardous food shall be maintained at safe temperatures of 40° F. (4° C.) or below, or 150° F. (66° C.) or above, as appropriate, except during necessary periods of preparation and serving. Frozen food shall be kept at temperatures that will keep them frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of 40° F. (4° C.) or below, quick-thawed as part of the cooking process, or thawed by another method approved by the department. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be cooked to heat all parts of the food to at least 165° F. (74° C.) before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared from chilled products, with a minimum of manual contact. Portions of food once served to an individual may not be served again.

(b) Refrigeration facilities, hot food storage facilities and effective insulated facilities shall be provided as needed to ensure that all food is maintained at safe temperatures of 40° F. (4° C.) or below, or 150° F. (66° C.) or above, as appropriate, during storage, preparation and serving.

(c) Containers of food shall be stored above the floor, on clean racks, shelves, or other clean surfaces, in such a manner as to be protected from splash and other contamination.

(4) **EMPLOYEE HEALTH (a)** No person knowingly infected with a communicable disease that may be transmitted by food handling may work in a bed and breakfast establishment.

(b) If the bed and breakfast operator suspects that any employe, family member or the operator himself or herself has a communicable disease that may be transmitted by food handling, that person shall be immediately excluded from working in the bed and breakfast establishment and, in the case of a reportable communicable disease under s. HSS 145.03 (2), the operator shall notify the local health authority immediately.

(c) Persons while preparing or serving food or washing equipment or utensils shall wear clean outer garments, maintain a high degree of personal cleanliness and conform to hygienic practices. They shall wash their hands thoroughly before starting work and as often as necessary while working, in order to remove soil and contamination. After visiting a toilet room, these persons shall wash their hands thoroughly in a lavatory but never in the kitchen sink. No one while preparing or serving food may use tobacco in any form.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85.

HSS 197.09 Building safety. (1) VENTILATION WITH SPACE HEATERS (a) Any room where a gas space heater is located shall have a constant supply of fresh air through a permanent opening which shall not be closed. The size of the opening shall be at least one square inch for each 1,000 BTU per hour of the rated heating capacity of the heater, with a minimum of 10 square inches (65 square cm), or be so constructed that the air used in the combustion of the fuel is taken directly from the outside.

(b) The use of unvented gas, kerosene, oil or other fossil fuel space heaters is prohibited.

(2) **SMOKE DETECTION** Each bed and breakfast establishment shall be provided with an approved, listed, labeled and operable smoke detector located inside each sleeping room and at the top of each stairway in a manner consistent with the manufacturer's recommendations.

(3) **WINDOW SCREENS.** All windows that can be opened in sleeping rooms shall be screened, using 16 mesh or finer material. Unless sleeping rooms are effectively air-conditioned, doors opening to the outside shall be similarly screened.

(4) **FIRE EXTINGUISHERS.** Each bed and breakfast establishment shall be provided with at least one approved, listed and labeled fire extinguisher located near the sleeping rooms.

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(5) **VENTILATION AND LIGHTING.** Rooms and areas used in conjunction with bed and breakfast establishments shall be ventilated and lighted as needed. The ventilation and lighting shall be effective under actual use conditions. Ventilating equipment and lighting fixtures shall be kept clean and in good repair.

(6) **COOKING IN SLEEPING ROOMS.** Cooking in sleeping rooms is prohibited.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85.

HSS 197.10 Maintenance. (1) **GENERAL.** Every bed and breakfast establishment shall be maintained and equipped in a manner conducive to the health, comfort and safety of its guests.

(2) **ROOMS.** The floors, walls and ceilings of all rooms shall be maintained in a clean and sanitary condition and in a good state of repair.

(3) **BUILDINGS AND GROUNDS.** Buildings and grounds shall be maintained in a clean, neat condition, free from refuse and other objectionable conditions or hazards. The exterior of all buildings shall be well-maintained and kept in good repair.

