CHAPTER 101

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

SUBCHAPTER I

REGULATION OF INDUSTRY: GENERAL PROVISIONS

101.01 Definitions. (1) In chs. 101 to 106 and 108:

(a) "Commission" means the labor and industry review commission.

(b) "Commissioner" means a member of the commission.

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

(d) "Deputy" means any person employed by the department designated as a deputy, who possesses special, technical, scientific, managerial or personal abilities or qualities in matters within the jurisdiction of the department, and who

may be engaged in the performance of duties under the direction of the secretary, calling for the exercise of such abilities or qualities.

(e) "General order" means such order as applies generally throughout the state to all persons, employments, places of employment or public buildings, or all persons, employments or places of employment or public buildings of a class under the jurisdiction of the department. All other orders of the department shall be considered special orders.

(f) "Local order" means any ordinance, order, rule or determination of any common council, board of aldermen, board of trustees or the village board, of any village or city, or the board of health of any municipality, or an order or direction of any official of such municipality, upon any matter over which the department has jurisdiction.

(g) "Order" means any decision, rule, regulation, direction, requirement or standard of the department, or any other determination arrived at or decision made by the department.

(h) "Secretary" means the secretary of industry, labor and human relations.

(2) The following terms as used in ss. 101.01 to 101.25, shall be construed as follows:

(a) The term "employe" shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment.

(b) The term "employer" shall mean and include every person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporations as well as any agent, manager, representative or other person having control or custody of any employment, place of employment or of any employe.

(c) The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation or process of manufacture in which any person may be engaged, except in such private domestic service as does not involve the use of mechanical power and in farm labor as used in par. (f).

(d) "Frequenter" means every person, other than an employe, who may go in or be in a place of employment or public building under circumstances which render such person other than a trespasser. Such term includes a pupil or student when enrolled in or receiving instruction at an educational institution.

(e) The term "owner" shall mean and include every person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporations as well as any manager, representative, officer, or other person having ownership, control or custody of any place of employment or public building, or of the construction, repair or maintenance of any place of employment or public building, or who prepares plans for the construction of any place of employment or public building. Said ss. 101.01 to 101.25 shall apply, so far as consistent, to all architects and builders.

(f) "Place of employment" includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in private domestic service which does not involve the use of mechanical power or in farming. "Farming" includes those activities specified in s. 102.04 (3), and also includes the transportation of farm products, supplies or equipment directly to the farm by the operator of said farm or employes for use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production. When used with relation to building codes, "place of employment" does not include an adult family home certified under s. 50.032 (1) (b) or, except for the purposes of s. 101.11, a previously constructed building used as a community-based residential facility, as defined in s. 50.01 (1g), which serves 20 or fewer unrelated residents.

(g) "Public building" means any structure, including exterior parts of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants. When used in relation to building codes, "public building" does not include a previously constructed building used as a community-based residential facility as defined in s. 50.01 (1g) which serves 20 or fewer unrelated residents or an adult family home certified under s. 50.032 (1) (b).

(h) The term "safe" or "safety" as applied to an employment or a place of employment or a public building, shall mean such freedom from danger to the life, health, safety or welfare of employes or frequenters, or the public, or tenants, or fire fighters, and such reasonable means of notification, egress and escape in case of fire, and such freedom from danger to adjacent buildings or other property, as the nature of the employment, place of employment, or public building, will reasonably permit.

(i) The term "welfare" shall mean and include comfort, decency and moral well-being.

History: 1971 c. 185 ss. 1, 5; 1971 c. 228 ss. 15, 44; 1975 c. 413, 421; 1977 c. 29; 1983 a. 189 ss. 142, 143, 329 (4); 1985 a. 135 s. 83 (3); 1987 a. 161.

In a safe-place action by a plaintiff injured through contact with home power lines while installing aluminum trim on the premises, the power lines did not constitute a place of employment under (2) (a), for although a "process or operation" was carried on by the transmission of electricity through the lines, no person was employed by the power company on the premises at the time of the injury. Barthel v. Wisconsin Electric Power Co. 69 W (2d) 446, 230 NW (2d) 863.

Vocational school was not place of employment. Korenak v. Curative Workshop Adult Rehabil. Ctr. 71 W (2d) 77, 237 NW (2d) 43.

Right to make progress inspections and to stop construction for noncompliance with specifications is not exercise of control sufficient to make architect an owner under (2) (i). Luterbach v. Mochon etc., Inc. 84 W (2d) 1, 267 NW (2d) 13 (1978).

See note to 101.11, citing Leitner v. Milwaukee County, 94 W (2d) 186, 287 NW (2d) 803 (1980).

Elks club was "place of employment". Schmorrow v. Sentry Ins. Co., 138 W (2d) 31, 405 NW (2d) 672 (Ct. App. 1987).

101.02 Powers, duties and jurisdiction of department. (1) The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

(2) The department may sue and be sued.

(3) The department shall employ, promote and remove deputies, clerks and other assistants as needed, to fix their compensation, and to assign to them their duties; and shall appoint advisers who shall, without compensation except reimbursement for actual and necessary expenses, assist the department in the execution of its duties.

(4) The department shall collect, collate and publish statistical and other information relating to the work under its jurisdiction and shall make public reports in its judgment necessary.

(5) (a) The department shall conduct such investigations, hold such public meetings and attend or be represented at such meetings, conferences and conventions inside or outside

of the state as may, in its judgment, tend to better the execution of its functions.

(b) For the purpose of making any investigation with regard to any employment or place of employment or public building, the secretary may appoint, by an order in writing, any deputy who is a citizen of the state, or any other competent person as an agent whose duties shall be prescribed in such order.

(c) In the discharge of his or her duties such agent shall have every power of an inquisitorial nature granted in ss. 101.01 to 101.25 to the department, the same powers as a court commissioner with regard to the taking of depositions and all powers granted by law to a court commissioner relative to depositions.

(d) The department may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent the taking of all testimony bearing upon any investigation or hearing. The decision of the department shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude the taking of further testimony if the department so orders nor preclude further investigation.

(e) The secretary may direct any deputy who is a citizen to act as special prosecutor in any action, proceeding, investigation, hearing or trial relating to the matters within its jurisdiction.

(f) Upon the request of the department, the department of justice or district attorney of the county in which any investigation, hearing or trial had under ss. 101.01 to 101.25 is pending, shall aid therein and prosecute under the supervision of the department, all necessary actions or proceedings for the enforcement of those sections and all other laws of this state relating to the protection of life, health, safety and welfare, and for the punishment of all violations thereof.

(6) (a) All orders of the department in conformity with law shall be in force, and shall be prima facie lawful; and all such orders shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise upon judicial review thereof pursuant to ch. 227 or until altered or revoked by the department.

(b) All general orders shall take effect as provided in s. 227.22. Special orders shall take effect as therein directed.

(c) The department shall, upon application of any employer or owner, grant such time as may be reasonably necessary for compliance with any order.

(d) Any person may petition the department for an extension of time, which the department shall grant if it finds such an extension of time necessary.

(e) Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the department in the manner provided in ss. 101.01 to 101.25.

(f) Such petition for hearing shall be by verified petition filed with the department, setting out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable, and every issue to be considered by the department on the hearing. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. All hearings of the department shall be open to the public.

(g) Upon receipt of such petition, if the issues raised in such petition have theretofore been adequately considered, the department shall determine the same by confirming without hearing its previous determination, or if such hearing is necessary to determine the issues raised, the department shall order a hearing thereon and consider and determine the matter or matters in question at such times as shall be prescribed. Notice of the time and place of such hearing shall be given to the petitioner and to such other persons as the department may find directly interested in such decision.

(h) Upon such investigation, if it shall be found that the order complained of is unjust or unreasonable the department shall substitute therefor such other order as shall be just and reasonable.

(i) Whenever at the time of the final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the order of the department, the department shall grant such time as may be reasonably necessary for such compliance.

(7) (a) Nothing contained in ss. 101.01 to 101.25 shall be construed to deprive the common council, the board of aldermen, the board of trustees or the village board of any village or city, or the board of health of any municipality of any power or jurisdiction over or relative to any place of employment or public building, provided that, whenever the department shall, by an order, fix a standard of safety or any hygienic condition for employments or places of employment or public buildings, such order shall, upon the filing by the department of a copy thereof with the clerk of the village or city to which it may apply, be held to amend or modify any similar conflicting local order in any particular matters governed by said order. Thereafter no local officer shall make or enforce any order contrary thereto.

(b) Any person affected by any local order in conflict with an order of the department, may in the manner provided in s. 101.02 (6) (e) to (i), petition the department for a hearing on the ground that such local order is unreasonable and in conflict with the order of the department. The petition for such hearing shall conform to the requirements set forth for a petition in s. 101.02 (6) (e) to (i).

(c) Upon receipt of such petition the department shall order a hearing thereon, to consider and determine the issues raised by such appeal, such hearing to be held in the village, city or municipality where the local order appealed from was made. Notice of the time and place of such hearing shall be given to the petitioner and such other persons as the department may find directly interested in such decision, including the clerk of the municipality or town from which such appeal comes. If upon such investigation it shall be found that the local order appealed from is unreasonable and in conflict with the order of the department, the department may modify its order and shall substitute for the local order appealed from such order as shall be reasonable and legal in the premises, and thereafter the said local order shall, in such particulars, be void and of no effect.

(7m) Notwithstanding sub. (7) (a), no city, village or town may make or enforce any ordinance that is applied to any multifamily dwelling, as defined in s. 101.971 (2), and that does not conform to subch. VI and this section or is contrary to an order of the department under ss. 101.01 to 101.25, except that if a city, village or town has a preexisting stricter sprinkler ordinance, as defined in s. 101.975 (3) (a), that ordinance remains in effect, except that the city, village or town may take any action with regard to that ordinance that a political subdivision may take under s. 101.975 (3) (b).

(8) (a) No action, proceeding or suit to set aside, vacate or amend any order of the department or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have applied to the department for a hearing thereon at the time and as provided in s. 101.02 (6) (e) to (i), and in the petition therefor shall have raised every issue raised in such action.

(b) Every order of the department shall, in every prosecution for violation thereof, be conclusively presumed to be just, reasonable and lawful, unless prior to the institution of prosecution for such violation a proceeding for judicial review of such order shall have been instituted, as provided in ch. 227.

(9) A substantial compliance with the requirements of ss. 101.01 to 101.25, shall be sufficient to give effect to the orders of the department, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(10) Orders of the department under ss. 101.01 to 101.25 shall be subject to review in the manner provided in ch. 227.

(11) Proof by any person, firm or corporation employing a contractor to construct, repair, alter or improve any building or structure, that such contractor in performing such work has failed to comply with any applicable order or regulation of the department promulgated under this chapter shall constitute a defense to any action for payment by such contractor to the extent that it shall bar recovery for any part of the work which fails to comply. Advancements paid to the contractor for work which fails to comply as well as any reasonable amount expended to effectuate compliance with any applicable order or regulation may be recovered from such contractor by way of counterclaim or in a separate action. This section shall not apply where plans or specifications were prepared by an architect or engineer licensed to do business in this state and the contract performed in accordance therewith.

(12) Every day during which any person, persons, corporation or any officer, agent or employe thereof, shall fail to observe and comply with any order of the department or to perform any duty enjoined by ss. 101.01 to 101.25, shall constitute a separate and distinct violation of such order, or of said sections as the case may be.

(13) (a) If any employer, employe, owner, or other person violates ss. 101.01 to 101.25, or fails or refuses to perform any duty lawfully enjoined, within the time prescribed by the department, for which no penalty has been specifically provided, or fails, neglects or refuses to obey any lawful order given or made by the department, or any judgment or decree made by any court in connection with ss. 101.01 to 101.25, for each such violation, failure or refusal, such employer, employe, owner or other person shall forfeit and pay into the state treasury a sum not less than $10 nor more than $100 for each such offense.

(b) It shall be the duty of all officers of the state, the counties and municipalities, upon request of the department, to enforce in their respective departments, all lawful orders of the department, insofar as the same may be applicable and consistent with the general duties of such officers.

(14) (a) The secretary or any examiner appointed by the secretary may hold hearings and take testimony.

(b) Each witness who appears before the department by its order shall receive for attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the secretary, and charged to the proper appropriation for the department. No witness subpoenaed at the instance of an attorney under par. (cm) or at the instance of a party other than the department is entitled to compensation from the state for attendance or travel unless the department certifies that the testimony was material to the matter investigated.

(c) The department or any party may in any investigation cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts. The expense incurred by the state in the taking of such depositions shall be charged against the proper appropriations for the department.

(cm) A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding.

(d) A full and complete record shall be kept of all proceedings had before the department on any investigation and all testimony shall be taken down by the stenographer appointed by the department.

(15) (a) The department has such supervision of every employment, place of employment and public building in this state as is necessary adequately to enforce and administer all laws and all lawful orders requiring such employment, place of employment or public building to be safe, and requiring the protection of the life, health, safety and welfare of every employe in such employment or place of employment and every frequenter of such place of employment, and the safety of the public or tenants in any such public building. This paragraph does not apply to occupational safety and health issues covered by standards established and enforced by the federal occupational safety and health administration.

(b) The department shall administer and enforce, so far as not otherwise provided for in the statutes, the laws relating to child labor, laundries, stores, employment, licensed occupations, school attendance, bakeries, employment offices, intelligence offices and bureaus, manufacture of cigars, sweatshops, corn shredders, woodsawing machines, fire escapes and means of egress from buildings, scaffolds, hoists, ladders and other matters relating to the erection, repair, alteration or painting of buildings and structures, and all other laws protecting the life, health, safety and welfare of employes in employments and places of employment and frequenters of places of employment.

(c) Upon petition by any person that any employment or place of employment or public building is not safe, the department shall proceed, with or without notice, to make such investigation as may be necessary to determine the matter complained of.

(d) After such hearing as may be necessary, the department may enter such order relative thereto as may be necessary to render such employment or place of employment or public building safe.

(e) Whenever the department shall learn that any employment or place of employment or public building is not safe it may of its own motion, summarily investigate the same, with or without notice, and enter such order as may be necessary relative thereto.

(f) The department shall investigate, ascertain and determine such reasonable classifications of persons, employments, places of employment and public buildings, as shall be necessary to carry out the purposes of ss. 101.01 to 101.25.

(g) Any commissioner, the secretary or any deputy of the department may enter any place of employment or public building, for the purpose of collecting facts and statistics, examining the provisions made for the health, safety and welfare of the employes, frequenters, the public or tenants therein and bringing to the attention of every employer or owner any law, or any order of the department, and any failure on the part of such employer or owner to comply

therewith. No employer or owner may refuse to admit any commissioner, the secretary or any deputy of the department to his or her place of employment or public building.

(h) The department shall investigate, ascertain, declare and prescribe what safety devices, safeguards or other means or methods of protection are best adapted to render the employes of every employment and place of employment and frequenters of every place of employment safe, and to protect their welfare as required by law or lawful orders.

(i) The department shall ascertain and fix such reasonable standards and shall prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employes in employments and places of employment or frequenters of places of employment.

(j) The department shall ascertain, fix and order such reasonable standards or rules for the construction, repair and maintenance of places of employment and public buildings, as shall render them safe. No such standard or rule may increase the maximum energy use, as defined in s. 101.08 (1) (f), allowed for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2) or decrease the minimum energy efficiency required for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2).

(jm) Paragraphs (a) to (j) do not apply to public employe occupational safety and health issues covered under s. 101.055.

(k) Every employer and every owner shall furnish to the department all information required by it to carry into effect ss. 101.01 to 101.25, and shall make specific answers to all questions submitted by the department relative thereto.

(L) Any employer receiving from the department any blanks calling for information required by it to carry into effect ss. 101.01 to 101.25, with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case he is unable to answer any question, he shall give a good and sufficient reason for such failure, and said answer shall be verified under oath by the employer, or by the president, secretary or other managing officer of the corporation, if the employer is a corporation, and returned to the department at its office within the period fixed by the department.

(16) The department shall comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

(17) The department may establish a data center to provide data processing services to the department, and to other state agencies on a contractual basis. If the department establishes a center, the department shall fix fees, and collect fees from the department, for services provided to the department by the data center. The fees for services shall equal the cost of providing the services.

(18) The department may establish a schedule of fees for publications and seminars provided by the department for which no fee is otherwise authorized, required or prohibited by statute. Fees established under this subsection for publications and seminars provided by the department may not exceed the actual cost incurred in providing those publications and seminars.

History: 1971 c. 185 ss. 1 to 5, 7; 1971 c. 228 ss. 16, 42; Stats. 1971 s. 101.02; 1975 c. 39, 94; 1977 c. 29; 1981 c. 360; 1983 a. 410; 1985 a. 182 s. 57; 1987 a. 343; 1989 a. 31, 56, 139; 1991 a. 39, 269.

Cross Reference: See 66.122 for provision authorizing special inspection warrants.

Safety rules promulgated under (15) (h) applied to frequenter of new home construction site. Failure to instruct jury that violation of safety standard constituted negligence per se was reversible error. Nordeen v. Hammerlund, 132 W (2d) 164, 389 NW (2d) 878 (Ct. App. 1986)

The department's authority to adopt rules covering the safety of frequenters while engaged in recreational activities at youth camps is limited by 101.10 (2), (3), (4) and (5), Stats. 1969, to orders relating to the construction of public buildings on the premises, but only as to the structural aspects thereof, and by 101.01 (1), Stats. 1969, as to places of employment, but only as to those camps operated for profit. 59 Atty. Gen. 35.

The department has the power to promulgate reasonable safety standards for the protection of employes while working in and around motor vehicles used on the job. 59 Atty. Gen. 181.

The department may inspect those parts of boarding homes designed for 3 or more persons where employes work or those used by the public, but not interiors of private dwellings. It has no authority to license or register boarding homes nor to charge an inspection fee based upon number of beds or rooms. 62 Atty. Gen. 107.

The department cannot enact a rule which would alter the common law rights and duties of adjoining landowners with respect to lateral support, although the department may specify 30 days as the minimum safety period in which an excavating owner must give notice to a neighbor of an intent to excavate. 62 Atty. Gen. 287.

101.025 Ventilation requirements for public buildings and places of employment. (1) Notwithstanding s. 101.02 (1) and (15), any rule which requires the intake of outside air for ventilation in public buildings or places of employment shall establish minimum quantities of outside air that must be supplied based upon the type of occupancy, the number of occupants, areas with toxic or unusual contaminants and other pertinent criteria determined by the department. The department shall set standards where the mandatory intake of outside air may be waived. The department may waive the requirement for the intake of outside air where the owner has demonstrated that the resulting air quality is equivalent to that provided by outdoor air ventilation. The department may not waive the mandatory intake of outside air unless smoking is prohibited in the building or place of employment. In this subsection "smoking" means carrying any lighted tobacco product.

(2) In the case where the intake of outside air is waived, any person may file a written complaint with the department requesting the enforcement of ventilation requirements for the intake of outside air for a particular public building or place of employment. The complaints shall be processed in the same manner and be subject to the same procedures as provided in s. 101.02 (6) (e) to (i) and (8).

(3) The department may order the owner of any public building or place of employment which is the subject of a complaint under sub. (2) to comply with ventilation requirements adopted under sub. (1) unless the owner can verify, in writing, that the elimination of the provision for outside air in the structure in question does not impose a significant detriment to the employes or frequenters of the structure and that the health, safety and welfare of the occupants is preserved. Upon receipt of a written verification from the owner, the department shall conduct an investigation, and the department may issue an order to comply with ventilation requirements under sub. (1) if it finds that the health, safety and welfare of the employes or frequenters of the structure in question is best served by reinstating the ventilation requirements for that structure.

(4) For ventilation systems in public buildings and places of employment, the department shall adopt rules setting:

(a) A maximum rate of leakage allowable from outside air dampers when the dampers are closed.

(b) Maintenance standards for ventilation systems in public buildings and places of employment existing on April 30, 1980.

(5) To the extent that the historic building code applies to the subject matter of this section, this section does not apply to a qualified historic building if the owner elects to be subject to s. 101.121.

History: 1979 c. 221; 1981 c. 341

101.03 Testimonial powers of commissioners, secretary and deputy. Each of the commissioners, secretary or deputy secretary may certify to official acts, and take testimony.

History: 1971 c. 228 s. 21; Stats. 1971 s. 101.03; 1977 c. 29.

101.04 Labor and industry review commission. (1) The commission shall issue its decision in any case where a petition for review is filed under ch. 102 or 108 or s. 66.191, 1981 stats., or s. 40.65 (2), 101.22 (10), 101.223 (4), 111.39, 303.07 (7) or 303.21.

(2) Notwithstanding s. 227.11, the commission may not promulgate rules except that it may promulgate its rules of procedure.

(3) The commission may employ professional and other persons to assist in the execution of its duties.

History: 1977 c. 29; 1981 c. 278 s. 6; 1981 c. 334 s. 25 (2); 1983 a. 122; 1983 a. 191 s. 6; 1985 a. 182 s. 57; 1987 a. 403 s. 256; 1989 a. 31; 1991 a. 295.

101.05 Exempt buildings and projects. (1) No building code adopted by the department under this chapter shall affect buildings located on research or laboratory farms of public universities or other state institutions and used primarily for housing livestock or other agricultural purposes.

(2) A bed and breakfast establishment, as defined under s. 50.50 (1), is not subject to rules on residential occupancy or to other building codes adopted by the department under this subchapter, except that the uniform dwelling code specified in s. 101.62 applies to the 3rd floor level of a bed and breakfast establishment that uses, other than as storage, the 3rd floor level of the bed and breakfast establishment structure.

(3) No standard, rule, code or regulation of the department under this subchapter applies to construction undertaken by the state for the purpose of renovation of the state capitol building.

History: 1971 c. 329; 1983 a. 163; 1983 a. 538 s. 271; 1989 a. 31, 354.

101.055 Public employe safety and health. (1) INTENT. It is the intent of this section to give employes of the state, of any state agency and of any political subdivision of this state rights and protections relating to occupational safety and health equivalent to those granted to employes in the private sector under the occupational safety and health act of 1970 (5 USC 5108, 5314, 5315 and 7902; 15 USC 633 and 636; 18 USC 1114; 29 USC 553 and 651 to 678; 42 USC 3142-1 and 49 USC 1421).

(2) DEFINITIONS. In this section, unless the context requires otherwise:

(a) "Agency" means an office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, and includes the legislature and the courts.

(b) "Public employe" or "employe" means any employe of the state, of any state agency or of any political subdivision of the state.

(c) "Public employe representative" or "employe representative" means an authorized collective bargaining agent, an employe who is a member of a workplace safety committee or any person chosen by one or more public employes to represent those employes.

(d) "Public employer" or "employer" means the state, any state agency or any political subdivision of the state.

(3) STANDARDS. (a) The department shall adopt, by administrative rule, standards to protect the safety and health of public employes. The standards shall provide protection at least equal to that provided to private sector employes under standards promulgated by the federal occupational safety and health administration, but no rule may be adopted by the department which defines a substance as a "toxic substance" solely because it is listed in the latest printed edition of the national institute for occupational safety and health registry of toxic effects of chemical substances. The department shall revise the safety and health standards adopted for public employes as necessary to provide protection at least equal to that provided to private sector employes under federal occupational safety and health administration standards, except as otherwise provided in this paragraph. Notwithstanding ss. 35.93 and 227.21, if the standards adopted by the department are identical to regulations adopted by a federal agency, the standards need not be duplicated as provided in ss. 35.93 and 227.21 if the identical federal regulations are made available to the public at a reasonable cost, promulgated in accordance with ch. 227, except s. 227.21, and distributed in accordance with s. 35.84.

(b) Standards adopted by the department shall contain appropriate provisions for informing employes about hazards in the workplace, precautions to be taken and emergency treatment practices to be used in the event of an accident or overexposure to a toxic substance. Standards shall include provisions for providing information to employes through posting, labeling or other suitable means. Where appropriate, standards adopted by the department shall contain provisions for the use of protective equipment and technological procedures to control hazards.

(c) Standards adopted by the department relating to toxic substances or harmful physical agents, such as noise, temperature extremes and radiation, shall assure to the extent feasible that no employe will suffer material impairment of health or functional capacity through regular exposure. Where appropriate, standards adopted by the department relating to toxic substances and physical agents shall require the monitoring and measuring of employes' exposure to the substance or agent.

(4) VARIANCES. (a) *Procedure.* A public employer may apply to the department for a temporary variance under par. (b), an experimental variance under par. (c) or a permanent variance under par. (d) to any standard adopted under sub. (3) by filing a petition with the department specifying the standard for which the public employer seeks a variance and the reasons for which the variance is sought. In addition, the public employer seeking the variance shall provide a copy of the application to the appropriate public employe representatives and post a statement at the place where notices to employes are normally posted. The posted statement shall summarize the application, specify a place where employes may examine the application and inform employes of their right to request a hearing. Upon receipt of a written request by the employer, an affected employe or a public employe representative, the department shall hold a hearing on the application for a variance and may make further investigations. If a hearing has been requested, the department may not issue a variance until a hearing has been held. A variance issued under par. (b), (c) or (d) shall prescribe the methods and conditions which the employer must adopt and maintain while the variance is in effect.

(b) *Temporary variance.* The department may grant a temporary variance before a standard goes into effect if the public employer complies with par. (a) and establishes that it is unable to comply with a standard by the standard's effective date because of unavailability of professional or technical personnel or of necessary materials or equipment or because necessary construction or alteration of facilities cannot be completed by the effective date. The employer shall also show that it is taking all available steps to safeguard employes against the hazard covered by the standard from

which the variance is sought and shall possess and describe a program for coming into compliance with the standard as quickly as possible. If a hearing is requested, the department may state in writing that noncompliance with the standard is permitted for 180 days or until a decision is made after the hearing, whichever is earlier. A temporary variance shall be in effect for the period of time needed by the employer to achieve compliance with the standard or for one year, whichever is shorter. A temporary variance may be renewed no more than twice, and only if the public employer files an application for renewal at least 90 days before expiration of the temporary variance and complies with this paragraph and par. (a).

(c) *Experimental variance.* The department may grant an experimental variance if the public employer complies with par. (a) and the department determines that the variance is necessary to permit the employer to participate in an experiment approved by the department to demonstrate or validate new or improved techniques to safeguard the health or safety of employes.

(d) *Permanent variance.* The department may grant a permanent variance if the public employer complies with par. (a) and the department finds the employer has demonstrated by a preponderance of the evidence that the conditions and methods the employer uses or proposes to use provide employment or a place of employment which is as safe and healthful as that provided under the standard from which the employer seeks a permanent variance. A permanent variance may be modified or revoked upon application by the employer, an affected employe, a public employe representative or the department and after opportunity for a hearing, but not sooner than 6 months after issuance of the permanent variance.

(5) INSPECTIONS. (a) A public employe or public employe representative who believes that a safety or health standard or variance is being violated, or that a situation exists which poses a recognized hazard likely to cause death or serious physical harm, may request the department to conduct an inspection. The department shall provide forms which may be used to make a request for an inspection. If the employe or public employe representative requesting the inspection so designates, that person's name shall not be disclosed to the employer or any other person, including any state agency except the department. If the department decides not to make an inspection, it shall notify in writing any employe or public employe representative making a written request. A decision by the department not to make an inspection in response to a request under this subsection is reviewable by the department under sub. (6) (a) 3 and is subject to judicial review under sub. (6) (a) 4.

(b) An authorized representative of the department may enter the place of employment of a public employer at reasonable times, within reasonable limits and in a reasonable manner to determine whether that employer is complying with safety and health standards and variances adopted under subs. (3) and (4) or to investigate any situation which poses a recognized hazard likely to cause death or serious physical harm to a public employe regardless of whether a standard is being violated. No public employer may refuse to allow a representative of the department to inspect a place of employment. If an employer attempts to prevent a representative of the department from conducting an inspection, the department may obtain an inspection warrant under s. 66.122. No notice may be given before conducting an inspection under this paragraph unless that notice is expressly authorized by the secretary or is necessary to enhance the effectiveness of the inspection.

(c) A representative of the employer and a public employe representative shall be permitted to accompany a representative of the department on an inspection made under this subsection to aid in the inspection and to notify the inspector of any possible violation of a safety and health standard or variance or of any situation which poses a recognized hazard likely to cause death or serious physical harm to a public employe. The public employe representative accompanying the representative of the department on an inspection shall, with respect to payment received or withheld for time spent accompanying the department representative, receive treatment equal to that afforded to any representative of the employer who is present during an inspection, except that a public employer may choose to allow only one public employe representative at a time to accompany the department representative on an inspection without a reduction in pay. If a representative of the employer does not accompany the representative of the department on an inspection, at least one public employe representative shall be allowed to accompany the representative of the department on the inspection without a loss of pay. Where no public employe representative accompanies the representative of the department on an inspection, the representative of the department shall consult with a reasonable number of employes concerning matters of employe safety and health. The department shall keep a written record of the name of any person accompanying the department representative during the inspection, the name of any employe consulted and the name of any authorized collective bargaining agent notified of the inspection by the public employer under sub. (7) (e).

(d) When making an inspection, a representative of the department may question privately any public employer or employe. No public employe shall suffer a loss in wages for time spent responding to any questions under this paragraph.

(e) A representative of the department shall have access to the records required under sub. (7) (a) and (b) and to any other records maintained by a public employer which are related to the purpose of the inspection.

(6) ENFORCEMENT. (a) *Orders.* 1. Issuance. If, as a result of inspection, the department finds a violation of a safety and health standard or variance or a condition which poses a recognized hazard likely to cause death or serious physical harm to a public employe, the department shall issue an order to the employer. A public employer who is in compliance with any standards or variances is deemed to be in compliance to the extent of the condition, practice, means, method, operation or process covered by that standard. The order shall describe the nature of the violation and the period of time within which the employer shall correct the violation. The department shall send a copy of the order to the top elected official of the political subdivision of which the public employer is a part and to the appropriate collective bargaining agent for the employes affected by the violation cited in the order, if a collective bargaining agent exists. If the order is issued as a result of an inspection requested by an employe or public employe representative, the department shall also send a copy of the order to that employe or public employe representative. Upon receipt of an order, the employer shall post the order at or near the site of violation for 3 days, or until the violation is abated, whichever is longer. The order shall be posted regardless of whether there has been a petition for a variance under sub. (4) or for a hearing under subd. 3. The employer shall ensure that the order is not altered, defaced or covered by other materials.

2. Decision not to issue. If the department decides not to issue an order in response to a request for inspection filed under sub. (5) (a), it shall mail written notice of that decision

to the public employe or public employe representative who requested the investigation. A decision under this subdivision is reviewable by the department under subd. 3.

3. Review by department. A public employer or employe affected by an order or decision issued by the department under subd. 1 or 2 or sub. (5) (a) may obtain review of the order or decision by filing with the department a petition requesting a hearing and specifying the modification or change desired in the order or decision. A petition for a hearing must be filed with the department not later than 30 days after the order is issued or the written notification is mailed. If the department denies the request for a hearing, the denial shall be in writing and shall state the reasons for denial. If the department holds a hearing, it shall issue an order affirming, vacating or modifying the order or decision under subd. 1 or 2 or sub. (5) (a), within 30 days after the close of the hearing.

4. Judicial review. Orders and denials of requests for hearings under subd. 3 are subject to judicial review under ch. 227.

(b) *Injunction.* Whenever a hazard exists in a public employer's place of employment which could reasonably be expected to cause death or serious physical harm before other procedures under this section can be carried out, the department may seek relief through an injunction or an action for mandamus as provided in chs. 783 and 813. If the department seeks an injunction or an action for mandamus, it shall notify the affected public employer and public employes of the hazard for which relief is being sought.

(7) EMPLOYER OBLIGATIONS FOR RECORD KEEPING AND NOTIFICATION. (a) A public employer shall maintain records of work-related injuries and illnesses and shall make reports of these injuries and illnesses to the department at time intervals specified by rule of the department. These records shall be available to the department, the employer's employes and the employes' representatives. This paragraph does not authorize disclosure of patient health care records except as provided in ss. 146.82 and 146.83.

(b) A public employer shall maintain records of employe exposures to toxic materials and harmful physical agents which are required by safety and health standards adopted under sub. (3) to be monitored or measured. A representative of the department and any affected public employe and his or her public employe representative shall be permitted to observe the monitoring and measuring and shall have access to the employer's records of the monitoring and measuring. This paragraph does not authorize disclosure of patient health care records except as provided in ss. 146.82 and 146.83.

(c) A public employer shall promptly notify a public employe who has been or is being exposed to any toxic material or harmful physical agent at a level which exceeds that prescribed by the safety and health standards of the department and shall inform that public employe of any corrective action being taken.

(d) A public employer shall notify its employes of their protections and rights under this section by posting a summary of these protections and rights in the place of employment where notices to employes are usually posted.

(e) When a representative of the department enters a public employer's place of employment to make an inspection, the employer shall notify an appropriate representative of any collective bargaining unit which represents the employer's employes. The employer shall give the name of the collective bargaining unit representatives notified of the inspection to the department representative making the inspection.

(8) PROTECTION OF PUBLIC EMPLOYES EXERCISING THEIR RIGHTS. (a) No public employer may discharge or otherwise discriminate against any public employe it employs because the public employe filed a request with the department, instituted or caused to be instituted any action or proceeding relating to occupational safety and health matters under this section, testified or will testify in such a proceeding, reasonably refused to perform a task which represents a danger of serious injury or death or exercised any other right related to occupational safety and health which is afforded by this section.

(b) A state employe who believes that he or she has been discharged or otherwise discriminated against by a public employer in violation of par. (a) may file a complaint with the personnel commission alleging discrimination or discharge, within 30 days after the employe received knowledge of the discrimination or discharge. A public employe other than a state employe who believes that he or she has been discharged or otherwise discriminated against by a public employer in violation of par. (a) may file a complaint with the division of equal rights of the department alleging discrimination or discharge, within 30 days after the employe received knowledge of the discrimination or discharge.

(c) Upon receipt of a complaint, the personnel commission or the division of equal rights, whichever is applicable, shall, except as provided in s. 230.45 (1m), investigate the complaint and determine whether there is probable cause to believe that a violation of par. (a) has occurred. If the personnel commission or the division of equal rights finds probable cause it shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved, the personnel commission or the division of equal rights shall hold a hearing on the complaint within 60 days after receipt of the complaint unless both parties to the proceeding agree otherwise. Within 30 days after the close of the hearing, the personnel commission or the division of equal rights shall issue its decision. If the personnel commission or the division of equal rights determines that a violation of par. (a) has occurred, it shall order appropriate relief for the employe, including restoration of the employe to his or her former position with back pay, and shall order any action necessary to ensure that no further discrimination occurs. If the personnel commission or the division of equal rights determines that there has been no violation of par. (a), it shall issue an order dismissing the complaint.

(d) Orders of the personnel commission and the division of equal rights under this subsection are subject to judicial review under ch. 227.

(9) COORDINATION OF STATE SAFETY AND HEALTH PROGRAMS. The department shall coordinate state safety and health programs and shall plan and conduct comprehensive safety and health loss prevention programs for state employes and facilities.

(10) EXCEPTION FOR CERTAIN POLITICAL SUBDIVISIONS. The department is not required to expend any resources to enforce this section in political subdivisions having 10 or less employes unless it has received a complaint.

History: 1981 c. 360, 391; 1985 a. 182 s. 57; 1991 a. 39.

101.07 Flushing devices for urinals. The department shall not promulgate any rules which either directly or indirectly prohibit the use of manual flushing devices for urinals. The department shall take steps to encourage the use of manual flushing devices for urinals.

History: 1977 c. 418.

101.08 Fluorescent lamp ballast energy efficiency. (1) DEFINITIONS. In this section:

(b) "Ballast efficacy factor" means the ratio of the relative light output of a fluorescent lamp ballast containing a fluorescent lamp, expressed as a percent, to the power input, expressed in watts at the test conditions specified under the American National Standards Institute standard C82.2-1977.

(c) "Covered product" means any consumer product, as defined in 42 USC 6291 (a) (1), which is not designed solely for use in a recreational vehicle or other mobile equipment and which is subject to an energy conservation standard under sub. (2).

(d) "Energy" means electricity, fossil fuel or other fuel specified under 42 USC 6293.

(e) "Energy conservation standard" means either of the following:

1. A performance standard which prescribes a minimum level of energy efficiency, as defined in 42 USC 6291 (a) (5) or a maximum quantity of energy use for a consumer product, as defined in 42 USC 6291 (a) (1), determined under test procedures.

2. A design requirement which is related to energy use for any consumer product, as defined in 42 USC 6291 (a) (1).

(f) "Energy use" means the quantity of energy directly consumed by a consumer product, as defined in 42 USC 6291 (a) (1), at point of use, determined under test procedures.

(g) "Fluorescent lamp ballast" means a device designed to operate a fluorescent lamp by providing a starting voltage and current and limiting the current during normal operation.

(i) "F40T12" means a tubular fluorescent lamp which is a nominal 40 watts, which has a 48 inch tube length and a 1.5 inch diameter, and which conforms to the American National Standards Institute standard C78.1-1978.

(j) "F96T12" means a tubular fluorescent lamp which is a nominal 75 watts, which has a 96 inch tube length and a 1.5 inch diameter and which conforms to the American National Standards Institute standard C78.3-1978.

(k) "Manufacturer" means any person who manufactures, produces, assembles or imports into the customs territory of the United States any consumer product, as defined in 42 USC 6291 (a) (1).

(n) "Test procedure" means a test procedure prescribed by the secretary of the federal department of energy under 42 USC 6293.

(2) FLUORESCENT LAMP BALLASTS. (a) Except as provided in par. (b), the ballast efficacy factor of any fluorescent lamp ballast manufactured on or after May 3, 1988, for sale at retail in this state or for installation in this state under a construction contract may not be less than:

1. For one F40T12 with 40 total nominal lamp watts and a ballast input voltage of 120 or 277, 1.805.

2. For 2 F40T12 lamps each with 80 total nominal lamp watts operated together:

a. With a ballast input voltage of 120, 1.060.

b. With a ballast input voltage of 277, 1.050.

3. For 2 F96T12 lamps each with 150 total nominal lamp watts and with a ballast input voltage of 120 or 277 operated together, 0.570.

(b) Paragraph (a) does not apply to any fluorescent lamp ballast with any of the following characteristics:

1. A dimming capability.

2. Designed for use in ambient temperatures of zero degrees Fahrenheit or less.

3. Having a power factor of less than 0.75 prior to January 1, 1995.

4. Designed to operate a single lamp and having a power factor of less than 0.60 on or after January 1, 1995.

(6) CERTIFICATION. Beginning on the first day of the 4th month after any energy conservation standard under sub. (2) first takes effect for a consumer product manufactured for sale at retail in this state or for installation in this state under a construction contract, the manufacturer of that product shall submit a certification statement to the department for each type of model of that product manufactured on or after the date on which the energy conservation standard first takes effect for that product. The statement shall certify that the product is in compliance with that energy conservation standard. The manufacturer shall submit a revised certification statement on any model of that product the design of which is changed in any way that may reasonably be expected to affect energy use. The department shall prescribe the form and contents of the certification statement. The department shall compile and make available to the public a list of all products for which it has received a certification statement under this subsection.

(7) INVENTORIES AND SALES LIMITED. (a) Beginning on the first day of the 7th month after the effective date of any energy conservation standard under sub. (2), no person may order or purchase, for the purpose of installing in this state under a construction contract or selling at retail in this state, any covered product which has not been certified under sub. (6).

(b) Beginning on the first day of the 13th month after the effective date of any energy conservation standard under sub. (2), no person may:

1. Install in this state under a construction contract, sell or display for sale in this state any covered product manufactured on or after that effective date unless it has been certified under sub. (6).

2. Sell at retail in this state any covered product which is manufactured before that date and which does not meet the energy conservation standard applicable to that covered product unless the person informs the buyer, prior to sale of the covered product, that the covered product does not meet that energy conservation standard.

3. Contract to install in this state in any dwelling, as defined in s. 101.61 (1), as part of the construction of that dwelling, any covered product which is manufactured before that date and which does not meet the energy conservation standard applicable to that covered product unless the person informs the person contracting for the construction, prior to the closing of the contract, that the covered product does not meet that energy conservation standard.

(8) TESTING PROCEDURES. Every manufacturer shall provide for the testing of each type of model of any covered product which it manufactures, using test procedures which are applicable to that model and which have been established by the federal government or by the department if the federal government has not established any test procedure applicable to that model. The results obtained from the testing under this subsection shall be included in the certification statement of each type of covered product model as required under sub. (6).

(9) ENFORCEMENT. To ensure compliance with this section, the department of agriculture, trade and consumer protection shall respond to reasonable consumer complaints related to the requirements of this section and may conduct inspections of the business places of persons who sell covered products and construction sites where appliances are being installed. The department of agriculture, trade and consumer protection may act under ch. 93 to administer this subsection.

(10) PENALTIES. (a) Any person who violates this section, except sub. (6), or any rule promulgated under this section, except sub. (6), shall forfeit not less than $50 nor more than

$200 for each violation. Each sale of a covered product which is not in compliance with the requirements of sub. (7) constitutes a single violation.

(b) Any manufacturer who submits a fraudulent certification statement under sub. (6) shall forfeit not less than $1,000 nor more than $10,000 for each violation.

History: 1987 a. 343.

101.09 Storage of flammable and combustible liquids. (1) DEFINITIONS. In this section:

(a) "Combustible liquid" means a liquid having a flash point at or above 100 degrees fahrenheit and below 200 degrees fahrenheit.

(b) "Flammable liquid" means a liquid having a flash point below 100 degrees fahrenheit.

(c) "Flash point" means the minimum temperature at which a flammable or combustible liquid will give off sufficient flammable vapors to form an ignitable mixture with air near the surface of the liquid or within the vessel which contains the liquid.

(d) "Waters of the state" has the meaning specified under s. 144.01 (19).

(2) STORAGE TANKS. (a) Except as provided under pars. (b) to (d), every person who constructs, owns or controls a tank for the storage, handling or use of flammable or combustible liquid shall comply with the standards adopted under sub. (3).

(b) This section does not apply to storage tanks which require a hazardous waste license under s. 144.64.

(c) This section does not apply to storage tanks which are installed above ground level and which are less than 5,000 gallons in capacity.

(d) This section does not apply to a pressurized natural gas pipeline system regulated under 49 CFR 192 and 193.

(3) RULES. (a) The department shall promulgate by rule construction, maintenance and abandonment standards applicable to tanks for the storage, handling or use of flammable and combustible liquids, and to the property and facilities where the tanks are located, for the purpose of protecting the waters of the state from harm due to contamination by flammable and combustible liquids. The rule shall comply with ch. 160. The rule may include different standards for new and existing tanks, but all standards shall provide substantially similar protection for the waters of the state. The rule shall include maintenance requirements related to the detection and prevention of leaks. The rule may require any person supplying heating oil to any noncommercial storage tank for consumptive use on the premises to submit to the department, within 30 days after the department requests, the location, contents and size of any such tank.

(b) The department may transfer any information which the department receives under par. (a) to any other agency or governmental unit. The department and any such agency shall treat the name of the owner and the location of any noncommercial storage tank which stores heating oil for consumptive use on the premises, required to be submitted to the department under par. (a), as confidential and shall not permit inspection or copying under s. 19.35 of any record containing the information.

(4) ENFORCEMENT. (a) The department shall enforce this section.

(b) The department shall issue orders directing and requiring compliance with the rules and standards of the department adopted under this section whenever, in the judgment of the department, the rules or standards are threatened with violation, are being violated or have been violated.

(c) The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the order by injunctive and other appropriate relief.

(5) PENALTIES. Any person who violates this section or any rule or order adopted under this section shall forfeit not less than $10 nor more than $1,000 for each violation. Each violation of this section or any rule or order under this section constitutes a separate offense and each day of continued violation is a separate offense.

History: 1983 a. 410; 1987 a. 399; 1991 a. 269.

101.11 Employer's duty to furnish safe employment and place. (1) Every employer shall furnish employment which shall be safe for the employes therein and shall furnish a place of employment which shall be safe for employes therein and for frequenters thereof and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employes and frequenters. Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building as to render the same safe.

(2) (a) No employer shall require, permit or suffer any employe to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards, or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employes and frequenters; and no employer or owner, or other person shall hereafter construct or occupy or maintain any place of employment, or public building, that is not safe, nor prepare plans which shall fail to provide for making the same safe.

(b) No employe shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, nor interfere in any way with the use thereof by any other person, nor shall any such employe interfere with the use of any method or process adopted for the protection of any employe in such employment or place of employment or frequenter of such place of employment, nor fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employes or frequenters.

(3) This section applies to community-based residential facilities as defined in s. 50.01 (1g).

History: 1971 c. 185; Stats. 1971 s. 101.11; 1975 c. 413; 1987 a. 161 s. 13m.

See note to 895.045, citing Lovesee v. Allied Development Corp. 45 W (2d) 340, 173 NW (2d) 196.

Where an apartment complex was managed for a fee by a management company, the company was carrying on a business there. Reduction of rent to one of the tenants for caretaking services constituted employment on the premises. A tenant who fell on the icy parking lot after the caretaker knew of the condition need only prove negligence in maintaining the premises. Wittka v. Hartnell, 46 W (2d) 374, 175 NW (2d) 248.

A public sidewalk is not made a place of employment merely because an employer constructed it and kept it free of ice and snow. Petroski v. Eaton Yale & Towne, Inc. 47 W (2d) 617, 178 NW (2d) 53.

The fact that a violation of the safe-place statute is found puts the burden on the owner to rebut the presumption of causation but does not establish as a matter of law that the defendant's negligence was greater than the plaintiff's. Frederick v. Hotel Investments, Inc. 48 W (2d) 429, 180 NW (2d) 562.

A store must be held to have had constructive notice of a dangerous condition when it displayed shaving cream in spray cans on a counter and a 70-year old woman fell in cream sprayed on the white floor. Steinhorst v. H. C. Prange Co. 48 W (2d) 679, 180 NW (2d) 525.

Mere existence of a step up into a hospital lavatory is not an unsafe condition. Prelipp v. Wausau Memorial Hospital, 50 W (2d) 27, 183 NW (2d) 24.

Failure to light a parking lot can support a safe-place action but the evidence must show how long the light was burned out to constitute constructive notice. Low v. Siewert, 54 W (2d) 251, 195 NW (2d) 451.

A parking lot owned by a city which is a continuation of a store parking lot, used by the public for attending the city zoo and the store, even though maintained by the private property owner, is not a place of employment. Gordon v. Schultz Savo Stores, Inc. 54 W (2d) 692, 196 NW (2d) 633.

Detailed construction specifications and the presence of engineers to insure compliance does not manifest control over the project so as to make the commission liable. Berger v. Metropolitan Sewerage Comm. 56 W (2d) 741, 203 NW (2d) 87.

In a safe-place action the employe's contributory negligence is less when his act or omission has been committed in the performance of his duties. McCrossen v. Nekoosa-Edwards Paper Co. 59 W (2d) 245, 208 NW (2d) 148.

A pier at a beach open to the public for a fee constitutes a place of employment. Any distinction between licensees and invitees is irrelevant, and the statute imposes a higher duty as to safety than the common law. Gould v. Allstar Ins. Co. 59 W (2d) 355, 208 NW (2d) 388.

A private road on the ground of a private racetrack which connected the track and a parking lot is subject to this section as to frequenters. Gross v. Denow, 61 W (2d) 40, 212 NW (2d) 2.

Causal negligence sustained where elevator had by-pass switch in violation of Wis. Adm. Code section Ind 4.60 (1) (e), May, 1971. Sampson v. Laskin, 66 W (2d) 318, 224 NW (2d) 594.

A one-eighth-inch variance in elevation between the sides of the ramp joint was too slight as a matter of law to constitute a violation of the safe-place statute. Balas v. St. Sebastian's Congregation, 66 W (2d) 421, 225 NW (2d) 428.