(4) **INSECT AND RODENT CONTROL.** Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be employed. The premises shall be kept in a condition which will prevent the harborage or feeding of insects or rodents.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85.

HSS 197.11 Enforcement. (1) **ACCESS.** Authorized employes or agents of the department, upon presenting proper identification, shall be permitted to enter any bed and breakfast establishment at any reasonable time for the purpose of inspecting the bed and breakfast establishment to determine compliance with this chapter. The representatives shall be permitted to obtain samples or specimens, examine and copy relevant documents and records and obtain photographic or other evidence needed to enforce this chapter.

(2) **ENFORCEMENT POLICY.** (a) *Notification.* If upon inspection of a bed and breakfast establishment the authorized employe or agent of the department finds that the bed and breakfast establishment is not operated or equipped as required by this chapter, the employe or agent shall, except as provided under par. (b), notify the owner in writing and shall specify the changes required to make the place of business conform to the standards established in this chapter and the time period within which compliance must be effected. If the order to correct violations is not carried out by the expiration of the time period stipulated in the order, or any extension of time granted for compliance, the department may issue an order suspending or revoking the permit to operate the bed and breakfast establishment. The suspension or revocation order shall take effect 15 days after the date of issuance unless a request for a hearing has been received under sub. (3).

(b) *Order to deal with an immediate danger to health.* Where there is reasonable cause to believe that any construction, sanitary condition, operation or method of operation of the premises of a bed and breakfast establishment or of equipment used on the premises creates an immediate danger to health, an authorized employe or agent of the department may, pursuant to s. 254.85, Stats., acting as the designee of the administrator of the department's division of health, and without advance written notice, issue a temporary order to remove the immediate danger to health. That order shall take effect on delivery to the operator or other person in charge of the bed and breakfast establishment. The order shall be limited to prohibiting the sale or movement of food, prohibiting the continued operation or method of operation of specific equipment, requiring the premises to cease other operations or methods of operation, or a combination of these, except that if a more limited order will not remove the immediate danger to health the order may direct that all operations authorized by the permit shall cease. If before scheduled expiration of the temporary order, the department determines that an immediate danger to health does in fact exist, the temporary order shall remain in effect. The department shall then schedule and hold the hearing required under s. 254.85 (3), Stats., unless the immediate danger to health is removed or the order is not contested and the operator and the department mutually agree that no purpose would be served by a hearing.

Note: Under s. 254.85, Stats., the temporary order is effective for 14 days and may be extended for another 14 days to permit the department to complete its examination. The order expires at the end of the 14-day or 28-day period unless it is terminated by the department by notice to the operator within that period, or is kept in effect beyond that period, pending a hearing, by department notification to the operator. The hearing is to be held by the department no later than 15 days after the notice is served on the operator unless the department and the operator agree on a later date, and the department must issue a final decision on the matter within 10 days after the hearing.

(3) **APPEAL BY THE OPERATOR.** Any operator aggrieved by an order of the department under this chapter, except for an order issued pursuant to s. 254.85, Stats., and sub. (2) (b), may request a hearing to challenge the order. A request for a hearing under this subsection shall be submitted to the department's office of administrative hearings and shall be received by that office within 15 days after issuance of the order. Procedures for the hearing shall be in accordance with ch. 227, Stats. After the hearing, the department shall affirm, set aside or modify the order. The final decision of the department may be appealed to the circuit court as provided in ch. 227, Stats.

Note: The mailing address of the office of administrative hearings is P.O. Box 7875, Madison, Wisconsin 53707.

(4) **LOCAL ENFORCEMENT.** Notwithstanding subs. (2) and (3), if an agent issues permits directly under this chapter, the agent shall create enforcement and appeal procedures in accordance with s. 66.124, Stats., which shall supersede subs. (2) and (3).

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; corrections made under s. 13.93 (2m) (b) 7, Stats., Register, January, 1995, No. 469.