An employer may be held liable under the safe-place statute not only where he fails to construct or maintain safety-structures such as a fence, but also where he knowingly permits employes or frequenters to venture into a dangerous area. Kaiser v. Cook, 67 W (2d) 460, 227 NW (2d) 50.

Safe-place statute applies only to unsafe physical conditions, not to activities conducted on premises. Korenak v. Curative Workshop Adult Rehabil. Ctr. 71 W (2d) 77, 237 NW (2d) 43.

Discussion of contractor's liability under safe-place law for injury to subcontractor's employe. Barth v. Downey Co., Inc. 71 W (2d) 775, 239 NW (2d) 92.

Time element of constructive notice of safe-place defect discussed. Buerosse v. Dutchland Dairy Restaurants, 72 W (2d) 239, 240 NW (2d) 176.

Retention of control and supervision is required for recovery against general contractor by subcontractor's employe. Lemacher v. Circle Const. Co., Inc. 72 W (2d) 245, 240 NW (2d) 179.

The length of time a safe-place defect must exist, in order to impose constructive notice of it on an owner, varies according to the nature of the business, the nature of the defect, and the public policy involved. May v. Skelley Oil Co. 83 W (2d) 30, 264 NW (2d) 574 (1978).

See note to 895.045, citing Brons v. Bischoff, 89 W (2d) 80, 277 NW (2d) 854 (1979).

Indemnity in safe-place action creates effect identical to that of contribution. Barrons v. J. H. Findorff & Sons, Inc. 89 W (2d) 444, 278 NW (2d) 827 (1979).

Non-negligent indemnitor was liable to indemnitee whose breach of safe-place duty was solely responsible for damages, under circumstances of case. Dykstra v. Arthur G. McKee & Co. 92 W (2d) 17, 284 NW (2d) 692 (Ct. App. 1979); (aff'd) 100 W (2d) 120, 301 NW (2d) 201 (1981).

Architect's liability discussed. Hortman v. Becker Const. Co., Inc. 92 W (2d) 210, 284 NW (2d) 621 (1979).

Safe employment and safe place of employment distinguished. Leitner v. Milwaukee County, 94 W (2d) 186, 287 NW (2d) 803 (1980).

Evidence of prior accident was admissible to prove notice of unsafe condition. Callan v. Peters Construction Co. 94 W (2d) 225, 288 NW (2d) 146 (Ct. App. 1979).

That lease allocates safe place duties between owner and employer/tenant does not nullify mutually shared statutory duties. Hannebaum v. Dirienzo & Bomier, 162 W (2d) 488, 469 NW (2d) 900 (Ct. App. 1991).

Safe place duty to keep swimming pool in a condition to protect customers from injury is overcome when person unreasonably dives into pool of unknown depth. Wisnicky v. Fox Hills Inn, 163 W (2d) 1023, 473 NW (2d) 523 (Ct. App. 1991).

Safe-place statute not extended to vehicles. Hopkins v. Ros Stores, Inc., 750 F Supp. 379 (1990).

101.111 Excavations; protection of adjoining property and buildings. (1) DEFINITION. In this section "excavator" means any owner of an interest in land making or causing to be made an excavation.

(2) CAVE-IN PREVENTION. Any excavator shall protect the excavation site in such a manner so as to prevent the soil of adjoining property from caving in or settling.

(3) LIABILITY FOR UNDERPINNING AND FOUNDATION EXTENSIONS. (a) If the excavation is made to a depth of 12 feet or less below grade, the excavator may not be held liable for the expense of any necessary underpinning or extension of the foundations of buildings on adjoining properties.

(b) If the excavation is made to a depth in excess of 12 feet below grade, the excavator shall be liable for the expense of any necessary underpinning or extension of the foundations of any adjoining buildings below the depth of 12 feet below grade. The owners of adjoining buildings shall be liable for the expense of any necessary underpinning or extension of the foundations of their buildings to the depth of 12 feet below grade.

(4) NOTICE. Unless waived by adjoining owners, at least 30 days prior to commencing the excavation the excavator shall notify, in writing, all owners of adjoining buildings of his or her intention to excavate. The notice shall state that adjoining buildings may require permanent protection. The owners of adjoining property shall have access to the excavation site for the purpose of protecting their buildings.

(5) EMPLOYES NOT LIABLE. No worker who is an employe of an excavator may be held liable for his or her employer's failure to comply with this section.

(6) FAILURE TO COMPLY; INJUNCTION. If any excavator fails to comply with this section, any aggrieved person may commence an action to obtain an order under ch. 813 directing such excavator to comply with this section and restraining the excavator from further violation thereof. If the aggrieved person prevails in the action, he or she shall be reimbursed for all his or her costs and disbursements together with such actual attorney fees as may be approved by the court.

(7) APPLICATION OF THIS SECTION. (a) Subject to par. (b), this section applies to any excavation made after January 1, 1978.

(b) This section does not apply to any excavation made under a contract awarded on or before January 1, 1978.

History: 1977 c. 88.

101.12 Approval and inspection of public buildings and places of employment and components. (1) The department shall require the submission of essential drawings, calculations and specifications for public buildings, public structures and places of employment including the following components:

(a) Heating, ventilation, air conditioning and fire detection, prevention or suppression systems.

(b) Industrial exhaust systems.

(c) Elevators, escalators, ski lift and towing devices and power dumbwaiters.

(d) Stadiums, grandstands and bleachers.

(e) Amusement and thrill rides equipment.

(2) Plans of said buildings, structures and components shall be examined for compliance with the rules of the department and a statement of the examination returned to the designer and owner before construction is started. Nothing in this section shall relieve the designer of the responsibility for designing a safe building, structure or component.

(3) The department shall:

(a) Accept the examination of essential drawings, calculations and specifications in accordance with sub. (1) performed by cities of the 1st class provided the same are examined in a manner approved by the department.

(am) 1. Accept the examination of essential drawings, calculations and specifications in accordance with sub. (1) performed by a 2nd class city in conformity with the requirements of this paragraph.

2. The department shall promulgate rules for the administration of a program to certify 2nd class cities to perform the examination of essential drawings, calculations and specifications in accordance with sub. (1).

3. A 2nd class city may apply for certification by the department for the purposes of this paragraph if that city employs at least one architect or one professional engineer who has been granted a certificate of registration under s. 443.10. The department shall certify a 2nd class city when the department determines and certifies the competency of all

examiners employed by the city. The department shall review the competency of the examiners of a city that is certified under this paragraph on a regular basis and may revoke the certification of a city if the examiners do not meet standards specified by the department.

4. Owners within the 2nd class city may obtain examinations from the city or the department.

5. The department shall by rule set fees, to be collected by the 2nd class city and remitted to the department, to meet the department's costs in enforcing and administering its duties under this paragraph.

(b) Accept the examination of essential drawings, calculations and specifications in accordance with sub. (1) for buildings containing less than 50,000 cubic feet of volume and alterations to buildings containing less than 100,000 cubic feet of volume performed by cities, villages, towns or counties, provided the same are examined in a manner approved by the department. The department shall determine and certify the competency of all such examiners.

(bm) Accept the review and determination performed by 1st class cities on variances for buildings if the variances are reviewed and decided on in a manner approved by the department.

(br) Accept the review and determination on variances for buildings containing less than 50,000 cubic feet of volume and alterations to buildings containing less than 100,000 cubic feet of volume performed by certified municipalities if the department has certified the competency of a municipality to issue variances and if the variances are reviewed in a manner approved by the department. Owners may submit variances to the municipality or the department.

(c) Determine and certify the competency of insurance company inspectors of boilers, unfired pressure vessels, refrigeration plants, elevators, escalators and power dumbwaiters.

(d) Accept inspections at no cost performed by insurance company inspectors for whom evidence of competency has been furnished to the department.

(e) Approve inspection service maintained or employed by owners or operators of boilers and unfired pressure vessels.

(f) Accept inspections at no cost performed by approved owner or operator inspection service and provide shop inspection service when deemed necessary.

(g) Accept inspection at no cost when performed by qualified and authorized inspectors in the employ of a city, village, town or county for the inspection of buildings and equipment located within the city, village, town or county. The department shall determine and certify the competency of all such inspectors.

(h) Require all local officers not authorized by the department to grant approvals as provided in pars. (a) and (b) to deny permits or licenses for construction or use of public buildings, public structures and places of employment until the required drawings and calculations have been examined by the department.

(5) (a) In this subsection:

1. "Plans" means construction plans, designs, specifications and related materials filed with the department, city, village, town or county concerning a structure.

2. "Secure structure" means a building or other structure of a type which the department, city, village, town or county determines to have extraordinary security requirements, including but not limited to structures used:

a. For the safekeeping of large sums of money, negotiable instruments, securities or other valuables;

b. As a jail, correctional facility or other secure facility for persons in detention;

c. For the safekeeping or evaluation of evidence in criminal proceedings or investigations;

d. For the safekeeping of weapons, ordnance or explosives; or

e. In the generation, transmission or distribution of electric power, fuels or communications.

(b) A person requesting to inspect or copy plans shall submit a written application identifying the structure or proposed structure whose plans are sought to be inspected or copied, providing the full name and address of the requester and stating that any information obtained from the inspection or copying will not be used for any unlawful or unfair competitive purpose and that the information set forth in the application is true and correct. The department, city, village, town or county shall promptly transmit a copy of the application to the owner of the structure or proposed structure and the submitter of the plans being inspected or copied.

(c) If an application submitted under par. (b) requests inspection or copying of plans for a secure structure or proposed secure structure, the department, city, village, town or county shall consider the information supplied in the application and weigh the possible harm to the public interest which may result from permitting inspection and copying of the plans against the benefits of allowing such inspection or copying. If the department, city, village, town or county determines that the possible harm to the public interest outweighs the benefit to the requester and to the public interest of allowing such inspection or copying, it may deny the application or grant it upon such conditions as it determines are necessary to protect the public interest. This paragraph does not apply to an application submitted by a law enforcement agency or person authorized to have access to the plans by lawful subpoena.

(d) The department, city, village, town or county may charge a reasonable amount to defray its costs in providing copies of the plans.

(6) (a) By January 1, 1990, the department shall inspect all public schools constructed prior to January 1, 1950, to determine whether the schools comply with this subchapter and subch. IV, ch. 145 and life-safety plans established under par. (b) and to review the maintenance schedules established by school boards under s. 120.12 (5).

(b) The department shall promulgate rules relating to the enforcement of this subchapter and subch. IV and ch. 145 for public schools constructed before 1930 and establishing life-safety plans for all public schools.

History: 1971 c. 185; 1971 c. 228 s. 42; Stats. 1971 s. 101.12; 1973 c. 326; 1979 c. 64, 243; 1983 a. 27; 1989 a. 31, 347; 1991 a. 39.

The state statutes and building code have not preempted the field as to school buildings; local building codes apply to the extent that they are not inconsistent. Hartford Union High School v. Hartford, 51 W (2d) 591, 187 NW (2d) 849.

See note to 19.21, citing 67 Atty. Gen. 214.

101.121 State historic building code. (1) PURPOSE. It is the purpose of this section to provide alternative standards, when necessary, for the preservation or restoration of buildings or structures designated as historic buildings. The development and application of these alternative standards is a matter of statewide concern. These alternative standards are intended to facilitate the restoration of historic buildings so as to preserve their original or restored architectural elements and features, to encourage energy conservation, to permit a cost-effective approach to preservation and restoration and to provide for the health, safety and welfare of occupants and visitors in historic buildings.

(2) DEFINITIONS. In this section:

(a) "Certified local register of historic property" means a register of historic property which is part of a historic

preservation ordinance promulgated by a city, village, town or county if the ordinance is certified by the state historical society under s. 44.44.

(am) "Historic building" means any building or structure that is significant in the history, architecture or culture of this state, its rural or urban communities or the nation.

(b) "National register of historic places in Wisconsin" means the places in Wisconsin that are listed on the national register of historic places maintained by the U.S. department of the interior.

(c) "Qualified historic building" means a historic building which:

1. Is listed on the national register of historic places in Wisconsin or the state register of historic places;

2. Is included in a district which is listed on the national register of historic places in Wisconsin or the state register of historic places, and has been determined by the state historical society to contribute to the historic significance of the district;

3. Is listed on a certified local register of historic property; or

4. Is included in a district which is listed on a certified local register of historic property, and has been determined by the city, village, town or county to contribute to the historic significance of the district.

(d) "State register of historic places" means the places in Wisconsin listed by the state historical society under s. 44.36, except for a place listed as an interim listing by the state historical society under s. 44.36 (5) (a) 3.

(3) RULES. (a) For any rule under this chapter or ch. 145 which applies to buildings, the department may provide an alternative rule which accomplishes the same general purpose and applies only to qualified historic buildings. These alternative rules shall permit, to the maximum extent possible, the use of original or duplicates of original materials, the maintenance of the original appearance of all components of a historic building and the use of original construction techniques. The department shall consult with the historic building code council regarding the development of alternative rules. All alternative rules taken together constitute the historic building code.

(b) In order to permit the proper preservation or restoration of a qualified historic building, the department may grant a variance to any rule or alternative rule under this chapter or ch. 145 if the owner demonstrates that an alternative proposed by the owner accomplishes the same purpose as the rule or alternative rule. With respect to any variances requested under this chapter or ch. 145, the department shall give priority to processing variance requests by owners of qualified historic buildings. The department shall maintain a list of variances granted under this paragraph to owners of qualified historic buildings.

(4) ELECTION. (a) Except as provided in par. (b), the owner of any qualified historic building may elect to be subject to the historic building code promulgated under sub. (3). Except as provided in s. 101.127, no owner who elects to be subject to the historic building code may be required to comply with any provision of any other building code, including but not limited to any county or municipal building code, or of any other local ordinance or regulation, if that provision concerns a matter dealt with in the historic building code.

(b) Paragraph (a) does not apply to any owner of a nursing home as defined in s. 50.01 (3), a hospital as defined in s. 50.33 (2) (a) and (c) or an approved public or private treatment facility for alcoholics as defined in s. 51.45 (2) (b) and (c).

History: 1981 c. 341; 1981 c. 391 s. 210; 1983 a. 189 s. 329 (5); 1985 a. 332; 1987 a. 395; 1991 a. 39.

101.122 Rental unit energy efficiency. (1) DEFINITIONS. In this section:

(a) "Dwelling unit" means a building or that part of a building which is used as a home or residence.

(b) "Energy conservation measure" means any measure which increases the energy efficiency of a rental unit, including, but not limited to, the installation of caulking, weatherstripping, insulation and storm windows.

(c) "Inspector" means a person certified under sub. (2) (c).

(d) "Owner" means any person having a legal or equitable interest in a rental unit.

(e) "Rental unit" means any rented dwelling units. "Rental unit" does not include:

1. Any building containing up to 4 dwelling units, one of which is owner-occupied.

2. Any building constructed after December 1, 1978, which contains up to 2 dwelling units and which is less than 10 years old.

3. Any building constructed after April 15, 1976, which contains more than 2 dwelling units and which is less than 10 years old.

4. Any dwelling unit not rented at any time from November 1 to March 31.

(em) "Thermal performance" means the gross heat loss from the building.

(f) "Transfer" means a conveyance of an ownership interest in a rental unit by deed, land contract or judgment or conveyance of an interest in a lease in excess of one year. "Transfer" does not include a conveyance under chs. 851 to 879.

(2) DEPARTMENTAL DUTIES. The department shall:

(a) 1. Promulgate rules which establish a code of minimum energy efficiency standards for rental units. The rules shall require installation of specified energy conservation measures. The present value benefits of each energy measure, in terms of saved energy over a 5-year period after installation, shall be more than the total present value cost of installing the measures.

2. In the rules adopted under this paragraph, the department may include a separate standard based on thermal performance.

3. In the rules adopted under this paragraph, the department may not include any requirement for interior or exterior foundation insulation or basement ceiling insulation.

(b) Adopt rules setting standards for inspections and certifications under sub. (4), including but not limited to prescription of a standard certificate form.

(c) Adopt rules for the certification, including provisions for suspension and revocation thereof, of inspectors for the purpose of inspecting rental units subject to any rule under this section. The rules shall include a maximum fee schedule for inspection and certification of rental units under sub. (4) by inspectors not employed by the department.

(d) Provide training, assistance and information services to any inspector or person seeking to be certified as an inspector under par. (c).

(e) Review the rules adopted under this section at least once every 5 years.

(f) Issue special orders which it deems necessary to secure compliance with this section and enforce the same by appropriate administrative and judicial proceedings.

(g) Hear petitions regarding the enforcement of rules and special orders under this section according to the procedure established under s. 101.02 (6) (e) to (i) and (8).

(3) DEPARTMENTAL POWERS. The department may:

(a) In rules adopted under sub. (2) (a), incorporate nationally recognized energy efficiency standards and vary standards according to:

1. Classes of energy use systems, including, but not limited to, building envelopes; heating, ventilating and air conditioning systems; lighting systems; appliances; and other fixtures which consume energy resources.

2. Climatic regions.

(b) Hold hearings on any matter relating to this section and issue subpoenas to compel the attendance of witnesses and the production of evidence at the hearings.

(4) CERTIFICATION. (a) The rules adopted under sub. (2) (a) shall take effect on the first day of the 24th month after adoption of the rules. After the rules take effect, except as provided under pars. (b) and (c), no owner may transfer a rental unit unless, within the previous 5 years, an inspector has inspected the unit and has issued a certificate stating that the unit satisfies applicable standards under sub. (2) (a) 1 or 2.

(b) The department or an inspector employed by the city, village or town within which a rental unit scheduled for demolition within 2 years is located may issue a written waiver of the requirements of par. (a). The waiver shall be conditioned on demolition of the rental unit within 2 years of the date of the waiver. If demolition does not take place within 2 years of the issuance of the waiver, the department or the city, village or town may do one or more of the following:

1. Order demolition of the rental unit no sooner than 90 days after the order.

2. Withdraw any certificate of occupancy.

3. Order energy conservation measures necessary to bring the rental unit into compliance with applicable standards under sub. (2) (a).

(c) The transferee of a rental unit may present a stipulation signed by the transferee and by the department or by the city, village or town within which the rental unit is located stating that the owner of the rental unit will bring the rental unit into compliance with the standards under sub. (2) (a) no later than one year after the date of the first transfer of the rental unit after the standards take effect under par. (a). The department, city, village or town signing the stipulation shall keep a copy of the stipulation and shall conduct an inspection of the rental unit no later than 180 days after the stipulated compliance date.

(5) INSPECTION. Any owner of a rental unit may request that an inspector inspect the owner's rental unit for the purpose of determining whether to issue a certificate under sub. (4). If an owner, after reasonable effort, is unable to procure an inspection, the department, within 14 days after receipt of a request by the owner shall perform the inspection and determine whether to issue a certificate. The department may establish a special fee under s. 101.19 (1) for an inspection under which it performs this subsection. If any inspector determines not to issue a certificate, the inspector shall specify in writing the energy conservation measures necessary to make the rental unit comply with applicable standards under sub. (2) (a).

(6) PROOF OF CERTIFICATION OR EXCLUSION REQUIRED FOR RECORDATION. A register of deeds may not accept for recording any deed or other document of transfer of real estate which includes a rental unit unless the deed or document is accompanied by the certificate required under sub. (4) (a), a waiver under sub. (4) (b) or a stipulation under sub. (4) (c). The department shall prescribe for use under s. 77.22 (2) a form setting forth the reasons why transferred real estate is not subject to certification under sub. (4) (a), waiver under sub. (4) (b) or stipulation under sub. (4) (c). A register of deeds shall record the certificate, waiver or stipulation.

(6m) REPORT TO LEGISLATURE. Annually, before March 1, the department shall submit a written report to the chief clerk of each house of the legislature, for distribution to the legislature, under s. 13.172 (2), on the impact of the requirements of this section.

(6r) MUNICIPAL CODES. After the effective date of the rules under sub. (4) (a), no city or village may enforce a code of minimum energy efficiency standards for rental units in the city or village unless the requirements of the code are at least as strict as the requirements of the code under sub. (2) (a).

(6w) EXCEPTION. To the extent that the historic building code applies to the subject matter of this section, this section does not apply to a qualified historic building, as defined under s. 101.121 (2) (c), if the owner elects to be subject to s. 101.121.

(7) PENALTY. (a) *Inspectors.* Any inspector falsifying a certificate issued under sub. (4) shall have his or her certification revoked and may be required to forfeit not more than $500 per dwelling unit in the rental unit for which the certificate is issued.

(b) *New owners.* Any person who offers documents evidencing transfer of ownership for recordation and who, with intent to evade the requirements of this section, falsely states on the form under s. 77.22 (1) that the real property involved does not include a rental unit may be required to forfeit not more than $500 per dwelling unit in the rental unit being transferred.

(c) *Waiver.* Any person who fails to comply with the requirements of a waiver issued under sub. (4) (b) may be required to forfeit not more than $500 per dwelling unit in the rental unit for which the waiver is issued.

(d) *Stipulation.* Any person who fails to comply with the requirements of a stipulation under sub. (4) (c) may be required to forfeit not more than $500 per dwelling unit.

History: 1979 c. 221; 1981 c. 341; 1983 a. 27, 233; 1985 a. 174; 1987 a. 186, 399; 1989 a. 56; 1991 a. 269.

This section applies to state. 76 Atty. Gen. 207.

101.123 Clean indoor air. (1) DEFINITIONS. In this section:

(a) "Educational facility" means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

(am) "Hospital" has the meaning given in s. 50.33 (2), except that "hospital" does not include a nursing home licensed under s. 50.03 that is operated in connection with a hospital or a retirement home that is operated in connection with a hospital.

NOTE: Par. (am) is created eff. 10-1-93 by 1991 Wis Act 130.

(b) "Inpatient health care facility" has the meaning provided under s. 140.86 (1), except that it does include community-based residential facilities as defined under s. 50.01 (1g).

NOTE: Par. (b) is amended eff. 10-1-93 by 1991 Wis. Act 130 to read:

(b) "Inpatient health care facility" means a county home established under s. 49.14, a county infirmary established under s. 49.171, a community-based residential facility or a nursing home licensed under s. 50.03 or a tuberculosis sanitorium established under s. 58.06, 149.01 or 149.02.

(bg) "Jail" means a county jail, rehabilitation facility established by s. 59.07 (76), county house of correction under s. 303.16 or secure detention facility as defined in s. 48.02 (16).

(bm) "Lockup facility" has the meaning given in s. 302.30.

(br) "Motor bus" has the meaning given in s. 340.01 (31).

(c) "Office" means any area, whether publicly or privately owned or occupied, that serves as a place of work at which the principal activities consist of professional, clerical or administrative services.

(d) "Person in charge" means the person who ultimately controls, governs or directs the activities aboard a public

conveyance or within a place where smoking is regulated under this section, regardless of the person's status as owner or lessee.

(dg) "Physician's office" means a place, other than a residence or a hospital, that is used primarily to provide medical care and treatment.

NOTE: Par. (dg) is created eff. 10-1-93 by 1991 Wis. Act 130.

(dm) "Prison" means a prison described in s. 302.01, except it does not include the correctional institution under s. 301.046 (1) if the institution is the prisoner's place of residence and does not include a Type 2 prison, as defined in s. 301.01 (6).

(e) "Public conveyance" means mass transit vehicles as defined by s. 340.01 (28m) and school buses as defined by s. 340.01 (56).

(f) "Restaurant" means an establishment defined in s. 50.50 (5) with a seating capacity of more than 50 persons.

(g) "Retail establishment" means any store or shop in which retail sales is the principal business conducted, except a tavern operating under a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license, and except bowling centers.

(gm) "Retirement home" means a residential facility where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

NOTE: Par. (gm) is created eff. 10-1-93 by 1991 Wis. Act 130.

(h) "Smoking" means carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment.

(i) "State institution" means a prison, a secured correctional facility, a mental health institute as defined in s. 51.01 (12) or a center for the developmentally disabled as defined in s. 51.01 (3).

(2) REGULATION OF SMOKING. (a) Except as provided in sub. (3), no person may smoke in the following places:

1. Public conveyances.
2. Educational facilities.
3. Inpatient health care facilities.
4. Indoor movie theaters.
5. Offices.
6. Passenger elevators.
7. Restaurants.
8. Retail establishments.
9. Public waiting rooms.
10. Any enclosed, indoor area of a state, county, city, village or town building.

(am) 1. Notwithstanding par. (a) and sub. (3) and except as provided in subd. 2, no person may smoke in a motor bus, in a hospital or in a physician's office.

2. Notwithstanding subd. 1, a person who is an adult patient of a hospital or unit of a hospital that has as its primary purpose the care and treatment of mental illness, alcoholism or drug abuse and who has the written permission of a physician may smoke in a room that is designated as a smoking area under sub. (4) (a) 2.

NOTE: Par. (am) is created eff. 10-1-93 by 1991 Wis. Act 130.

(b) The prohibition in par. (a) applies only to enclosed, indoor areas.

NOTE: Par (b) is amended eff. 10-1-93 by 1991 Wis. Act 130 to read:

(b) The prohibition in pars. (a) and (am) 1 applies only to enclosed, indoor areas.

(c) This section does not limit the authority of any county, city, village or town to enact ordinances or of any school district to adopt policies that, complying with the purpose of this section, protect the health and comfort of the public.

(3) EXCEPTIONS. The regulation of smoking in sub. (2) does not apply to the following places:

NOTE: Sub. (3) (intro.) is amended eff. 10-1-93 by 1991 Wis. Act 130 to read:

(3) EXCEPTIONS. (intro.) The regulation of smoking in sub. (2) (a) does not apply to the following places:

(a) Areas designated smoking areas under sub. (4).

(b) Rooms in which the main occupants are smokers, even if nonsmokers are periodically present in the office or room.

(c) Entire rooms or halls used for private functions, if the arrangements for the function are under the control of the sponsor of the function.

(d) Restaurants holding a "Class B" intoxicating liquor or Class "B" fermented malt beverage license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant's receipts.

(f) Any area of a facility used principally to manufacture or assemble goods, products or merchandise for sale.

(gm) The correctional institution under s. 301.046 (1) if the institution is the prisoner's place of residence.

(gr) A Type 2 prison, as defined in s. 301.01 (6).

(4) DESIGNATION OF SMOKING AREAS. (a) 1. Except as provided in subd. 2 a person in charge or his or her agent may designate smoking areas in the places where smoking is regulated under sub. (2) unless a fire marshal, law, ordinance or resolution prohibits smoking.

NOTE: Subd. 1. is amended eff. 10-1-93 by 1991 Wis. Act 130 to read:

1. Except as provided in subd. 2, a person in charge or his or her agent may designate smoking areas in the places where smoking is regulated under sub. (2) (a) unless a fire marshal, law, ordinance or resolution prohibits smoking.

2. A person in charge or his or her agent may not designate an entire building as a smoking area or designate any smoking areas in a motor bus. Subject to sub. (3) (b), a person in charge or his or her agent may not designate an entire room as a smoking area.

NOTE: Subd. 2. is amended eff. 10-1-93 by 1991 Wis. Act 130 to read:

2. A person in charge or his or her agent may not designate an entire building as a smoking area or designate any smoking areas in a motor bus, in a hospital or in a physician's office, except that in a hospital or a unit of a hospital that has as its primary purpose the care and treatment of mental illness, alcoholism or drug abuse a person in charge or his or her agent may designate one or more enclosed rooms with outside ventilation as smoking areas for the use of adult patients who have the written permission of a physician. Subject to this subdivision and sub. (3) (b), a person in charge or his or her agent may not designate an entire room as a smoking area.

3. This paragraph does not apply to places described in par. (am).

(am) 1. The secretary of health and social services or his or her designee may designate areas where smoking is permitted in a state institution other than a prison, unless a fire marshal, law or resolution prohibits smoking in the area. The secretary of corrections or his or her designee may designate areas where smoking is permitted in a prison, unless a fire marshal, law or resolution prohibits smoking in the area. Either secretary or his or her designee may designate an entire room as a smoking area in a state institution administered by the secretary's department.

2. A person in charge of a jail or lockup facility, or his or her agent, may designate areas where smoking is permitted in the jail or lockup facility, unless a fire marshal, law or resolution prohibits smoking in the area. The person in charge or his or her agent may designate an entire room in the jail or lockup facility as a smoking area.

3. Except in a prison, secured correctional facility, jail or lockup facility, an entire building may not be designated as a smoking area.

(b) The person in charge or his or her agent shall post notice of the designation of a smoking area in or near the area designated. If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all entrances to the room normally used by the public. This paragraph does not apply to a place described in par. (bm).

(bm) The person in charge of a state institution, jail or lockup facility, or his or her agent, shall post notice of the designation of a smoking area under par. (am) in or near the area designated. If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all normally used entrances to the room. If an entire building in a prison, secured correctional facility, jail or lockup facility is designated a smoking area, the person in charge, or his or her agent, shall post notice of the designation on or near all normally used entrances to the building, but need not post notice of the designation on or near entrances to rooms within the building.

(c) The person in charge or his or her agent shall utilize, if possible, existing physical barriers and ventilation systems when designating smoking areas. This paragraph requires no new construction of physical barriers or ventilation systems in any building.

(d) This section requires the posting of signs only in areas where smoking is permitted.

(5) RESPONSIBILITIES. The person in charge or his or her agent shall:

(a) Post signs identifying designated smoking areas; and

(b) Arrange seating to accommodate nonsmokers if smoking areas are adjacent to nonsmoking areas.

(6) UNIFORM SIGNS. The department shall, by rule, specify uniform dimensions and other characteristics of signs used to designate smoking areas. These rules may not require the use of signs that are more expensive than is necessary to accomplish their purpose.

(7) SIGNS FOR STATE AGENCIES. The department shall arrange with the department of administration to have the signs prepared and made available to state agencies for use in state facilities.

(8) PENALTIES. (a) Any person who wilfully violates sub. (2) (a) after being advised by an employe of the facility that smoking in the area is prohibited or any person in charge or his or her agent who wilfully fails to comply with sub. (5) shall forfeit not more than $10.

NOTE: Par. (a) is amended eff. 10-1-93 by 1991 Wis. Act 130 to read:

(a) Any person who wilfully violates sub. (2) (a) or (am) 1 after being advised by an employe of the facility that smoking in the area is prohibited or any person in charge or his or her agent who wilfully fails to comply with sub. (5) shall forfeit not more than $10.

(c) A violation of this section does not constitute negligence as a matter of law.

(9) INJUNCTION. Notwithstanding s. 165.60, state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130.

101.124 Heated sidewalks prohibited. In this section, "exterior pedestrian traffic surface" means any sidewalk, ramp, stair, stoop, step, entrance way, plaza or pedestrian bridge not fully enclosed within a building and "heated" means heated by electricity or energy derived from the combustion of fossil fuels, but not including the use of waste thermal energy. "Exterior pedestrian traffic surface" does not include any means of ingress and egress by the physically disabled required under s. 101.13 (2). No person may construct a heated exterior pedestrian traffic surface. The department or any city, village, town or county is prohibited from approving any plan under s. 101.12 which includes such heated surface. The department shall order any existing heated exterior pedestrian traffic surface in operation to be shut off. This section does not apply to any inpatient health care facility or community-based residential facility, as defined in s. 140.85 (1) (a) or 140.86.

History: 1979 c. 221; 1983 a. 27; 1989 a. 56; 1991 a. 39.

101.125 Safety glazing in hazardous locations. (1) DEFINITIONS. In this section:

(a) "Building" means a "place of employment" as defined in s. 101.01 (2) (f) and a "public building" as defined in s. 101.01 (2) (g) and includes, without limitation because of enumeration, wholesale and retail stores, storerooms, office buildings, factories, warehouses, governmental buildings, hotels, hospitals, motels, dormitories, sanatoriums, nursing homes, retirement homes, theaters, stadiums, gymnasiums, amusement park buildings, schools and other buildings used for educational purposes, places of worship and other places of public assembly and all residences including mobile homes, manufactured or industrialized housing, lodging homes and any other building used as a dwelling for one or more persons.

(b) "Entrance and exit door" means a hinged, pivoting, revolving or sliding door which is used alone or in combination with other such doors on interior or exterior walls of a residential, commercial or public building for passage, ingress or egress.

(c) "Fixed or operating, flat panels immediately adjacent to an entrance or exit door" means the first fixed or operating, flat panel on either or both sides of an interior or exterior door if:

1. The nearest vertical edge of such panel is located within 2 feet of the nearest vertical edge of the door; and

2. The lower horizontal edge of such panel is less than 2 feet from the floor.

(d) "Hazardous location" means the location of a structural element in a building which is used as an entrance and exit door to a compartment, room or building; the fixed or operating, flat panels immediately adjacent to an entrance or exit door; a sliding glass door unit; a storm or combination door; a shower and bathtub enclosure; and the adjacent sidelites of a door. In the case of a public building, the term also includes any other location designated by the department.

(e) "Safety glazing material" means any transparent or translucent material, including tempered glass, laminated glass, wire glass and rigid plastic, which is constructed, treated or combined with other materials to minimize the likelihood of cutting or piercing injuries to humans, and which is approved by rule of the department as meeting departmental standards for the location in which it is to be applied.

(f) "Sliding glass door unit" means a panel or an assembly of panels contained in a frame designed so that at least one panel is movable in a horizontal direction.

(g) "Storm or combination door" means a door which protects an entrance or exit door against weather elements and affects indoor temperature control.

(2) LABELING REQUIRED. (a) Except as provided in par. (b), each lite of safety glazing material manufactured, distributed, imported, sold or installed for use in a hazardous location shall be permanently labeled with a label which:

1. States the nominal thickness and the type of safety glazing material;

2. Identifies the labeling seller, manufacturer, fabricator or installer;

3. Is legible and so positioned as to be legible after installation; and

4. Is distinctive in design and is not used on materials other than safety glazing materials.

(b) The department may by rule provide that in new construction or remodeling, the installation of safety glazing material may be recorded with the department or other appropriate agency designated by it, by the filing of an affidavit certifying the installation, in lieu of the labeling requirement of par. (a), if it finds that enforcement of this section will not be hindered by such substitute procedure.

(3) SAFETY GLAZING MATERIALS REQUIRED. No material supplier, builder, contractor or subcontractor may knowingly install, cause to be installed, consent to the installation, or sell for installation in any hazardous location, transparent or translucent materials other than safety glazing materials, except that:

(a) In buildings contracted for or existing on or before November 30, 1976, the department may by rule require the installation of a vertical or horizontal bar, rail, grill or screen as a protective device in lieu of safety glazing material in hazardous locations where safety glazing would be impractical because of the size of the lite required.

(b) The department may by rule exempt from the requirements of this section and, if it deems necessary, prescribe other less stringent protective requirements for:

1. Any lite which is 8 inches or less in the least dimension, or no more than 4 inches in either dimension, and which is used in an application which the department finds is not hazardous.

2. Leaded stained glass which is used in an application which the department finds is not hazardous.

(c) Any mirror, framed glazed picture or similar decorative object which is attached to a door or wall in a hazardous location and which does not in whole or in part conceal any opening in such door or wall is exempt from the requirements of this section.

(4) LIABILITY OF EMPLOYERS AND SELLERS. (a) No employe of a person responsible for compliance with this section is liable for the employer's failure to comply.

(b) No seller of glazing materials is subject to the penalty under sub. (5) or is liable for injuries occurring to any person if the seller has exercised reasonable care to see that the glazing materials sold by him or her are properly used.

(4m) EXCEPTION. To the extent that the historic building code applies to the subject matter of this section, this section does not apply to a qualified historic building, as defined under s. 101.121 (2) (c), if the owner elects to be subject to s. 101.121.

(5) PENALTY. Whoever violates this section may be required to forfeit not less than $100 nor more than $500.

History: 1975 c. 293; 1981 c. 341; 1983 a. 189 s. 329 (4)

101.126 Recycling space. (1) The department shall establish, by rule, requirements for a person engaging in any of the following to provide adequate space in or adjacent to the building for the separation, temporary storage and collection of the materials listed in s. 159.07 (3) or (4), likely to be generated by the occupants of the building:

(a) The construction of a public building.

(b) An increase in the size of a public building by 50% or more.

(c) An alteration of 50% or more of the existing area of a public building that is 10,000 square feet or more in area.

(1m) In developing the requirements under sub. (1), the department shall consult with the council on recycling.

History: 1989 a. 335, 359.

101.127 Building requirements for certain residential facilities. The department, after consultation with the department of health and social services, shall develop a building code for previously constructed buildings converted to use as community-based residential facilities as defined in s. 50.01 (1g) which serve between 9 and 20 unrelated residents. In setting standards, the department shall consider the criteria enumerated in ss. 46.03 (25) and 50.02 (3) (b), and in addition shall consider the relationship of the development and enforcement of the code to any relevant codes of the department of health and social services. The objectives of the code shall be to guarantee health and safety and to maintain insofar as possible a homelike environment. The department shall consult with the residential facilities council in developing the code. Notwithstanding s. 101.121, a historic building as defined in s. 101.121 (2) (am) which is converted to use as a community-based residential facility serving between 9 and 20 unrelated residents is governed only by the building code promulgated under this section.

History: 1975 c. 413; 1975 c. 422 s. 163; Stats. 1975 s. 101.125; s. 13.93 (1) (b); Stats. 1975 s. 101.127; 1981 c. 341; 1987 a. 161 s. 13m.

101.128 Restroom equity. (1) DEFINITIONS. In this section:

(a) "Amusement facility" means any zoo, state or local park, amusement or theme park, state fair park, county or other local fairgrounds, or any similar facility, as determined by department rule.

(b) "Facility where the public congregates" means any of the following that has a general capacity or a seating capacity of 500 or more persons:

1. An amusement facility.
2. A convention or trade hall or center.
3. A specialty event center.
4. A sports or entertainment arena, center or building.
5. A stadium.
6. An airport, bus terminal, train station or other transportation center.

(c) "Hotel" has the meaning given in s. 50.50 (3).

(d) "Renovation" means any structural remodeling, improvement or alteration of an existing facility where the public congregates. "Renovation" does not include any of the following:

1. Reroofing.
2. Cosmetic remodeling, including painting or the installation of wall covering, of paneling, of floor covering or of suspended ceilings.
3. An alteration to an electrical or mechanical system.

(e) "Restaurant" has the meaning given in s. 50.50 (5).

(f) "School" means a public or private elementary or secondary school.

(g) "Specialty event center" means an open arena used for rallies, concerts, exhibits or other assemblies, with no permanent structure for such assembly.

(2) RESTROOM REQUIREMENTS. (a) *Equal speed of access required.* The owner of a facility where the public congregates shall equip and maintain the restrooms in the facility where the public congregates with a sufficient number of permanent or temporary toilets to ensure that women have a speed of access to toilets in the facility where the public congregates that equals the speed of access that men have to toilets and urinals in that facility where the public congregates when the facility where the public congregates is used to its maximum capacity.

(b) *Standards.* The department shall promulgate rules that establish standards that the owner of a facility where the public congregates shall meet to achieve the equal speed of access required under par. (a).

(3) EXEMPTIONS. (a) *Exemptions established.* This section does not apply to any of the following:

1. A hotel.
2. A restaurant.
3. A school.

(b) *Mixed-use facilities.* If a facility where the public congregates contains a hotel, restaurant or school, the requirements of this section shall apply only to the portion of the facility where the public congregates that is not part of the hotel, restaurant or school.

(4) APPLICABILITY. (a) *Six months after rules promulgated.* This section applies to any facility where the public congregates at which the following events begin on or after the first day of the 7th month beginning after the department promulgates rules under this section:

1. If the facility is a new structural facility, initial construction of any structure.

2. If the facility is a new facility that will contain no permanent structure to serve the public, other than structures to house restrooms or other minor structures, the establishment of the facility.

3. If the facility is an existing structural facility, renovations that affect more than 50% of the facility's square footage.

4. If the facility is an existing structural facility, the initial construction of any structural addition to the facility that has a square footage equal to or larger than 51% of the existing facility's square footage.

5. If the facility is an existing facility with no permanent structure to serve the public, other than structures to house restrooms or other minor structures, the addition of land to the facility that has an acreage equal to or larger than 51% of the existing facility's acreage.

(b) *Renovations or additions.* In any existing facility where the public congregates to which this section applies under par. (a) 3 to 5, the requirements of this section apply only to the renovated portion of the facility or to the structural or land addition of the facility.

History: 1991 a. 110.

101.13 Physically disabled persons; building requirements. (1) In this section, "access" means the physical characteristics of a place which allow persons with functional limitations caused by impairments of sight, hearing, coordination or perception or persons with semiambulatory or nonambulatory disabilities to enter, circulate within and leave a place of employment or public building and to use the public toilet facilities and passenger elevators in the place of employment or public building without assistance.

(1m) The department shall by rule provide minimum requirements to facilitate the use of public buildings and places of employment by physically disabled persons where traffic might reasonably be expected by such persons.

(2) (a) Any place of employment or public building, the initial construction of which is commenced after July 1, 1970, but prior to May 27, 1976, shall be so designed and constructed as to provide reasonable means of ingress and egress by the physically disabled with the exception of:

1. Apartment houses with less than 20 units, row houses and rooming houses;

2. Convents and monasteries;

3. Jails or other places of detention;

4. Garages, hangars and boathouses;

5. All buildings classified as hazardous occupancies;

6. Warehouses;

7. State buildings specifically built for field service purposes such as but not limited to conservation fire towers, fish hatcheries, tree nursery buildings; and

8. University residence halls at universities which have at least 3 residence halls for men and 3 residence halls for women so constructed as to allow physically disabled persons reasonable means of ingress and egress to such buildings.

(b) The requirements of par. (a) may be accomplished by at least one ground or street level entrance and exit without steps, by ramps with slopes not more than one foot of rise in 12 feet, coated with a nonskid surface, or by elevator or such other arrangement as may be reasonably appropriate under the circumstances and which meets with the approval of the department or in lieu thereof with the approval of the municipality wherein the building is located. The doors of such entrance and exit must have a clear opening of at least 40 inches in width and shall otherwise conform to the department building code.

(c) If any ground or street level entrance or exit is not so designed or constructed a sign shall be placed at such entrance or exit indicating the location of the entrance or exit available for wheelchair service.

(d) Any place of employment or public building, unless exempted by rule of the department, the initial construction of which is commenced on or after May 27, 1976, shall be designed and constructed so as to provide reasonable means of access. Buildings, as defined in s. 703.02 (5), 1975 stats., of 2 stories or less in height shall be exempt from requirements relating to parking space, ramps and grade-level entrances.

(e) The department shall by rule provide minimum regulations to ensure the access to and use of buildings prescribed in pars. (a) to (d).

(f) 1. Except as provided in subd. 2, no governmental unit may issue any authorization to occupy any place of employment or public building prescribed in pars. (a) to (d) unless the owner thereof files with that governmental unit a true certification of compliance with the rules under par. (e) applicable to that place of employment or public building relating to the reservation and marking of parking spaces for use by a motor vehicle used by a physically disabled person.

2. An authorization to occupy a place of employment or public building prescribed in pars. (a) to (d) may be issued prior to the completion of parking facilities for that place of employment or public building if the owner files a true certification that upon completion of any parking facility for that place of employment or public building that parking facility shall comply with the rules under par. (e) applicable to that place of employment or public building as specified in subd. 1.

(3) Any place of employment or public building subject to sub. (2) shall be so designed and constructed to allow physically disabled persons reasonable means of access from a parking lot, if any, ancillary to such buildings.

(4) The owner of any building who fails to meet the requirements of this section may be required to reconstruct the same by mandatory injunction in a circuit court suit brought by any interested person. Such person shall be reimbursed, if successful, for all costs and disbursements plus such actual attorney fees as may be allowed by the court.

(5) (a) Every place of employment and public building, except those described in sub. (2) (a) 1 to 8, the construction of which is begun after May 24, 1974 but prior to May 27, 1976, on each floor that is accessible to disabled persons, including persons in wheelchairs, which has public toilets shall have:

1. All public toilet rooms and at least one toilet compartment therein so designed and constructed that they will be suitable for entry and use by handicapped persons, including persons in wheelchairs;

2. The toilet compartment specified under par. (a) so designed and constructed to allow sufficient space between the front entrance of the compartment and adjacent furniture, fixtures or walls to permit the compartment door to open at least 95° and to allow a person in a wheelchair ample

room to readily maneuver himself or the wheelchair into the compartment; and

3. At least one lavatory, sink, mirror and towel dispenser or hand drier in each public toilet room accessible to a disabled person, including a person in a wheelchair, if such item is provided.

(b) Within 90 days after May 24, 1974, the department shall adopt, by rule, specifications to effect the requirements of par. (a). The department, in so adopting rules, shall consider the specifications established in the most current revision of "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped", published by the American standards association of New York.

(6) (a) As used in this subsection, "remodeling" means to substantially improve, alter, extend or otherwise change the structure of a building or change the location of exits, but shall not include maintenance, redecoration, reroofing or alteration of mechanical or electrical systems.

(b) If more than 50% of the interior square footage of a public building is to undergo proposed remodeling, the entire building shall be made to conform to sub. (2) (d) and (e), notwithstanding whether the building was constructed prior to, on or after July 1, 1970, and any rules issued under this section.

(c) If 25% to 50% of the interior square footage of a public building is to undergo proposed remodeling, that part of the building which is to be remodeled shall conform to sub. (2) (d), notwithstanding whether the building was constructed prior to, on or after July 1, 1970, and any rules issued under this section.

(d) If less than 25% of the interior square footage of a public building is to undergo proposed remodeling, the remodeling is not subject to sub. (2) (d) and (e) unless the alteration involves work on doors, entrances, exits or public toilet rooms in which case such doors, entrances, exits or public toilet rooms shall be made to conform to sub. (2) (d) and (e), notwithstanding whether the building was constructed prior to, on or after July 1, 1970, and any rules issued under this section.

(e) If remodeling is undertaken pursuant to a plan whereby the project is done in stages which, taken together, add up to a portion of the public building subjecting the remodeling to the limits specified in par. (b) or (c), the appropriate paragraph shall be complied with by the time the remodeling under the plan is completed.

(f) In the case of remodeling in a building having vertical transportation with adequate elevator openings to meet disabled requirements:

1. If the building has 5 floors or less, accessible toilet room accommodations for each sex shall be provided for the disabled on at least one floor.

2. If the building has more than 5 floors, in addition to the accommodations required by subd. 1, accessible toilet room accommodations for each sex shall be provided to serve each additional 5 floors or fraction thereof, and shall be located conveniently throughout the building to facilitate their use.

(g) The owner of any public building who fails to comply with this subsection may be compelled to meet its requirements in a circuit court suit by any interested person. Such person shall be reimbursed, if successful, for all costs and disbursements plus such actual attorney fees as may be allowed by the court.

(h) Each toilet room accommodation provided for disabled persons as required under this section shall be identified on its entrance as a disabled accommodation, and directions to such accommodations shall appear at the building's primary entrance.

(7) The international symbol of accessibility as adopted by the rehabilitation international in 1969 is established as the official state symbol designating buildings and facilities constructed and designed to be accessible. The symbol may be used only in buildings or other facilities, or parts thereof, which meet the standards for access established by rule of the department. If anyone uses or causes the use of the symbol in violation of department standards, the department shall order the discontinuance of such use until such standards are met. Whoever fails to comply with a department order under this subsection shall be fined $50.

(8) Every passenger elevator installed in a place of employment or public building after October 1, 1978 shall be equipped with raised letters and numerals on the operating panel and the external door frame on each floor, and the letters and numerals shall be designed and placed to maximize the ability of persons with functional limitations to use the passenger elevator without assistance.

(9) To the extent that the historic building code applies to the subject matter of this section, this section does not apply to a qualified historic building, as defined under s. 101.121 (2) (c), if the owner elects to be subject to s. 101.121.

History: 1971 c. 185; 1971 c. 228 ss. 17, 42, 44; Stats. 1971 s. 101.13; 1973 c. 201, 202, 336; 1975 c. 276; 1977 c. 249, 407; 1981 c. 341; 1983 a. 77, 246; 1987 a. 260.

While neither the U.S. nor Wisconsin Constitutions compels states to require that public buildings and seats of government be constructed and maintained as to be accessible to the physically handicapped, the legislature has an affirmative duty to address this problem and assure equal access to all constituted classes of citizens, including the physically handicapped. 63 Atty. Gen. 87.

101.135 Uniform firewall identification. (1) The department shall promulgate rules that specify uniform dimensions, design and other characteristics for signs used to identify firewalls. The rules may not specify firewall signs that are more expensive than necessary to accomplish their purpose.

(2) Whenever a city, village or town provides by ordinance for the identification of firewalls, the provisions of the ordinance shall conform to the rules promulgated under sub. (1).

History: 1991 a. 269.

101.14 Fire inspections, prevention, detection and suppression. (1) (a) The department may make reasonable orders for the repair or removal of any building or other structure which for want of repair or by reason of age or dilapidated condition or for any other cause is especially liable to fire, and which is so situated as to endanger other buildings or property and for the repair or removal of any combustible or explosive material or inflammable conditions, dangerous to the safety of any building or premises or the occupants thereof or endangering or hindering fire fighters in case of fire.

(b) The secretary and any deputy may at all reasonable hours enter into and upon all buildings, premises and public thoroughfares excepting only the interior of private dwellings, for the purpose of ascertaining and causing to be corrected any condition liable to cause fire, or any violation of any law or order relating to the fire hazard or to the prevention of fire.

(bm) The secretary and any deputy may, at all reasonable hours, enter the interior of private dwellings at the request of the owner or renter for the purpose of s. 101.145 (6) or 101.645 (4).

(c) The department is hereby empowered and directed to provide the form of a course of study in fire prevention for use in the public schools, dealing with the protection of lives and

property against loss or damage as a result of preventable fires, and transmit the same by the first day of August in each year to the state superintendent of public instruction.

(d) The department may prepare and provide suitable forms for distribution to the school systems in the state, for the purpose of providing uniform reports on fire drills conducted during the year in accordance with s. 118.07 (2).

(2) (a) The chief of the fire department in every city, village or town, except cities of the 1st class, is constituted a deputy of the department, subject to the right of the department to relieve any such chief from duties as such deputy for cause, and upon such suspension to appoint some other person to perform the duty imposed upon such deputy. The department may appoint either the chief of the fire department or the building inspector as its deputy in cities of the 1st class.

(b) The chief of every fire department shall provide for the inspection of every public building and place of employment to determine and cause to be eliminated any fire hazard or any violation of any law relating to fire hazards or to the prevention of fires.

(c) 1. Except as provided under subd. 2, the chief of every fire department shall provide that the inspections required under par. (b) be made at least once in each nonoverlapping 6-month period per calendar year in all of the territory served by his or her fire department. The chief of a fire department may require more frequent inspections than required under this subdivision. The department by rule shall provide for general exceptions, based on the type of occupancy or use of the premises, where less frequent inspections are required. Upon written request by the chief of a fire department, the department by special order may grant an exception to a city, village or town to conduct less frequent inspections than required under this subdivision.

2. In 1st class cities, the fire chief may establish the schedule of fire inspections in that city. The fire chief shall base the frequency of the inspections on hazardous classification, the proportion of public area, the record of fire code violations, the ratio of occupancy to size and any other factor the chief deems significant. Property other than residential property with 4 dwelling units or less shall be inspected at least once annually.

(cm) In addition to the requirements of pars. (b) and (c), a fire department shall provide public fire education services, in consultation with the department and the fire prevention council.

(d) The chief of every fire department, or, in 1st class cities, the building inspector appointed by the department under par. (a), shall designate a sufficient number of inspectors to make the inspections required under pars. (b) and (c).

(e) Written reports of inspection shall be made and kept on file by the authority having jurisdiction to conduct inspections, or its designee, in the manner and form required by the department.

(f) Every inspection required under pars. (b) and (c) is subject to the supervision and direction of the department, which shall, after audit, certify to the commissioner of insurance after the expiration of each calendar year each city, village or town where the inspections for the year have been made, and where records have been made and kept on file as required under par. (e).

(3) The department shall annually conduct training sessions and provide manuals and other materials and services to assist deputies and inspectors in the fulfillment of their duties under sub. (2).

(4) (a) The department shall make rules, pursuant to ch. 227, requiring owners of places of employment and public buildings to install such fire detection, prevention or suppression devices as will protect the health, welfare and safety of all employers, employes and frequenters of places of employment and public buildings.

(b) 1. Except as provided in subd. 2, the rules of the department shall require all such places and buildings over 60 feet in height, the construction of which is begun after July 3, 1974, to contain an automatic fire sprinkler system on each floor.

2. a. Subdivision 1 does not apply to any open parking structure, as defined by the department.

b. If the department determines that water would cause irreparable damage and undue economic loss if discharged in such places or buildings, it shall require a suppression device which has a substance other than water.

c. Subdivision 1 does not apply to any building over 60 feet in height the construction of which is completed or is begun prior to July 3, 1974.

(c) 1. The rules of the department governing such places and buildings under 60 feet in height shall be based upon but may vary from those provisions in the building officials and code administrators international, inc., building code which relate to fire detection, prevention and suppression in public buildings and places of employment.

2. Before the effective date of the rules promulgated under subd. 1, as affected by 1983 Wisconsin Act 295, section 3, the department may grant a variance to any rule relating to automatic fire sprinklers and mandated under chapter 320, laws of 1981, if the department first does both of the following:

a. Consults with the chief of the fire department having authority over the place of employment or public building.

b. Determines that the variance provides protection, substantially equivalent to that of the rules mandated by chapter 320, laws of 1981, of the health, safety and welfare of employers, employes and frequenters of the place of employment or public building.

(d) To the extent that the historic building code applies to the subject matter of this subsection, each qualified historic building, as defined under s. 101.121 (2) (c), is exempt from this subsection if the owner elects to be subject to s. 101.121.

(dm) Each building required by rule under this subsection to contain fire detection, prevention and suppression devices shall have the necessary devices installed at the time of its construction.

(e) Whoever violates this subsection may be fined not less than $100 but not more than $500 for each day of violation.

(f) The department may inspect all buildings covered by this subsection and may issue such orders as may be necessary to assure compliance with it.

(g) As used in this subsection:

1. "Automatic fire sprinkler system" has the meaning provided in s. 145.01 (2).

2. "Fire detection, prevention and suppression devices" include but are not limited to manual fire alarm systems, smoke and heat detection devices, fire extinguishers, standpipes, automatic fire suppression systems and automatic fire sprinkler systems.

(4m) (a) In this subsection:

1. "Automatic fire sprinkler system" has the meaning given in s. 145.01 (2).

2. "Dwelling unit" has the meaning given in s. 101.61 (1).

3. "Multifamily dwelling" has the meaning given in s. 101.971 (2).

4. "Nondwelling unit portions" means the common use areas of a multifamily dwelling, including corridors, stairways, basements, cellars, vestibules, atriums, community rooms, laundry rooms or swimming pool rooms.

5. "Political subdivision" means a county, city, village or town.

5m. "Two-hour fire resistance" means 2-hour fire separations for all walls that separate dwelling units, exit corridors and exit stair enclosures and for all floors and ceilings, so that the specified walls, floors and ceilings are capable of resisting fire for a period not shorter than 2 hours.

(am) A political subdivision may enact ordinances, as provided in this paragraph, that require an automatic fire sprinkler system or 2-hour fire resistance in every multifamily dwelling. Any ordinance enacted under this paragraph shall meet the standards established under pars. (b) and (c) or under pars. (d) and (e).

(b) The department shall require an automatic fire sprinkler system or 2-hour fire resistance in every multifamily dwelling that contains any of the following:

1. Total floor area, for all individual dwelling units, exceeding 16,000 square feet.

2. More than 20 dwelling units.

3. Total floor area of its nondwelling unit portions exceeding the limits established in par. (c).

(c) An automatic fire sprinkler system or 2-hour fire resistance is required under par. (b) in a multifamily dwelling constructed by any of the following types of construction if the total floor area of the nondwelling unit portions in the multifamily dwelling exceeds the following:

1. Type 1 fire resistive construction, 16,000 square feet.

2. Type 2 fire resistive construction, 12,000 square feet.

3. Type 3 metal frame protected construction, 8,000 square feet.

4. Type 4 heavy timber construction, 5,600 square feet.

5. Type 5A exterior masonry protected, 5,600 square feet.

6. Type 5B exterior masonry unprotected, 5,600 square feet.

7. Type 6 metal frame unprotected, 5,600 square feet.

8. Type 7 wood frame protected construction, 5,600 square feet.

9. Type 8 wood frame unprotected construction, 4,800 square feet.

(d) A political subdivision's ordinances, enacted to meet the requirements of this paragraph and par. (e), shall require an automatic fire sprinkler system or 2-hour fire resistance in every multifamily dwelling that contains any of the following:

1. Total floor area, for all individual dwelling units, exceeding 8,000 square feet.

2. More than 8 dwelling units.

3. Total floor area of its nondwelling unit portions exceeding the limits established in par. (e).

(e) A political subdivision's ordinances, enacted to meet the standards established in par. (d) and this paragraph, shall require an automatic fire sprinkler system or 2-hour fire resistance in every multifamily dwelling that is constructed by any of the following types of construction if the total floor area of the nondwelling unit portions in the multifamily dwelling exceeds the following:

1. Type 1 fire resistive construction, 12,000 square feet.

2. Type 2 fire resistive construction, 10,000 square feet.

3. Type 3 metal frame protected construction, 8,000 square feet.

4. Type 4 heavy timber construction, 5,600 square feet.

5. Type 5A exterior masonry protected, 5,600 square feet.

6. Type 5B exterior masonry unprotected, 5,600 square feet.

7. Type 6 metal frame unprotected, 5,600 square feet.

8. Type 7 wood frame protected construction, 5,600 square feet.

9. Type 8 wood frame unprotected construction, 4,800 square feet.

(5) In addition to any fee charged by the department by rule for plan review and approval for the construction of a new or additional installation or change in operation of a previously approved installation for the storage, handling or use of flammable or combustible liquids, the department or its agent shall collect a groundwater fee of $100 for each plan review submittal. The moneys collected under this subsection shall be credited to the environmental fund for groundwater management.

History: 1971 c. 185 s. 1; 1971 c. 228; Stats. 1971 s. 101.14; 1973 c. 324, 326, 336; 1975 c. 39, 94; 1977 c. 29, 413; 1979 c. 221; 1981 c. 320, 341; 1983 a. 36; 1983 a. 189 s. 329 (8); 1983 a. 295, 410; 1985 a. 29; 1985 a. 135 s. 83 (3); 1987 a. 288, 321, 399; 1989 a. 31, 109, 359; 1991 a. 187, 269.

Cross Reference: See 66.122 for provision authorizing special inspection warrants.

See note to 893.80, citing Coffey v. Milwaukee, 74 W (2d) 526, 247 NW (2d) 132.

101.141 Record keeping of fires. The department shall maintain records of all fires occurring in this state. Such records shall be open to public inspection during normal business hours.

History: 1975 c. 224.

101.142 Inventory of petroleum product storage tanks. (1) DEFINITIONS. In this section:

(a) "Petroleum product" means materials derived from petroleum, natural gas or asphalt deposits and includes gasoline, diesel and heating fuels, liquefied petroleum gases, lubricants, waxes, greases and petrochemicals.

(b) "Storage tank" means an enclosed container with a capacity in excess of 60 gallons which is used to hold a petroleum product, regardless of the duration of storage and which is intended for use as a fixed, rather than as a portable, installation.

(2) INVENTORY OF STORAGE TANKS. The department shall undertake a program to inventory and determine the location of aboveground storage tanks and underground storage tanks. The department may require its deputies and any person engaged in the business of distributing petroleum products to provide information on the location of aboveground storage tanks and underground storage tanks. The department shall develop uniform procedures for reporting the location of aboveground storage tanks and underground storage tanks.

History: 1983 a. 410; 1989 a. 254; 1991 a. 82.

101.143 Petroleum storage remedial action. (1) DEFINITIONS. In this section:

(ad) "Bodily injury" does not include those liabilities which are excluded from coverage in liability insurance policies for bodily injury other than liabilities excluded because they are caused by a petroleum project discharge from a petroleum product storage system.

(b) "Discharge" has the meaning designated under s. 144.76 (1) (a).

(c) "Groundwater" has the meaning designated under s. 144.027 (1) (c).

(cm) "Home oil tank system" means an underground home heating oil tank used for consumptive use on the premises together with any on-site integral piping or dispensing system.

(cs) "Occurrence" means a contiguous contaminated area resulting from one or more petroleum products discharges.

(d) "Operator" means any of the following:

1. A person who operates a petroleum product storage system, regardless of whether the system remains in operation

and regardless of whether the person operates or permits the use of the system at the time environmental pollution occurs.

2. A subsidiary or parent corporation of the person specified under subd. 1.

(e) "Owner" means any of the following:

1. A person who owns, or has possession or control of, a petroleum product storage system, or who receives direct or indirect consideration from the operation of a system regardless of whether the system remains in operation and regardless of whether the person owns or receives consideration at the time environmental pollution occurs.

2. A subsidiary or parent corporation of the person specified under subd. 1.

(f) "Petroleum product" means gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil.

(fg) "Petroleum product storage system" means a storage tank that is located in this state and is used to store petroleum products together with any on-site integral piping or dispensing system. The term does not include pipeline facilities, tanks of 110 gallons or less capacity, farm and residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, tanks used for storing heating oil for consumptive use on the premises where stored or tanks owned by this state or the federal government.

(g) "Program year" means the period beginning on August 1, and ending on the following July 31.

(gm) "Property damage" does not include those liabilities which are excluded from coverage in liability insurance policies for property damage, other than liability for remedial action associated with petroleum product discharges from petroleum product storage systems.

(h) "Subsidiary or parent corporation" means a business entity, including a subsidiary, parent corporation or other business arrangement, that has elements of common ownership or control or that uses a long-term contractual arrangement with a person to avoid direct responsibility for conditions at a petroleum product storage system site.

(i) "Underground petroleum product storage tank system" means an underground storage tank used for storing petroleum products together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground.

(1m) RULES CONCERNING 3RD-PARTY COMPENSATION. The commissioner of insurance shall promulgate rules defining "liabilities which are excluded from coverage in liability insurance policies for bodily injury" and "liabilities which are excluded from coverage in liability insurance policies for property damage" for the purposes of sub. (1) (ad) and (gm). The definitions shall be consistent with standard insurance industry practices.

(2) DUTIES OF THE DEPARTMENT. (b) The department shall promote the program under this section to persons who may be eligible for awards under this section.

(c) The department shall keep records and statistics on the program under this section and shall periodically evaluate the effectiveness of the program.

(d) The department shall reserve a portion, not to exceed 20%, of the amount annually appropriated under s. 20.445 (1) (v) for awards under this section to be used to fund emergency remedial action and claims that exceed the amount initially anticipated.

(2m) INTERDEPARTMENTAL COORDINATION. Whenever the department of industry, labor and human relations receives a notification under sub. (3) (a) 3 or the department of natural resources receives a notification of a petroleum product discharge under s. 144.76, the department receiving the notification shall contact the other department and shall schedule a meeting of the owner or operator or person owning a home oil tank system and representatives of both departments.

(3) CLAIMS FOR PETROLEUM PRODUCT INVESTIGATION, REMEDIAL ACTION PLANNING AND REMEDIAL ACTION ACTIVITIES. (a) *Who may submit a claim.* An owner or operator or a person owning a home oil tank system may submit a claim to the department for an award under sub. (4) to reimburse the owner or operator or the person for the eligible costs under sub. (4) (b) that the owner or operator or the person incurs because of a petroleum products discharge from a petroleum product storage system or home oil tank system if all of the following apply:

1. The owner or operator or the person is able to document that the source of a discharge is from a petroleum product storage system or home oil tank system.

3. The owner or operator or the person notifies the department, before conducting a site investigation or remedial action activity, of the discharge and the potential for submitting a claim under this section, except as provided under par. (g).

4. The owner or operator registers the petroleum product storage system or the home oil tank system is registered with the department under s. 101.09.

5. The owner or operator or the person reports the discharge in a timely manner to the division of emergency government in the department of military affairs or to the department of natural resources, according to the requirements under s. 144.76.

6. The owner or operator or the person investigates the extent of environmental damage caused by the petroleum product storage system or home oil tank system.

7. The owner or operator or the person recovers any recoverable petroleum products from the petroleum products storage system or home oil tank system.

8. The owner or operator or the person disposes of any residual solid or hazardous waste in a manner consistent with local, state and federal laws, rules and regulations.

9. The owner or operator or the person follows standards for groundwater restoration in the groundwater standards in the rules promulgated by the department of natural resources under ss. 160.07 and 160.09 and restores the environment, to the extent practicable, according to those standards at the site of the discharge from a petroleum product storage system or home oil tank system.

(b) *Claims submitted by owners or operators who were not owners or operators, or a person owning a home oil tank system when a petroleum product discharge occurred.* An owner or operator who was not the owner or operator, or a person who owns a home oil tank system who did not own the home oil tank system, when a petroleum product discharge occurred and who meets the requirements of this section may submit a claim for an award under sub. (4) unless the owner or operator or the person knew or should have known of the ineligibility of the previous owner or operator or of the person who previously owned the home oil tank system as a result of actions under sub. (4) (g) 4, 5 or 6.

(bm) *Agents.* Except as provided in par. (bn), an owner or operator or a person owning a home oil tank system may enter into a written agreement with another person under which that other person acts as an agent for the owner or operator or person owning a home oil tank system in conducting the activities required under par. (c). The owner or operator or person owning a home oil tank system shall jointly submit the claim for an award under sub. (4).

(bn) *Department of transportation as agent.* With the prior approval of the department and the owner or operator or person owning a home oil tank system, the department of transportation may act as an agent for an owner or operator or a person owning a home oil tank system whose petroleum product storage system or home oil tank system is located on property that is or may be affected by a transportation project under the jurisdiction of the department of transportation. The scope of the department of transportation's agency shall be limited to conducting the activities required under par. (c) and submitting the claim for an award under sub. (4) to be jointly paid to the owner or operator or person and the department of transportation for the eligible costs incurred by the department of transportation in conducting the activities required under par. (c).

(c) *Investigations, remedial action plans and remedial action activities.* Before submitting an application under par. (f), except as provided under par. (g), an owner or operator or the person shall do all of the following:

1. Complete an investigation to determine the extent of environmental damage caused by a discharge from a petroleum product storage system or home oil tank system.

2. Prepare a remedial action plan that identifies specific remedial action activities proposed to be conducted under subd. 3.

3. Conduct all remedial action activities at the site of the discharge from the petroleum product storage system or home oil tank system necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 144.76.

4. Receive written approval from the department of natural resources that the remedial action activities performed under subd. 3 meet the requirements of s. 144.76.

(cm) *Monitoring as remedial action.* An owner or operator or person owning a home oil tank system may, with the approval of the department of natural resources, satisfy the requirements of par. (c) 2 and 3 by proposing and implementing monitoring to ensure the effectiveness of the natural process of degradation of petroleum product contamination.

(d) *Review of site investigations, remedial action plans and remedial action activities.* The department of natural resources shall, at the request of the claimant, review the site investigation and the remedial action plan and advise the claimant on the adequacy of proposed remedial action activities in meeting the requirements of s. 144.76. The advice is not an approval of the remedial action activities. The department of natural resources shall complete a final review of the remedial action activities within 60 days after the claimant notifies the department of natural resources that the remedial action activities are completed.

(e) *Notifications.* The department of natural resources shall notify the department when it gives the claimant written approval under par. (c) 4.

(f) *Application.* A claimant shall submit a claim on a form provided by the department. The claim shall contain all of the following documentation of activities, plans and expenditures associated with the eligible costs incurred because of a petroleum products discharge from a petroleum product storage system:

1. A record of investigation results and data interpretation.

2. A remedial action plan.

3. Contracts for eligible costs incurred because of the discharge and records of the contract negotiations.

4. Accounts, invoices, sales receipts or other records documenting actual eligible costs incurred because of the discharge.

5. The written approval of the department of natural resources under par. (c) 4.

6. Other records and statements that the department determines to be necessary to complete the application.

(g) *Emergency situations.* Notwithstanding pars. (a) 3 and (c) 1 and 2, an owner or operator or the person may submit a claim for an award under sub. (4) after notifying the department under par. (a) 3, without completing an investigation under par. (c) 1 and without preparing a remedial action plan under par. (c) 2 if any of the following apply:

1. An emergency existed which made the investigation under par. (c) 1 and the remedial action plan under par. (c) 2 inappropriate.

2. The owner or operator or the person acted in good faith in conducting the remedial action activities and did not wilfully avoid conducting the investigation under par. (c) 1 or the remedial action plan under par. (c) 2.

(h) *Initial eligibility review.* When an owner or operator or the person notifies the department under par. (a) 3, the department shall provide the owner or operator or the person with information on the program under this section and the department's estimate of the eligibility of the owner or operator or of the person for an award under this section.

(4) AWARDS FOR PETROLEUM PRODUCT INVESTIGATION, REMEDIAL ACTION PLANNING AND REMEDIAL ACTION ACTIVITIES. (a) *Awards.* 1. If the department finds that the claimant meets all of the requirements of this section and any rules promulgated under this section, the department shall issue an award to reimburse a claimant for eligible costs incurred because of a petroleum products discharge from a petroleum product storage system or home oil tank system.

2. The department may not issue an award before all eligible costs have been incurred and written approval is received under sub. (3) (c) 4, unless the department determines that the delay in issuing the award would cause a financial hardship to the owner or operator or the person.

5. The department shall allocate $500,000 in each fiscal year to make awards for home oil tank system discharges, and shall make awards in the order that applications are received. The department may conditionally approve awards which exceed the total of $500,000 in any fiscal year, and make those awards first in the following fiscal year.

(b) *Eligible costs.* Eligible costs for an award under par. (a) include actual costs or, if the department establishes a schedule under par. (cm), usual and customary costs for the following items only:

1. Testing to determine tightness of tanks and lines if the method used is approved by the department.

2. Removal of petroleum products from surface waters, groundwater or soil.

3. Investigation and assessment of contamination caused by a petroleum product storage system or a home oil tank system.

4. Preparation of remedial action plans.

5. Removal of contaminated soils.

6. Soil treatment and disposal.

7. Environmental monitoring.

8. Laboratory services.

9. Maintenance of equipment for petroleum product recovery or remedial action activities.

10. Restoration or replacement of a private or public potable water supply.

11. Restoration of environmental quality.

12. Contractor costs for remedial action activities.

13. Inspection and supervision.

14. Other costs identified by the department as necessary for proper investigation, remedial action planning and remedial action activities to meet the requirements of s. 144.76.

15. For an owner or operator only, compensation to 3rd parties for bodily injury and property damage caused by a petroleum products discharge from an underground petroleum product storage tank system.

(c) *Exclusions from eligible costs.* Eligible costs for an award under par. (a) do not include the following:

1. Costs incurred before August 1, 1987.

2. Costs of retrofitting or replacing a petroleum product storage system or home oil tank system.

3. Other costs that the department determines to be associated with, but not integral to, the eligible costs incurred because of a petroleum products discharge from a petroleum product storage system or home oil tank system.

4. Costs, other than costs for compensating 3rd parties for bodily injury and property damage, which the department determines to be unreasonable or unnecessary to carry out the remedial action activities as specified in the remedial action plan.

5. Costs for investigations or remedial action activities conducted outside this state.

6. Costs for remedial action activities funded under 42 USC 6991, unless the owner or operator or the person repays the funds provided under 42 USC 6991.

7. Costs of emptying, cleaning and disposing of the tank and other costs normally associated with closing or removing any petroleum product storage system or home oil tank system unless those costs were incurred before November 1, 1991, or unless the claimant had signed a contract for services for activities required under sub. (3) (c) or a loan agreement, note or commitment letter for a loan for the purpose of conducting activities required under sub. (3) (c) before November 1, 1991.

(cm) *Usual and customary costs.* The department may establish a schedule of usual and customary costs for any items under par. (b) and may use that schedule to determine the amount of a claimant's eligible costs.

(d) *Awards for claims, underground systems.* 1. The department shall issue an award under this paragraph for a claim filed after July 31, 1987, for eligible costs, under par. (b), incurred on or after August 1, 1987, and before July 1, 1995, by the owner or operator of an underground petroleum product storage tank system.

2. The department shall issue the award under this paragraph without regard to fault in an amount equal to the amount of the eligible costs that exceeds a deductible amount of $2,500 plus 5% of the eligible costs, but not more than $7,500 per occurrence. An award issued under this paragraph may not exceed the following for each occurrence:

a. For an owner or operator of an underground petroleum product storage tank system that is located at a facility at which petroleum is stored for resale or an owner or operator of an underground petroleum product storage tank system that handles an annual average of more than 10,000 gallons of petroleum per month, $1,000,000.

b. For an owner or operator other than an owner or operator under subd. 2. a., $500,000.

3. The department may not issue awards under this paragraph to an owner or operator for eligible costs incurred in one program year that total more than the following:

a. For an owner or operator of 100 or fewer underground petroleum product storage tank systems, $1,000,000.

b. For an owner or operator of more than 100 underground petroleum product storage tank systems, $2,000,000.

4. The department shall recalculate all awards issued under this paragraph, or under s. 101.143 (4) (e), 1987 stats., before May 3, 1990, according to all of the requirements of those provisions at the time that the award was made, except that the award shall be based on 100% of the eligible costs and except that the award shall be subject to the maximum amounts under subds. 2 and 3. The department shall issue an award under this subdivision for the difference between the award as recalculated under this subdivision and the award issued before May 3, 1990.

(e) *Awards for certain owners or operators.* 1. The department shall issue an award under this paragraph for a claim for eligible costs, under par. (b), incurred by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system or for eligible costs, under par. (b), incurred on or after July 1, 1995, by the owner or operator of an underground petroleum product storage tank system.

2. The department shall issue the award under this paragraph without regard to fault in an amount equal to the amount of the eligible costs that exceeds a deductible amount of $2,500 plus 5% of the eligible costs, but not more than $7,500 per occurrence, for eligible costs incurred before July 1, 1993, or a deductible amount of $10,000 for eligible costs incurred on or after July 1, 1993. An award issued under this paragraph may not exceed $195,000 for eligible costs incurred before July 1, 1993, or $190,000 for eligible costs incurred on or after July 1, 1993, for each occurrence.

3. The department may not issue awards under this paragraph to an owner or operator for eligible costs incurred in one program year that total more than $195,000 for eligible costs incurred before July 1, 1993, or $190,000, for eligible costs incurred on or after July 1, 1993.

(ee) *Waiver of deductible.* Notwithstanding par. (d) 2 or (e) 2, the department may waive the requirement that an owner or operator pay the deductible amount if the department determines that the owner or operator is unable to pay. If the department waives the requirement that an owner or operator pay the deductible, the department shall file a statement of lien with the register of deeds of the county in which the petroleum product storage system is located. If the department files the statement of lien, the department has a lien on the property on which the petroleum product storage system is located in the amount of the deductible that was waived. The property remains subject to the lien until that amount is paid in full.

(em) *Awards for claims for home oil tank system discharges.* 1. The department shall issue an award for a claim filed after May 17, 1988, for eligible costs, under par. (b), incurred on or after August 1, 1987, by a person who owns a home oil tank system.

2. The department shall issue the award under this paragraph without regard to fault for each home oil tank system in an amount equal to 75% of the amount of the eligible costs. An award issued under this paragraph may not exceed $7,500.

(es) *Awards for claims for investigations.* 1. The department shall issue an award for a claim filed after August 9, 1989, for eligible costs, under par. (b), incurred on or after August 1, 1987, by an owner or operator or a person owning a home oil tank system in investigating the existence of a discharge or investigating the presence of petroleum products in soil or groundwater if the investigation is undertaken at the written direction of the department of industry, labor and human relations or the department of natural resources and no discharge or contamination is found.

2. The department shall issue the award under this paragraph without regard to fault for each petroleum product storage system or home oil tank system in an amount equal to the eligible costs incurred.

3. If an award has been made under this paragraph and a discharge or contamination is found in a subsequent investigation, the department shall reduce the award under par. (d) or (e) by the amount paid under this paragraph.

(f) *Contributory negligence.* Contributory negligence shall not be a bar to submitting a claim under this section and no award under this section may be diminished as a result of negligence attributable to the claimant or any person who is entitled to submit a claim.

(g) *Denial of claims, limits on awards.* The department shall deny a claim under par. (a) if any of the following applies:

1. The claim is not within the scope of this section.

2. The claimant submits a fraudulent claim.

3. The claimant has been grossly negligent in the maintenance of the petroleum product storage system or home oil tank system.

4. The claimant intentionally damaged the petroleum product storage system or home oil tank system.

5. The claimant falsified storage records.

6. The claimant wilfully failed to comply with laws or rules of this state concerning the storage of petroleum products.

(4m) ASSIGNMENT OF AWARDS. The filing by a claimant with the department of an assignment of an award under sub. (4) to a person who loans money to the claimant for the purpose of conducting activities required under sub. (3) (c) creates and perfects a lien in favor of the assignee in the proceeds of the award. The lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan. The lien under this subsection has priority over any previously existing or subsequently created lien, assignment, security interest or other interest in the proceeds of the award.

(5) RECOVERY OF AWARDS. (a) *Right of action.* A right of action under this section shall accrue to the state against an owner, operator or other person only if the owner, operator or other person submits a fraudulent claim or does not meet the requirements under this section and if an award is issued under this section to the owner, operator or other person for eligible costs under this section.

(b) *Action to recover awards.* The attorney general shall take action as is appropriate to recover awards to which the state is entitled under par. (a). The department shall request that the attorney general take action if the department discovers a fraudulent claim after an award is issued.

(c) *Disposition of funds.* If an award is made from the petroleum storage environmental cleanup fund, the net proceeds of the recovery under par. (b) shall be paid into the petroleum storage environmental cleanup fund.

(6) REQUIREMENT FOR PROOF OF FINANCIAL RESPONSIBILITY. (a) An owner or operator covered under sub. (4) (d) shall provide to the department proof of financial responsibility for the first $5,000 of eligible costs incurred because of a petroleum products discharge. The proof of financial responsibility shall be in a form determined by the department to provide assurance equal to that provided under 40 CFR 280.97 (b) (1) 2. b. that may include a bond, an irrevocable letter of credit, a deposit or an escrow account made payable to or established for the benefit of the department.

(b) The department, after consultation with the petroleum storage environmental cleanup council, shall determine whether proof of financial responsibility submitted under par. (a) satisfies par. (a).

(7) LIABILITY. (a) No common law liability, and no statutory liability which is provided in a statute other than this section, for damages resulting from a petroleum product storage system or home oil tank system is affected by this section. Except as provided in par. (am), the authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any statute other than this section or provided at common law.

(am) An award under this section is the exclusive method for the recovery of the amount of eligible costs equal to the amount of the award that may be issued under this section.

(b) If a person conducts a remedial action activity for a discharge at a petroleum product storage system or home oil tank system site, whether or not the person files a claim under this section, the claim and remedial action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution.

(7m) INTERVENTION IN 3RD-PARTY ACTIONS. An owner or operator of an underground petroleum product storage tank system shall notify the department of any action by a 3rd party against the owner or operator for compensation for bodily injury or property damage caused by a petroleum products discharge from the underground petroleum product storage tank system if the owner or operator may be eligible for an award under this section. The department may intervene in any action by a 3rd party against an owner or operator for compensation for bodily injury or property damage caused by a petroleum products discharge from an underground petroleum product storage tank system if the owner or operator may be eligible for an award under this section for compensation awarded in the action.

(8) PETROLEUM STORAGE ENVIRONMENTAL CLEANUP COUNCIL. The petroleum storage environmental cleanup council shall do all of the following:

(a) Advise the secretary on any rules which may be promulgated under this section.

(b) Review and advise the secretary and the secretary of natural resources on the implementation of the petroleum product remedial action program established under this section.

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269.

101.145 Smoke detectors. (1) DEFINITIONS. As used in this section:

(a) "Residential building" means any public building which is used for sleeping or lodging purposes and includes any apartment house, rooming house, hotel, children's home, community-based residential facility or dormitory but does not include a hospital or nursing home.

(b) "Sleeping area" means the area of the unit in which the bedrooms or sleeping rooms are located. Bedrooms or sleeping rooms separated by another use area such as a kitchen or living room are separate sleeping areas but bedrooms or sleeping rooms separated by a bathroom are not separate sleeping areas.

(c) "Smoke detector" means a device which detects particles or products of combustion other than heat.

(d) "Unit" means a residential building or that part of a residential building which is intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(2) APPROVAL. A smoke detector required under this section shall be approved by underwriters laboratory.

(3) INSTALLATION AND MAINTENANCE. (a) The owner of a residential building shall install any smoke detector required under this section according to the directions and specifications of the manufacturer of the smoke detector.

(b) The owner of a residential building shall maintain any such smoke detector that is located in a common area of that residential building.

(c) The occupant of a unit in a residential building shall maintain any smoke detector in that unit, except that if an occupant who is not an owner, or a state, county, city, village or town officer, agent or employe charged under statute or municipal ordinance with powers or duties involving inspection of real or personal property, gives written notice to the owner that a smoke detector in the unit is not functional the owner shall provide, within 5 days after receipt of that notice, any maintenance necessary to make that smoke detector functional.

(4) REQUIREMENT. The owner of a residential building the initial construction of which is commenced before, on or after May 23, 1978, shall install and maintain a functional smoke detector in the basement and at the head of any stairway on each floor level of the building and shall install a functional smoke detector either in each sleeping area of each unit or elsewhere in the unit within 6 feet of each sleeping area and not in a kitchen.

(5) PENALTY. Whoever violates this section shall forfeit to the state not more than $50 for each day of violation.

(6) DEPARTMENT INSPECTION AND ORDERS. The department may inspect all residential buildings, except the interior of private dwellings, as may be necessary to ensure compliance with this section. The department may inspect the interior of private dwellings at the request of the owner or renter as may be necessary to ensure compliance with this section. The department may issue orders as may be necessary to ensure compliance with this section.

History: 1977 c. 388; 1983 a. 189; 1987 a. 376; 1989 a. 109.

101.15 Mines, tunnels, quarries and pits. (1) If any shaft or workings of a mine, or any tunnel, trench, caisson, quarry, or gravel or sand pit is being operated or used in violation of the safety orders of the department applicable thereto, the owner or operator upon receiving notice of such violation from the department shall immediately cease such operation or use. The operation or use of such shaft or workings of a mine, or of such tunnel, trench, caisson, quarry or gravel or sand pit, shall not be resumed until such safety orders have been complied with.

(2) (a) For the purpose of this section:

1. "Excavation" or "workings" means any or all parts of a mine excavated or being excavated, including shafts, tunnels, drifts, cross cuts, raises, winzes, stopes and all other working places in a mine.

2. "Mineral" means a product recognized by standard authorities as mineral, whether metalliferous or nonmetalliferous.

3. "Shaft" means an opening made for mining minerals, for hoisting and lowering persons or material, or for ventilating underground workings.

(b) No excavation of a shaft may be commenced unless a permit is first issued therefor by the department. Permits for such excavation shall be issued upon fee payment and application filed with the department, if the department is satisfied that the shaft or the excavation and workings will be in compliance with the safety orders adopted by the department and applicable thereto. Application shall be made upon forms prescribed by the department and shall be furnished upon request.

(c) Paragraph (b) does not apply to shafts which will be less than 50 feet in depth wherein persons are not employed, or which are not equipped with power driven hoists used for hoisting persons in and out of the shafts, or which are not covered with a flammable building.

(d) The department may:

1. Employ additional mining inspectors, who shall have had at least 10 years experience in underground mining or be a graduate of a recognized college with a degree of mining engineering.

2. Cause the inspection of all underground mines, quarries, pits, zinc works or other excavations.

(e) The department shall promulgate rules to effect the safety of mines, explosives, quarries and related activities. Such rules shall provide for the establishment of uniform limits on permissible levels of blasting resultants to reasonably assure that blasting resultants do not cause injury, damage or unreasonable annoyance to any person or property outside any controlled blasting site area.

(f) 1. The department shall cause the inspections of mines and similar establishments at least once every 2 months. In the making of the inspections the owner and the labor union identified as the bargaining representative of the employes of the mine or establishment shall be permitted to accompany the inspector engaged in the tour of inspection. The department shall cause a report of any inspection so made, to be submitted to representatives of the operator and of the employes.

2. The department may apply to a court of record for the closing of any underground mine, quarry, pit, zinc works or other excavation where the same is being operated in violation of any of its rules or orders, and the owners or operators have failed within a reasonable time to correct any unsafe methods of operation. The failure of any owner or operator to comply with the order or judgment of the court subjects the party or parties to contempt proceedings.

History: 1971 c. 185; 1971 c. 228 s. 44; Stats. 1971 s. 101.15; 1975 c. 94 s. 91 (9); 1977 c. 29; 1979 c. 257; 1983 a. 189; 1985 a. 29.

When a deputy inspector determines that there is a violation of safety orders where a condition of extreme and imminent danger to a workman's life exists, he may seek the assistance of a local law enforcement officer. The local law enforcement officer has a duty to render such assistance unless in his opinion other priority assignment take precedence. 59 Atty. Gen. 12.

101.16 Liquefied petroleum gas. (1) The term "liquefied petroleum gas" as used in this section, shall mean and include any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes, normal butane or isobutane and butylenes.

(2) The department shall ascertain, fix and order such reasonable standards, rules or regulations for the design, construction, location, installation, operation, repair and maintenance of equipment for storage, handling, use, and transportation by tank truck or tank trailer, of liquefied petroleum gases for fuel purposes, and for the odorization of said gases used therewith, as shall render such equipment safe. The promulgation, effect and review of standards, rules and regulations adopted under this section shall be controlled by this chapter.

(3) No person, firm or corporation, except the owner thereof and those duly authorized by the owner so to do, shall fill, refill or use in any manner a liquefied petroleum gas container or receptacle for any purpose whatsoever.

(4) Every person, firm, association or corporation actually performing the work of installing, on and after the effective date of regulations promulgated by the department pursuant to this section, equipment utilizing liquefied petroleum gas for fuel purposes, shall furnish the customer or user of said equipment, a statement, the form of which shall be prescribed by the department, showing that the design, construction, location and installation of said equipment conforms with the

rules and regulations adopted by the department pursuant to this section.

(5) Any person, firm, association or corporation violating this section, or any standard, rule or regulation adopted by the department pursuant to this section, or issuing a false statement under sub. (4), shall be fined not less than $25 nor more than $100, or imprisoned not less than 30 days nor more than 6 months.

(6) This section shall not apply to railroads engaged in interstate commerce or to equipment used by them.

History: 1971 c. 185 s. 1; Stats. 1971 s. 101.16.

101.17 Machines and boilers, safety requirement. No machine, mechanical device, or steam boiler shall be installed or used in this state which does not fully comply with the requirements of the laws of this state enacted for the safety of employes and frequenters in places of employment and public buildings and with the orders of the department adopted and published in conformity with ss. 101.01 to 101.25. Any person violating this section shall be subject to the forfeitures provided in s. 101.02 (12) and (13).

History: 1971 c. 185 ss. 1, 7; 1971 c. 228 ss. 19, 43; Stats. 1971 s. 101.17.

101.175 Local energy resource systems. (1) In this section:

(a) "Local energy resource system" means a solar energy system, a wind energy system or a wood energy system.

(b) "Solar energy system" means equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy.

(c) "Wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy.

(d) "Wood energy system" means woodburning stove or furnace.

(1m) The purpose of this section is to establish statewide local energy resource system standards to promote accurate consumer evaluation of local energy resource systems and components thereof.

(2) Any manufacturer or retailer prior to the sale in this state of any local energy resource system or components thereof may request the department to issue a seal of quality for each system or component which meets or exceeds the quality standards established by the department under sub. (4).

(3) The department, in consultation with the department of agriculture, trade and consumer protection, shall establish by rule quality standards for local energy resource systems which do not impede development of innovative systems but which do:

(a) Promote accurate consumer evaluation of local energy resource systems and components thereof.

(b) Conform, where feasible, with national performance standards promulgated or recognized by the federal government for local energy resource systems.

(c) Promote the production, marketing and installation of local energy resource systems.

(4) The quality standards under sub. (3) shall include but are not limited to:

(a) The requirement of a warranty and minimum requirements for the contents thereof.

(b) The requirement of an operation and maintenance manual and minimum requirements for the contents thereof.

(c) Minimum specifications for materials, workmanship, durability and efficiency.

(5) Upon request by any manufacturer or retailer of any local energy resource system or components thereof which meet or exceed the quality standards established under sub. (4), the department shall issue an appropriate seal of quality. The department may charge a fee to cover the cost of the seal and to cover the cost of examining the system or its components.

(6) Misrepresentation, misuse or duplication of the department seal of quality issued under sub. (5) shall be deemed deceptive advertising under s. 100.18 (9m).

(7) At the request of any buyer of a local energy resource system the department may inspect any local energy resource system necessary to ascertain compliance with this section.

History: 1979 c. 350; 1983 a. 27 s. 2202 (25); 1985 a. 120.

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

(a) "Approved refrigerant reclaiming 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 reclaimed refrigerant established under sub. (4) (a) 1.

(am) "Approved refrigerant recycling equipment" means equipment that the department or an independent standards testing organization approved by the department determines will reduce contaminants in used ozone-depleting refrigerant by oil separation and passes through devices that reduce moisture, acidity and particulate matter.

(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), or trailer refrigeration equipment, as defined in s. 100.45 (1) (e).

(2) SERVICING. (a) After December 31, 1991, no person, including a state agency, as defined in s. 234.75 (10), may install or service a piece of refrigeration equipment that contains 5 pounds or more of ozone-depleting refrigerant unless the person certifies all of the following to the department:

1. That the person does not use ozone-depleting refrigerant for cleaning purposes, including to clean the interior or exterior surfaces of refrigeration equipment.

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

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

4. That the person does not knowingly or negligently release ozone-depleting refrigerant to the environment, except for minimal releases that occur as a result of efforts to recover, reclaim or recycle ozone-depleting refrigerant removed from refrigeration equipment.

(b) After December 31, 1992, no person may service a refrigerator or freezer that contains less than 5 pounds of ozone-depleting refrigerant unless the person certifies all of the items under par. (a) 1 to 4 to the department.

(3) SALE OF USED REFRIGERANT. (a) After December 31, 1991, no person, including a state agency as defined in s. 234.75 (10), may sell used ozone-depleting refrigerant removed from refrigeration equipment for reuse unless the person certifies all of the following to the department:

1. That the person or another person reclaims the ozone-depleting refrigerant using approved refrigerant reclaiming equipment.

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

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

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

(bm) Identify approved refrigerant reclaiming equipment or approve independent testing organizations that may identify approved refrigerant reclaiming 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.

History: 1989 a. 284; 1991 a. 97.

101.18 Electric fences. The department shall ascertain, fix and order such reasonable standards, rules or regulations for the erection, construction, repair and maintenance of electric fences as shall render them safe.

History: 1971 c. 185 s. 1; 1971 c. 228; Stats. 1971 s. 101.18.

101.19 Fees and records. (1) The department, by rule promulgated under ch. 227, shall fix and collect fees which shall, as closely as possible, equal the cost of providing the following services:

(a) The examination of plans for public buildings, public structures, places of employment and the components thereof.

(am) The services specified by s. 101.12 (3) (am).

(b) The required inspection of boilers, pressure vessels, refrigeration plants, petroleum and liquefied petroleum gas vessels, anhydrous ammonia tanks and containers, elevators, ski towing and lift devices, escalators, dumbwaiters and amusement or thrill rides but not of amusement attractions.

(c) Determining and certifying the competency of inspectors, blasters and welders.

(d) Each inspection of a facility conducted to ensure that the construction is in accordance with the plans approved by the department.

(e) The review of plans, construction inspections, department labels and licensing of manufacturers of manufactured homes and mobile homes.

(f) Defraying the cost of the manufactured dwelling program, the one- and two-family dwelling programs and the multifamily dwelling program.

(g) The inspection and investigation of accidents.

(h) Inspections of mines, tunnels, quarries, pits and explosives.

(i) Inspecting and certifying rental units under s. 101.122 (4) and certifying and training inspectors under s. 101.122 (2) (c) and (d).

(j) The licensing and inspection of fireworks manufacturers under s. 167.10 (6m).

(k) The certification of appliances under s. 101.08 (6).

(2) The department shall issue and record required certificates of inspection or of registration for equipment listed in sub. (1) (b).

(3) In this section:

(a) "Amusement attraction" means any game of skill, show, or exhibition that does not constitute an amusement or thrill ride entertainment device.

(b) "Amusement or thrill ride" means any device that carries frequenters in an unusual, entertaining or thrilling mode of motion or any vehicle providing entertainment or transportation to, from or within an amusement area.

History: 1971 c. 185; 1971 c. 228 s. 42; Stats. 1971 s. 101.19; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1983 a. 27, 94, 446; 1987 a. 343; 1991 a. 39, 269.

101.211 Lunchrooms. The department shall require a suitable space in which lunches may be eaten in any place of employment if found by the department to be reasonably necessary for the protection of the life, health, safety and welfare of employes therein.

History: 1971 c. 185 s. 1; 1971 c. 228 s. 42; Stats. 1971 s. 101.211; 1977 c. 29.

101.22 Equal rights. (1) INTENT. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ss. 66.432 and 66.433. The legislature hereby extends the state law governing equal housing opportunities to cover single-family residences which are owner-occupied. The legislature finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated. This section shall be deemed an exercise of the police powers of the state for the protection of the welfare, health, peace, dignity and human rights of the people of this state.

(1m) DEFINITIONS. In this section:

(ad) "Advertise" means to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing or rental of housing.

(am) "Age", in reference to a member of a protected class, means at least 18 years of age.

(b) "Aggrieved person" means a person who claims to have been injured by discrimination in housing or believes that he or she will be injured by discrimination in housing that is about to occur.

(c) "Complainant" means a person who files a complaint alleging discrimination in housing or public place of accommodation or amusement.

(d) "Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the complainant, the respondent and the department.

(e) "Condominium" has the meaning given in s. 703.02 (4).

(f) "Condominium association" means an association, as defined in s. 703.02 (1m).

(g) "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment or being regarded as having such an impairment. "Disability" does not include the current illegal use of a controlled substance, as defined in s. 161.01 (4), unless the individual is participating in a supervised drug rehabilitation program.

(h) "Discriminate" means to segregate, separate, exclude or treat a person or class of persons unequally in a manner described in sub. (2), (2m) or (2r) because of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry.

(i) "Dwelling unit" means a structure or that part of a structure that is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons who are maintaining a common household, to the exclusion of all others.

(j) "Family" includes one natural person.

(k) "Family status" means any of the following conditions that apply to a person seeking to rent or purchase housing or to a member or prospective member of the person's household regardless of the person's marital status:

1. A person is pregnant.

2. A person is in the process of securing sole or joint legal custody, periods of physical placement or visitation rights of a minor child.

3. A person's household includes one or more minor or adult relatives.

4. A person's household includes one or more adults or minor children in his or her legal custody or physical placement or with whom he or she has visitation rights.

5. A person's household includes one or more adults or minor children placed in his or her care under a court order, under a guardianship or with the written permission of a parent or other person having legal custody of the adult or minor child.

(km) "Hardship condition" means a situation under which a tenant in housing for older persons has legal custody or physical placement of a minor child or a minor child is placed in the tenant's care under a court order, under a guardianship or with the written permission of a parent or other person having legal custody of the minor child.

(L) "Housing" means any improved property, or any portion thereof, including a mobile home as defined in s. 66.058 (1) (d) or condominium, that is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence. "Housing" includes any vacant land that is offered for sale or rent for the construction or location thereon of any building, structure or portion thereof that is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence.

(m) "Housing for older persons" means any of the following:

1. Housing provided under any state or federal program that the secretary determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

2. Housing solely intended for, and solely occupied by, persons 62 years of age or older.

3. Housing primarily intended and primarily operated for occupancy by at least one person 55 years of age or older per dwelling unit.

(mm) "Interested person" means an adult relative or friend of a member of a protected class, or an official or representative of a private agency, corporation or association concerned with the welfare of a member of a protected class.

(n) "Lodging establishment" means any of the following:

1. A bed and breakfast establishment, as defined in s. 50.50 (1).

2. A hotel, as defined in s. 50.50 (3).

3. A tourist rooming house, as defined in s. 50.50 (6).

4. A campground.

(nm) "Member of a protected class" means a group of natural persons, or a natural person, who may be categorized based on one or more of the following characteristics: sex, race, color, disability, sexual orientation as defined in s. 111.32 (13m), religion, national origin, marital status, family status, lawful source of income, age or ancestry.

(om) "Political subdivision" means a city, village, town or county.

(p) 1. "Public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation; lodging establishments; restaurants; taverns; barber or cosmetologist, aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where accommodations, amusement, goods or services are available either free or for a consideration, subject to subd. 2.

2. "Public place of accommodation or amusement" does not include a place where a bona fide private, nonprofit organization or institution provides accommodations, amusement, goods or services during an event in which the organization or institution provides the accommodations, amusement, goods or services to the following individuals only:

a. Members of the organization or institution.

b. Guests named by members of the organization or institution.

c. Guests named by the organization or institution.

(q) "Relative" means a parent, grandparent, great-grandparent, stepparent, step grandparent, brother, sister, child, stepchild, grandchild, step grandchild, great-grandchild, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, half brother or half sister or any other person related by marriage, consanguinity or affinity.

(r) "Rent" means to lease, to sublease, to let or to otherwise grant for a consideration the right of a tenant to occupy housing not owned by the tenant.

(s) "Respondent" means the person accused in a complaint or amended complaint of discrimination in housing and any other person identified in the course of an investigation as allegedly having discriminated in housing or in providing a public place of accommodation or amusement.

(t) "Sexual orientation" has the meaning given in s. 111.32 (13m).

(u) "Significant facilities and services specifically designed to meet the physical or social needs of older persons" includes social and recreational programs; continuing education; information and counseling; recreational, homemaker, outside maintenance and referral services; an accessible physical environment; emergency and preventive health care programs; congregate dining facilities; transportation to facilitate access to social services; and services designed to en-

courage and assist residents to use the services and facilities available to them.

(1s) DEPARTMENT TO ADMINISTER. This section shall be administered by the department through its division of equal rights. The department may promulgate such rules as are necessary to carry out this section. No rule may prohibit the processing of any class action complaint or the ordering of any class-based remedy, or may provide that complaints may be consolidated for administrative convenience only.

(2) DISCRIMINATION PROHIBITED. It is unlawful for any person to discriminate:

(a) By refusing to sell, rent, finance or contract to construct housing or by refusing to negotiate or discuss the terms thereof.

(b) By refusing to permit inspection or exacting different or more stringent price, terms or conditions for the sale, lease, financing or rental of housing.

(c) By refusing to finance or sell an unimproved residential lot or to construct a home or residence upon such lot.

(d) By advertising in a manner that indicates discrimination by a preference or limitation.

(e) For a person in the business of insuring against hazards, by refusing to enter into, or by exacting different terms, conditions or privileges with respect to, a contract of insurance against hazards to a dwelling.

(f) By refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant.

(g) In providing the privileges, services or facilities that are available in connection with housing.

(h) By falsely representing that housing is unavailable for inspection, rental or sale.

(i) By denying access to, or membership or participation in, a multiple listing service or other real estate service.

(j) By coercing, intimidating, threatening or interfering with a person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, a right granted or protected under this section, or with a person who has aided or encouraged another person in the exercise or enjoyment of a right granted or protected under this section.

(k) In making available any of the following transactions, or in the terms or conditions of such transactions for a person whose business includes engaging in residential real estate-related transactions:

1. The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing or maintaining housing or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate.

2. Selling, brokering or appraising residential real property.

(L) By otherwise making unavailable or denying housing.

(2m) REPRESENTATIONS DESIGNED TO INDUCE PANIC SALES. No person may induce or attempt to induce a person to sell or rent housing by representations regarding the present or prospective entry into the neighborhood of a person of a particular economic status or a member of a protected class, or by representations to the effect that such present or prospective entry will or may result in any of the following:

(a) The lowering of real estate values in the area concerned.

(b) A deterioration in the character of the area concerned.

(c) An increase in criminal or antisocial behavior in the area concerned.

(d) A decline in the quality of the schools or other public facilities serving the area.

(2r) DISCRIMINATION AGAINST PERSONS WITH DISABILITIES PROHIBITED. (a) *Definitions.* In this subsection:

1. "Accessible" means able to be approached, entered and used by persons with disabilities.

2. "Accessible route" means a continuous, unobstructed path connecting accessible elements and spaces in a building, within a site or from a site to a vehicular route, that can be negotiated by all persons with a disability.

3. "ANSI A117.1" means the 1986 edition of the American national standards institute's code for buildings and facilities providing accessibility and usability for physically handicapped people.

4. "Covered multifamily housing" means any of the following:

a. Housing that is first ready for occupancy on or after October 1, 1993, consisting of 3 or more dwelling units if the housing has one or more elevators.

b. Grade-level dwelling units, in housing without elevators, that are first ready for occupancy on or after October 1, 1993, consisting of 3 or more dwelling units.

5. "Remodeling" has the meaning given in s. 101.13 (6) (a).

6. "Vehicular route" means a route intended for vehicular traffic including, but not limited to, a street, driveway or parking lot.

(b) *Types of discrimination prohibited.* In addition to discrimination prohibited under subs. (2) and (2m), no person may do any of the following:

1. Segregate, separate, exclude or treat unequally in the sale or rental of, or otherwise make unavailable or deny, housing to a buyer or renter because of a disability of that buyer or renter, a disability of a person residing in or intending to reside in that housing after it is sold, rented or made available or a disability of a person associated with that buyer or renter.

2. Segregate, separate, exclude or treat unequally a person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection with such housing, because of a disability of that person, a disability of a person residing in or intending to reside in that housing after it is sold, rented or made available or a disability of a person associated with that person.

3. Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing housing that is occupied, or is to be occupied, by such a person if the modifications may be necessary to afford the person full enjoyment of the housing, except that in the case of rental housing the landlord may, where it is reasonable to do so, condition permission for a modification on the tenant's agreement to restore the interior of the housing to the condition that existed before the modification, other than reasonable wear and tear. The landlord may not increase any customarily required security deposit. Where it is necessary to ensure that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of a restoration agreement a requirement that the tenant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. If escrowed funds are not used by the landlord for restorations, they shall be returned to the tenant.

4. Refuse to make reasonable accommodations in rules, policies, practices or services that are associated with the housing, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy housing, unless the accommodation would impose an undue hardship on the owner of the housing.

(bm) *Animals assisting persons with disabilities.* 1. If an individual's vision, hearing or mobility is impaired, it is

discrimination for a person to refuse to rent or sell housing to the individual, cause the eviction of the individual from housing, require extra compensation from an individual as a condition of continued residence in housing or engage in the harassment of the individual because he or she keeps an animal that is specially trained to lead or assist the individual with impaired vision, hearing or mobility if all of the following apply:

a. Upon request, the individual shows to the lessor, seller or representative of the condominium association credentials issued by a school recognized by the department as accredited to train animals for individuals with impaired vision, hearing or mobility.

b. The individual accepts liability for sanitation with respect to, and damage to the premises caused by, the animal.

2. Subdivision 1 does not apply in the case of the rental of owner-occupied housing if the owner or a member of his or her immediate family occupying the housing possesses and, upon request, presents to the individual a certificate signed by a physician which states that the owner or family member is allergic to the type of animal the individual possesses.

(c) *Design and construction of covered multifamily housing.* In addition to discrimination prohibited under pars. (b) and (bm) and subs. (2) and (2m), no person may design or construct covered multifamily housing unless it meets all of the following standards:

1. There is at least one accessible entrance for each building and that entrance is on an accessible route. All other entrances that are at grade level shall be accessible to the greatest extent feasible. The department shall promulgate rules that define "to the greatest extent feasible" to ensure maximum accessibility in a way that is not disproportionate to the entire project's cost and scope. If the covered multifamily housing units are at grade level and are served by separate entrances, each unit shall be on an accessible route. If the units have a minimum number of required exits, as determined by rules that shall be promulgated by the department, all required grade-level exits shall be accessible.

2. Public and common use areas are accessible to persons with disabilities.

3. Interior and exterior doors, and interior passages, are sufficiently wide to allow passage by persons with disabilities who use wheelchairs.

4. Light switches, electrical outlets, circuit controls, thermostats and other environmental controls are all located in accessible locations; reinforcements in bathroom walls are installed to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, when such facilities are provided; kitchens and bathrooms allow an individual in a wheelchair to maneuver about the space; and, upon the request of a renter and without cost to a renter, lever door handles are on all doors and single lever controls, or other controls that are approved by the department by rule, are on all plumbing fixtures used by residents.

(d) *Remodeling.* 1. If more than 50% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, the entire housing shall conform to the standards in par. (c), regardless of when the housing was first intended for occupancy.

2. If 25% to 50% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, that part of the housing that is to be remodeled shall conform to the standards in par. (c), regardless of when the housing was first intended for occupancy.

3. If less than 25% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, the remodeling is not subject to the standards in par. (c) unless the alteration involves work on doors, entrances, exits or toilet rooms, in which case the doors, entrances, exits or toilet rooms shall conform to the standards in par. (c) regardless of when the housing was first intended for occupancy.

4. The department may grant a variance or waiver from the requirements under this paragraph relating to exterior accessibility using the standards and procedures under par. (e).

(e) *Permit and variance procedures.* 1. Plans and specifications for all covered multifamily housing subject to par. (c) and proposed remodeling subject to par. (d) shall be submitted to the department or its authorized representative for examination and approval before commencing work. The department shall promulgate rules that specify the materials to be included in the submittal, the procedures to be followed upon receipt of a submittal, reasonable time limitations for reviewing submittals and issuing or denying permits and qualifications for authorized representatives.

2. The department may grant a variance from the requirements relating to exterior accessibility under par. (c) 1 or (d), or from administrative rules promulgated under sub. (1s), if the person designing, constructing or remodeling the housing shows that meeting those requirements is impractical because of the terrain or unusual characteristics of the site. The department shall use a slope analysis of the undisturbed site for covered multifamily housing under par. (c) or the existing site for remodeling under par. (d) to determine the minimum number of accessible entrances at each site, with a minimum goal of exterior accessibility of 50% of the dwelling units of covered multifamily housing at one site. The department may impose specific conditions in granting a variance to promote exterior accessibility of the housing to persons with disabilities. If the department finds that exterior accessibility is impractical as to all dwelling units at a site, it may grant a waiver from the requirements under par. (c) 1 or (d).

(f) *Safe harbor.* 1. Except as provided in subd. 2, covered multifamily housing and remodeled housing are accessible for purposes of this subsection if they comply with one of the following:

a. The applicable requirements of ANSI A117.1.

b. Final guidelines issued by the federal department of housing and urban development, published in the federal register on March 6, 1991.

c. Another standard that affords persons with disabilities access that is essentially equivalent to or greater than that required by ANSI A117.1.

2. Subdivision 1 does not apply to remodeled or covered multifamily housing for which a building permit is issued on or after the first day of the 7th month beginning after the effective date of administrative rules promulgated by the department under this subsection establishing the accessibility standards for design and construction under par. (c).

(g) *General powers and duties of department.* 1. The requirements under this subsection are in addition to, and do not supplant, the requirements under s. 101.13 relating to the use of public buildings by persons with disabilities. Any conflict between this subsection and s. 101.13 or the rules promulgated under s. 101.13 shall be resolved in favor of the provision providing the greatest degree of access by persons with disabilities, as determined by the department.

2. The department shall promulgate rules establishing minimum accessibility requirements for design and construction of covered multifamily housing and the remodeling of housing that are consistent with this subsection, that incorporate the applicable standards under ANSI A117.1 and that set forth permit and variance procedures for purposes of par. (e).

3. The department shall promulgate rules creating standards for interior and exterior accessibility of grade level

portions of multilevel dwelling units without elevators in any housing consisting of 3 or more dwelling units with separate exterior entrances. The rules shall ensure that access to a grade-level floor is provided to at least 25% of the dwelling units first ready for occupancy on or after the effective date of the rule.

(5m) EXEMPTIONS AND EXCLUSIONS. (a) 1. Nothing in this section prohibits discrimination based on age or family status with respect to housing for older persons.

1e. Under this paragraph, housing under sub. (1m) (m) 3 may qualify as housing for older persons only if the owner of the housing provides the department with written certification that all of the following factors apply to the housing:

a. There exists significant facilities and services specifically designed to meet the physical or social needs of older persons under sub. (1m) (m) 3.

b. At least 80% of the dwelling units under sub. (1m) (m) 3 are occupied by at least one person 55 years of age or older.

c. Policies are published and procedures are adhered to that demonstrate an intent by the owner or manager to provide housing under sub. (1m) (m) 3 for persons 55 years of age or older.

1m. No person may discriminate by refusing to continue renting to a person living in housing for older persons under sub. (1m) (m) 3 who is subject to a hardship condition.

2. Under this paragraph, housing may qualify as housing for older persons with respect to persons first occupying the housing on or after September 1, 1992, regardless of whether a person who had not attained the age of 62 resided in the housing on that date or regardless of whether one or more dwelling units were unoccupied on that date, if the persons who first occupy the housing on or after that date have attained the age of 62.

(b) Nothing in this section shall prohibit a person from exacting different or more stringent terms or conditions for financing housing based on the age of the individual applicant for financing if the terms or conditions are reasonably related to the individual applicant.

(c) Nothing in this section shall prohibit the development of housing designed specifically for persons with disabilities and preference in favor of persons with disabilities in relation to such housing.

(d) Nothing in this section requires that housing be made available to an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property or whose tenancy would result in substantial physical damage to the property of others, if the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations. A claim that an individual's tenancy poses a direct threat or a substantial risk of harm or damage must be evidenced by behavior by the individual which caused harm or damage, which directly threatened harm or damage or which caused a reasonable fear of harm or damage to other tenants, persons employed on the property or the property. No claim that an individual's tenancy would constitute a direct threat to the safety of other persons or would result in substantial damage to property may be based on the fact that a tenant has been or may be the victim of domestic abuse, as defined in s. 813.12 (1) (a).

(e) It is not discrimination based on family status to comply with any reasonable federal, state or local government restrictions relating to the maximum number of occupants permitted to occupy a dwelling unit.

(em) 1. Subject to subd. 2, nothing in this section applies to a decision by an individual as to the person with whom he or she will, or continues to, share a dwelling unit, as defined in s. 101.71 (2) except that dwelling unit does not include any residence occupied by more than 5 persons.

2. Any advertisement or written notice published, posted or mailed in connection with the rental or lease of a dwelling unit under subd. 1 may not violate sub. (2) (d), 42 USC 3604 (c), or any rules or regulations promulgated under this section or 42 USC 3601 to 3619, except that such an advertisement or written notice may be for a person of the same sex as the individual who seeks a person to share the dwelling unit for which the advertisement or written notice is placed.

(f) Nothing in this section prohibits an owner or agent from requiring that a person who seeks to buy or rent housing supply information concerning family status and marital, financial and business status but not concerning race, color, physical condition, disability, sexual orientation, age, ancestry, national origin, religion or creed.

(6) FAIR HOUSING ADMINISTRATIVE ENFORCEMENT. (a) *Complaints.* 1. The department may receive and investigate a complaint charging a violation of sub. (2), (2m) or (2r) if the complaint is filed with the department not later than one year after the alleged discrimination occurred or terminated.

2. The complaint shall include a written statement of the essential facts constituting the discrimination that is charged, and shall be signed by the complainant.

3. The complaint may be filed by an aggrieved person, by an interested person, or by the department under par. (b). The department shall, upon request, provide appropriate assistance in completing and filing complaints.

4. The department shall serve notice on the aggrieved person acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under this subsection and the right to bring a private civil action under sub. (6m).

5. Upon the filing of an initial, amended, final or supplemental complaint, the department shall promptly serve a copy of the complaint upon the respondent, except where testing may be conducted. The initial complaint shall be served before the commencement of the investigation by the department, except where testing may be conducted. The notice shall be sent by certified mail, return receipt requested. The notice to the respondent shall include a written statement from the department directing the respondent to respond in writing to the allegations in the complaint within 20 days after the date of the notice and further stating that, if the respondent fails to answer the complaint in writing, the department will make an initial determination as to whether discrimination has occurred based only on the department's investigation and the information supplied by the complainant.

6. The department may dismiss the complaint if the complainant fails to respond to the department within 20 days from the date of mailing of any correspondence from the department concerning the complaint, if the department's correspondence requests a response and if the correspondence is sent by certified mail, return receipt requested, to the last known-address of the complainant.

(b) *Powers and duties of department.* The department and its duly authorized agents may hold hearings, subpoena witnesses, take testimony and make investigations as provided in this subsection. The department may test and investigate for the purpose of establishing violations of sub. (2), (2m) or (2r) and may make, sign and file complaints alleging violations of sub. (2), (2m) or (2r). The department shall employ examiners to hear and decide complaints of discrimination under this section, and to assist in the administration of this section. The examiners may make findings and issue orders under this subsection. The department shall

develop and implement an investigation manual for use in conducting investigations under par. (c).

(c) *Investigation and finding of probable cause.* 1. The department shall investigate all complaints that allege a violation of this section and that are filed within the time specified under par. (a). The department may subpoena persons or documents for the purpose of investigation. If during an investigation it appears that the respondent has engaged in discrimination against the complainant which is not alleged in the complaint, the department may advise the complainant that the complaint should be amended. If the complaint is amended, the department shall also investigate the allegations of the amended complaint.

2. At the conclusion of the investigation of the allegations, the department shall make a determination as to whether probable cause exists to believe that discrimination has occurred or is about to occur. In making a determination of probable cause, the department shall consider whether the facts concerning the alleged discrimination are sufficient to warrant the initiation of a civil action. If the department determines that probable cause exists, the department shall immediately issue a charge on behalf of the aggrieved person. Service of copies of the charge shall be made on the complainant, the respondent and the aggrieved person by certified mail, return receipt requested. When a charge is filed, a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action under sub. (6m) in lieu of a hearing under par. (f). The election shall be made no later than 20 days after the receipt by the electing person of service of the charge, along with information about how to make the election. If an election is made, the person making the election shall give notice of doing so to the department and to all other complainants and respondents to whom the charge relates. The department shall notify the aggrieved persons that an election is made.

3. No charge may be issued regarding alleged discrimination after the beginning of the trial of a civil action commenced by the aggrieved party under sub. (6m) or 42 USC 3613, seeking relief with respect to that discriminatory act.

4. If the department initially determines that there is no probable cause to believe that discrimination occurred as alleged in the complaint, it may dismiss those allegations. The department shall, by a notice to be served with the determination, notify the parties of the complainant's right to appeal the dismissal of the claim to the secretary for a hearing on the issue by a hearing examiner. Service of the determination shall be made by certified mail, return receipt requested. If the hearing examiner determines that no probable cause exists, that determination is the final determination of the department and may be appealed under par. (j).

(d) *Temporary judicial relief.* At any time after a complaint is filed alleging discrimination in violation of sub. (2), (2m) or (2r), the department may file a petition in the circuit court for the county in which the act of discrimination allegedly occurred or for the county in which a respondent resides or transacts business, seeking a temporary injunction or restraining order against the respondent to prevent the respondent from performing an act that would tend to render ineffectual an order that the department may enter with respect to the complaint, pending final determination of proceedings under this section.

(e) *Conciliation.* 1. Upon the filing of a complaint alleging discrimination in violation of sub. (2), (2m) or (2r), the department may endeavor to eliminate the discrimination by conference, conciliation and persuasion. The department shall notify the parties that conciliation services are available.

2. Conciliation efforts may be undertaken by the department during the period beginning with the filing of the complaint and ending with the dismissal of the complaint under par. (c) 4 or the issuance of a charge under par. (c) 2.

3. If conciliation resolves the dispute, a written conciliation agreement shall be prepared which shall state all measures to be taken by each party. The agreement may provide for dismissal of the complaint if the dismissal is without prejudice to the complainant's right to pursue the complaint against any respondent who fails to comply with the terms of the agreement. The agreement shall be signed by the respondent, the complainant and the aggrieved person and is subject to approval by the department. A conciliation agreement entered into under this subdivision is a public record and is subject to inspection under s. 19.35, unless the parties to the agreement request that the record be exempt from disclosure and the department finds that disclosure is not required to further the purposes of this section.

4. Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement, the department shall refer the matter to the department of justice with a recommendation that a civil action be filed for enforcement of the agreement.

(f) *Hearing procedures.* 1. After the department issues a charge under par. (c) 2, the department shall serve the charge, along with a written notice of hearing, specifying the nature and acts of discrimination which appear to have been committed, and requiring the respondent to answer the charge at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the charge, and a place of hearing within the county in which the violation is alleged to have occurred.

2. If an election is not made under par. (c) 2, the hearing shall be conducted by a hearing examiner. A person who is aggrieved, with respect to the issues to be determined at the hearing, may be represented by counsel.

3. The department or a party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4) and shall be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the hearing examiner who is responsible for conducting the hearing.

4. The testimony at the hearing shall be recorded by the department. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence. The hearing under this paragraph shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The burden of proof is on the party alleging discrimination.

5. If after the hearing the examiner finds by a fair preponderance of the evidence that the respondent has violated sub. (2), (2m) or (2r), the examiner shall make written findings and order the respondent to take actions that will effectuate the purpose of sub. (2), (2m) or (2r), and may order other penalties, damages and costs as provided in pars. (h) and (i). The department shall serve a certified copy of the final findings and order on the aggrieved party, the complainant and the respondent. The order shall have the same force as other orders of the department and be enforced as provided in this subsection except that the enforcement of the order is automatically stayed upon the filing of a petition for review under par. (j).

6. If the examiner finds that the respondent has not engaged in discrimination as alleged in the complaint, the

department shall serve a certified copy of the examiner's findings on the aggrieved party, the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed $100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

(g) *Time limitations.* 1. The department shall commence proceedings with respect to a complaint before the end of the 30th day after receipt of the complaint.

2. The department shall investigate the allegations of the complaint and complete the investigation not later than 100 days after receipt of the complaint. If the department is unable to complete the investigation within 100 days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

3. The department shall make final administrative disposition of a complaint within one year after the date of receipt of a complaint, unless it is impracticable to do so. If the department is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(h) *Damages and penalties.* 1. If the hearing examiner finds that a respondent has engaged in or is about to engage in a discriminatory act prohibited under sub. (2), (2m) or (2r), the hearing examiner shall promptly issue an order for such relief as may be appropriate, which may include economic and noneconomic damages suffered by the aggrieved person, regardless of whether he or she intervened in the action, and injunctive or other equitable relief. The hearing examiner may not order punitive damages.

2. In addition to any damages ordered under subd. 1, the hearing examiner may assess a forfeiture against a respondent who is not a natural person in an amount not exceeding $10,000, unless the respondent who is not a natural person has been adjudged to have committed any prior discriminatory act under sub. (2), (2m) or (2r). If a respondent who is not a natural person has been adjudged to have committed one other discriminatory act under sub. (2), (2m) or (2r) during the preceding 5-year period, based on the offense date of the prior discriminatory act, the hearing examiner may assess a forfeiture in an amount not exceeding $25,000. If a respondent who is not a natural person has been adjudged to have committed 2 or more prior discriminatory acts under sub. (2), (2m) or (2r) during the preceding 7-year period, based on the offense date of the prior discriminatory act, the hearing examiner may assess a forfeiture in an amount not exceeding $50,000.

3. In addition to any damages ordered under subd. 1, the administrative law judge may assess a forfeiture against a respondent who is a natural person in an amount not exceeding $10,000, unless the respondent who is a natural person has been adjudged to have committed any prior discriminatory act under sub. (2), (2m) or (2r). If a respondent who is a natural person has been adjudged to have committed one other prior discriminatory act under sub. (2), (2m) or (2r) based on an offense date that is before September 1, 1992, the administrative law judge may assess a forfeiture in an amount not exceeding $25,000. If a respondent who is a natural person has been adjudged to have committed 2 or more prior discriminatory acts under sub. (2), (2m) or (2r) based on an offense date that is before September 1, 1992, the administrative law judge may assess a forfeiture in an amount not exceeding $50,000.

(i) *Attorney fees and costs.* The hearing examiner may allow a prevailing complainant, including the state, reasonable attorney fees and costs. The state shall be liable for those fees and costs if the state is a respondent and is determined to have committed a discriminatory act under sub. (2), (2m) or (2r).

(j) *Judicial review.* Within 30 days after service upon all parties of an order or determination of the department under this subsection, the respondent, the complainant or the aggrieved party may appeal the order or the determination to the circuit court for the county in which the alleged discrimination took place by the filing of a petition for review. The court shall review the order or determination as provided in ss. 227.52 to 227.58.

(6m) CIVIL ACTIONS. (a) Any person, including the state, alleging a violation of sub. (2), (2m) or (2r) may bring a civil action for injunctive relief, for damages, including punitive damages, and, in the case of a prevailing plaintiff, for court costs and reasonable attorney fees.

(b) An action commenced under par. (a) may be brought in the circuit court for the county where the alleged violation occurred or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within one year after the alleged violation occurred or terminated. The one-year statute of limitations under this paragraph shall be tolled while an administrative proceeding with respect to the same complaint is pending.

(c) The court may issue a permanent or temporary injunction or restraining order to assure the rights granted by this section. The court may order other relief that the court considers appropriate, including monetary damages, actual and punitive, a forfeiture as provided in sub. (6) (h) and costs and fees as provided in sub. (6) (i).

(d) If the attorney general has reasonable cause to believe that any person is engaged in a pattern or practice of discrimination in violation of sub. (2), (2m) or (2r) or that any person has been denied any of the rights granted under sub. (2), (2m) or (2r), and such denial raises an issue of general public importance, the department of justice may commence a civil action.

(8) DISCRIMINATION BY LICENSED OR CHARTERED PERSONS. (a) If the department finds reasonable cause to believe that an act of discrimination has been or is being committed in violation of this section by a person taking an action prohibited under sub. (2), (2m) or (2r), or probable cause to believe that an act has been or is being committed in violation of sub. (9), and the person is licensed or chartered under state law, the department shall notify the licensing or chartering agency of its findings, and may file a complaint with such agency together with a request that the agency initiate proceedings to suspend or revoke the license or charter of such person or take other less restrictive disciplinary action.

(b) Upon filing a complaint under par. (a), the department shall make available to the appropriate licensing or chartering agency all pertinent documents and files in its custody, and shall cooperate fully with such agency in the agency's proceedings.

(9) PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT. (a) No person may do any of the following:

1. Deny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, disability, sexual orientation, national origin or ancestry.

1m. Deny to an adult or charge an adult a higher price than the regular rate for the full and equal enjoyment of a lodging establishment because of age, subject to s. 125.07.

2. Give preferential treatment to some classes of persons in providing services or facilities in any public place of accom-

modation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

3. Directly or indirectly publish, circulate, display or mail any written communication which the communicator knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of sex, race, color, creed, disability, sexual orientation, national origin or ancestry or that the patronage of a person is unwelcome, objectionable or unacceptable for any of those reasons.

3m. Directly or indirectly publish, circulate, display or mail any written communication which the communicator knows is to the effect that any of the facilities of a lodging establishment will be denied to an adult because of age, subject to s. 125.07.

4. Refuse to furnish or charge another a higher rate for any automobile insurance because of race, color, creed, disability, national origin or ancestry.

5. Refuse to rent, charge a higher price than the regular rate or give preferential treatment, because of sex, race, color, creed, sexual orientation, national origin or ancestry, regarding the use of any private facilities commonly rented to the public.

(b) Nothing in this subsection prohibits separate dormitories at higher educational institutions or separate public toilets, showers, saunas and dressing rooms for persons of different sexes.

(c) Nothing in this subsection prohibits separate treatment of persons based on sex with regard to public toilets, showers, saunas and dressing rooms for persons of different sexes.

(10) INVESTIGATION AND REVIEW OF CLAIMS, PUBLIC PLACES. (a) *Claims filed with department.* 1. The department may receive and investigate a complaint charging a violation of sub. (9) if the complaint is filed with the department no more than 300 days after the alleged act prohibited under sub. (9) occurred. A complaint shall be a written statement of the essential facts constituting the act prohibited under sub. (9) charged, and shall be verified.

2. In carrying out this subsection, the department and its duly authorized agents may hold hearings, subpoena witnesses, take testimony and make investigations as provided in this chapter. The department, upon its own motion, may test and investigate for the purpose of establishing violations of sub. (9), and may make, sign and file complaints alleging violations of sub. (9), and initiate investigations and studies to carry out the purposes of sub. (9) and this subsection.

3. The department shall employ such examiners as are necessary to hear and decide complaints of acts prohibited under sub. (9) and to assist in the effective administration of this subsection. The examiners may make findings and orders under this subsection.

4. If the department finds probable cause to believe that any act prohibited under sub. (9) has been or is being committed, it may endeavor to eliminate the discrimination or other act by conference, conciliation and persuasion. If the department determines that such conference, conciliation and persuasion has not eliminated the alleged act prohibited under sub. (9), the department shall issue and serve a written notice of hearing, specifying the nature and acts prohibited under sub. (9) which appear to have been committed, and requiring the person named, in this subsection called the "respondent", to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the complaint, and a place of hearing within the county in which the violation of sub. (9) is alleged to have occurred. A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. The testimony at the hearing shall be recorded by the department. In all hearings before an examiner, except those for determining probable cause, the burden of proof is on the party alleging an act prohibited under sub. (9). If, after the hearing, the examiner finds by a fair preponderance of the evidence that the respondent has violated sub. (9), the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of sub. (9) and this subsection. The department shall serve a certified copy of the examiner's findings and order on the respondent and complainant, the order to have the same force as other orders of the department and be enforced as provided in this subsection except that the enforcement of the order is automatically stayed upon the filing of a petition for review with the commission. If the examiner finds that the respondent has not engaged in an act prohibited under sub. (9) as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed $100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

5. At any time after a complaint is filed, the department may file a petition in the circuit court for the county in which the act prohibited under sub. (9) allegedly occurred, or for the county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this subsection, including an order or decree restraining the respondent from performing an act tending to render ineffectual an order the department may enter with respect to the complaint. The court may grant such temporary relief or restraining order as it deems just and proper.

(b) *Petition for review.* 1. A respondent or complainant who is dissatisfied with the findings and order of the examiner under par. (a) may file a written petition with the department for review by the commission of the findings and order.

2. The commission shall either reverse, modify, set aside or affirm the findings and order in whole or in part, or direct the taking of additional evidence. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a respondent or complainant has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 21 days for filing the petition with the department.

3. On motion, the commission may set aside, modify or change any decision made by the commission, at any time within 28 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. The commission may on its own motion, for reasons it deems sufficient, set aside any final decision of the commission within one year from the date thereof upon grounds of mistake or newly discovered evidence, and remand the case to the department for further proceedings.

4. If no petition is filed within 21 days from the date that a copy of the findings and order of the examiner are mailed to the last-known address of the respondent and complainant, the findings and order shall be considered final.

(c) *Judicial review.* Within 30 days after service upon all parties of an order of the commission under par. (b), the

respondent or complainant may appeal the order to the circuit court for the county in which the alleged act prohibited under sub. (9) took place by the filing of a petition for review. The respondent or complainant shall receive a new trial on all issues relating to any alleged act prohibited under sub. (9) and a further right to a trial by jury, if so desired. The department of justice shall represent the commission. In any such trial the burden shall be to prove an act prohibited under sub. (9) by a fair preponderance of the evidence. Costs in an amount not to exceed $100 plus actual disbursements for the attendance of witnesses may be taxed to the prevailing party on the appeal.

(d) *Penalty.* 1. A person who wilfully violates sub. (9) or any lawful order issued under this subsection shall, for the first violation, forfeit not less than $100 nor more than $1,000.

2. A person adjudged to have violated sub. (9) within 5 years after having been adjudged to have violated sub. (9), for every violation committed within the 5 years, shall forfeit not less than $1,000 nor more than $10,000.

3. Payment of a forfeiture under this paragraph shall be stayed during the period in which an appeal may be taken and during the pendency of an appeal under par. (c).

(e) *Civil actions.* 1. A person, including the state, alleging a violation of sub. (9) may bring a civil action for appropriate injunctive relief, for damages including punitive damages, and, in the case of a prevailing plaintiff, for court costs and reasonable attorney fees. The attorney general shall represent the department in an action to which the department is a party.

2. An action commenced under this paragraph may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within one year after the alleged violation occurred.

3. The remedies provided for in this paragraph shall be in addition to any other remedies contained in this subsection.

History: 1971 c. 185 s. 1; 1971 c. 228 s. 42; 1971 c. 230; 1971 c. 307 s. 51; Stats. 1971 s. 101.22; 1975 c. 94, 275, 421, 422; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 110; 1979 c. 177 s. 85; 1979 c. 188, 221, 355; 1981 c. 112, 180; 1981 c. 391 s. 210; 1983 a. 27, 189; 1985 a. 238, 319; 1987 a. 262; 1989 a. 47 ss. 2 to 5, 8 to 11; 1989 a. 94, 106, 139, 359; 1991 a. 295, 315.

NOTE: 1991 Wis. Act 295, which affected this section, contains extensive legislative council notes.

"Harassment" under (2) (f) includes sexual harassment as defined in 111.32 (13). Compensable damages discussed. Chomicki v. Wittekind, 128 W. (2d) 188, 381 NW (2d) 561 (Ct. App. 1985).

Newspaper's classified advertising section not subject to public accommodations act. Hatheway v. Gannett Satellite Network, 157 W. (2d) 395, 459 NW (2d) 873 (Ct. App. 1990).

Under (3) the department is precluded from actively publicizing complaints only at those stages before the department finds that conference, conciliation and persuasion have not eliminated the alleged discrimination. 60 Atty. Gen. 43.

Wisconsin open housing law permits, but does not require, department to receive and process class action complaints of housing discrimination. 70 Atty. Gen. 250.

Insurer of apartment had duty to defend owner and manager for liability under this section. Gardner v. Romano, 688 F. Supp. 489 (E. D. Wis. 1988).

101.221 Equal rights council. (1) The equal rights council shall disseminate information and attempt by means of discussion as well as other proper means to educate the people of the state to a greater understanding, appreciation and practice of human rights for all people, of whatever race, creed, color, sexual orientation or national origin, to the end that this state will be a better place in which to live.

(2) The council shall give consideration to the practical operation and application of ss. 101.22 to 101.222 and report to the proper legislative committee its view on any pending bill relating to the subject matter of ss. 101.22 to 101.222.

History: 1971 c. 185 s. 1; 1971 s. 228; Stats. 1971 s. 101.221; 1981 c. 112.

101.222 Division of equal rights. (2) The division shall encourage and assist local units of government in guaranteeing all persons an equal opportunity for housing.

(3) All gifts, grants, bequests and devises to the division for its use for any of the purposes mentioned in s. 101.221 are valid and shall be used to carry out the purposes for which made and received.

(4) The division shall review complaints of discrimination against public employes exercising their rights with respect to occupational safety and health matters, under s. 101.055 (8).

(5) The division shall receive complaints of discharge or discrimination under s. 46.90 (4) (b) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

History: 1971 c. 185 ss. 1, 7; Stats. 1971 s. 101.222; 1977 c. 29; 1981 c. 360; 1983 a. 398; 1989 a. 47.

101.223 Postsecondary education: prohibition against discrimination on basis of physical condition or developmental disability. (1) Subject to sub. (3), no school, university or other institution offering courses or programs in postsecondary education or vocational training which is supported wholly or in part by public funds may refuse to admit any person to any school, institution, course or program or any curricular or extracurricular activity, or may otherwise discriminate against any person, solely on the basis of physical condition or developmental disability as defined in s. 51.01 (5).

(2) If admission to any such school, university, institution, program or course requires that a prospective enrollee take a standardized aptitude examination and the prospective enrollee is unable to take such an examination under standard conditions because of physical condition or developmental disability as defined in s. 51.01 (5), the school, university or institution shall make a good-faith effort to modify the examination conditions in a manner which will permit the prospective enrollee to demonstrate aptitude. The failure of any school, university or institution to make such a good-faith effort is discrimination within the meaning of this section.

(3) The prohibition against discrimination under sub. (1) does not apply to:

(a) Courses, programs or activities involving the handling or operation of hazardous substances, machines or appliances if there is no feasible way in which the physical safety of the disabled student or of other persons can be adequately protected; or

(b) The admission of a person who does not meet the minimum physical standards which are reasonably necessary for a particular course, program or activity. The school, university or other institution has the burden of proving that such minimum physical standards are reasonably necessary.

(4) (a) The department shall receive and investigate complaints charging discrimination or discriminatory practices in particular cases, and publicize its findings with respect thereto. The department has all powers provided under s. 111.39 with respect to the disposition of such complaints. The findings and orders of examiners may be reviewed as provided under s. 101.22 (10) (b).

(b) Findings and orders of the commission under this section are subject to review under ch. 227. Upon such review, the department of justice shall represent the commission.

History: 1975 c. 275, 421; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 221; 1981 c. 334 s. 25 (2); 1991 a. 295.

101.225 Discrimination in education prohibited. No child may be excluded from or discriminated against in admission to any public school or in obtaining the advantages, privileges

and courses of study of such public school on account of sex, race, religion or national origin.

History: 1975 c. 94.

101.23 Public employment offices. (1) The department shall establish and conduct free employment agencies, license and supervise the work of private employment offices, do all in its power to bring together employers seeking employes and working people seeking employment, make known the opportunities for self-employment in this state, aid in procuring employment for the blind adults of the state, aid in inducing minors to undertake promising skilled employments, provide industrial or agricultural training for vagrants and other persons unsuited for ordinary employments, and encourage wage earners to insure themselves against distress from unemployment. It shall investigate the extent and causes of unemployment in this state and the remedies therefor in this and other countries, and it shall devise and adopt the most efficient means within its power to avoid unemployment, to provide employment, and to prevent distress from involuntary idleness.

(2) Any county, city, town or village may enter into an agreement with the department for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and it shall be lawful for any county, city, town or village to appropriate and expend the necessary money and to permit the use of public property for the joint establishment and maintenance of such offices as may be agreed upon, or in counties containing 250,000 inhabitants or more in any city, town or village therein to purchase a site and construct necessary buildings. Provided, that in any county, city, village or town therein, wherein there is a citizens' committee on unemployment, such committee may rent, lease, purchase or construct necessary buildings for the joint establishment and maintenance of such free employment office, subject to the approval of such plans by the department. The department may establish such free employment offices as it deems necessary to carry out the purposes of ch. 108. All expenses of such offices, or all expenses not defrayed by the county, city, town or village in which an office is located, shall be paid from the appropriations to the department provided in s. 20.445 (1) (ga) and (n).

(3) The department may rent, furnish and equip, except as provided in sub. (2), such offices as may be needed in cities for the conduct of its affairs. All payments arising under this section shall be charged against the proper appropriation for the department.

(4) The legislature hereby accepts the provisions of an act of congress, approved June 6, 1933, entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes."

(5) The department is authorized and directed to cooperate with the U.S. employment service in the administration of said act and in carrying out all agreements made thereunder.

(6) All moneys made available to this state under said act shall, upon receipt thereof, be paid into the federal administrative financing account under s. 20.445 (1) (n).

(7) The department may, by rule, fix and collect fees for provision of employment services authorized but not funded by the U.S. employment service.

History: 1971 c. 185 ss. 1, 7; 1971 c. 228 ss. 25, 42; Stats. 1971 s. 101.23; 1973 c. 90 s. 559; 1979 c. 34 s. 2102 (25) (a); 1981 c. 36 s. 45; 1983 a. 27; 1985 a. 29 ss. 1650, 3202 (29).

101.25 Veterans job training. The department shall cooperate with the U.S. department of veterans affairs in the performance of functions prescribed in P.L. 79-679, 60 Stat. 934 and any acts amendatory thereof or supplementary thereto. The secretary may with the approval of the governor take all necessary steps in the making of leases or other contracts with the federal government in the adoption and execution of plans, methods and agreements to effectuate P.L. 79-679.

History: 1971 c. 185 s. 1; 1971 c. 228; Stats. 1971 s. 101.25; 1977 c. 29, 272; 1989 a. 56.

101.26 Employment and training programs. (1) The department shall cooperate with the federal government in carrying out the purposes of the federal job training partnership act, 29 USC 1501 to 1781. In administering the programs authorized by that act the department shall, in cooperation with other state agencies and with private industry councils, establish a statewide coordinated employment and training delivery system to meet the employment, training and educational needs of persons in this state.

(2) (a) In this subsection:

1. "Economically disadvantaged individual" means an individual to whom at least one of the following applies:

a. The individual receives, or is a member of a family which receives, cash welfare payments under a federal, state or local welfare program.

b. The individual has, or is a member of a family which has, received a total family income for the 6-month period prior to application for the program involved, excluding unemployment compensation, child support payments and welfare payments, which in relation to family size did not exceed the higher of the poverty level determined in accordance with criteria established by the director of the federal office of management and budget or 70% of the lower living standard income level.

c. The individual receives food stamps pursuant to the food stamp act of 1977.

d. The individual is a foster child on behalf of whom state or local government payments are made.

e. In cases permitted by regulations of the U.S. secretary of labor, the individual is an adult handicapped individual whose own income meets the requirements of subd. 1. a. or b., but who is a member of a family whose income does not meet those requirements.

2. "Eligible youth participant" means an individual between the ages of 14 and 21 who is either of the following:

a. At least one year behind his or her high school entering class in academic credit.

b. Excused from compulsory school attendance under s. 118.15 (1) (c).

3. "Handicapped individual" means an individual who has a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment.

(b) In carrying out its responsibilities under this section, the department shall coordinate services authorized under 29 USC 1533 and provided by the department of public instruction and the board of vocational, technical and adult education to provide programs to help eligible youth participants, at least 75% of whom shall be economically disadvantaged individuals. At least 50% of the federal moneys received under 29 USC 1602 (b) (1) shall be used for programs under this subsection.

(3) (a) To ensure that the governor's coordination and special services plan proposed by the state job training coordinating council and each job training plan proposed by a private industry council pursuant to the federal job training partnership act, 29 USC 1501 to 1781, coordinate with and consider programs and services provided or proposed by other bodies with a direct interest in employment, training

and human resources utilization and respond to concerns of interested citizens, employment and training service providers and members of the business community, the state job training coordinating council and each private industry council shall make their proposed plans available to the public and after reasonable notice hold at least one public hearing before submittal to the governor under par. (c). The state job training coordinating council or private industry council shall provide notice of the public hearing and a copy of the proposed plan or a summary of it to the appropriate standing committees under par. (b). The public hearing shall be held sufficiently in advance of the date each council must submit its plan to the governor to permit the council to address concerns raised at its hearing. The public hearing shall be held at a reasonable time in a place accessible to the public, including handicapped persons.

(b) 1. The state job training coordinating council shall submit notice of public hearing and a copy of the proposed governor's coordination and special services plan or a summary of it to the standing committees dealing with education, economic development and employment and to any other appropriate standing committee in each house of the legislature at least 120 days before the beginning of the first of 2 program years covered by the plan.

2. Each private industry council shall submit its notice of public hearing and a copy of its proposed job training plan or a summary of it to the standing committees dealing with education, economic development and employment and to any other appropriate standing committee in each house of the legislature. The private industry council shall submit notice and the plan or summary at least 120 days before the beginning of the first of 2 program years covered by the plan, pursuant to 29 USC 1515 (a) (1) (B), and according to procedures established by the department.

(c) After the public hearing under par. (a), the state job training coordinating council or the private industry council shall submit its proposed plan to the governor according to procedures established by the department. The state job training coordinating council or the private industry council shall include all of the following with the proposed plan submitted to the governor:

1. A copy of any written testimony presented to the council.

2. A summary of any oral testimony presented to the council.

3. A discussion of testimony presented in opposition to the council's proposed plan, including whether the council has addressed or will address the opposing parties' concerns and a justification of any decision by the council not to address those concerns.

History: 1985 a. 29 ss. 43, 45 to 48, 50, 51, 1651 to 1653, 3202 (22).

101.265 Youth apprenticeship program. (1) The department shall provide a youth apprenticeship program in accordance with the report prepared by the department under 1991 Wisconsin Act 39, section 9129 (5t).

(2) The youth apprenticeship council under s. 15.227 (22), the state board of vocational, technical and adult education and the department of public instruction shall assist the department of industry, labor and human relations in providing the youth apprenticeship program under sub. (1).

(3) The youth apprenticeship program under sub. (1) shall not affect any apprenticeship program that is governed by ch. 106, except that an apprenticeship program that is governed by ch. 106 may grant credit toward the completion of an apprenticeship for the successful completion of a youth apprenticeship under sub. (1).

History: 1991 a. 39.

101.27 Assistance for dislocated workers. (1) DEFINITIONS. In this section:

(a) "Council" means the state job training coordinating council established under 29 USC 1532.

(b) "Dislocated worker" has the meaning established by the department by rule in substantial conformance with 29 USC 1652 (a).

(c) "Dislocated worker committee" means the committee or other subunit of the council that deals with the dislocated workers program under 29 USC 1651 to 1662b.

(d) "Substate plan" means a substate plan required under 29 USC 1661b (a) as a condition for a grant.

(3) GRANTS. From the appropriation under s. 20.445 (1) (bc), (jm), (mb) and (mc), the department shall make grants to persons providing to dislocated workers programs offering training and related employment services including but not limited to the following:

(a) Job search assistance, including participation in job clubs.

(b) Training in job skills.

(c) Support services, including but not limited to transportation assistance, relocation assistance, financial counseling, personal counseling and programs conducted in cooperation with employers or labor organizations.

(4) GRANT APPROVAL. No grant may be awarded under this section unless both of the following occur:

(a) The dislocated workers committee approves the substate plan or application for funding and refers its decision to the secretary.

(b) After receiving a referral under par. (a), the secretary approves the substate plan or application for funding.

(5) SUBSTATE PLAN OR APPLICATION REVIEW. In reviewing substate plans and applications for funding under this section, the dislocated workers committee and the secretary shall consider all of the following:

(a) The severity of the need for the program in the community to be served when compared with the severity of need in other communities.

(b) The appropriateness of the skill development or training to be provided, including whether the demand for that skill exceeds the supply.

(c) Whether the program provides for labor organizations to participate in program planning.

(d) Whether the program provides for coordination with other employment and training programs offered in the community in which the program will be offered.

(6) RULE MAKING. The department shall adopt rules to administer this section. The rules shall address eligible applicants and program providers, application requirements, criteria and procedures for awarding grants, reporting and auditing procedures and administrative operations.

(7) FUNDING. From the amounts appropriated under s. 20.445 (1) (ma), (mb) and (mc), all moneys received under 29 USC 1651 to 1661c shall be expended to fund grants and operations under this section.

History: 1985 a. 153; 1987 a. 27; 1989 a. 31, 44.

NOTE: This section is created by 1985 Act 153. Section 2 of Act 153 is entitled "Legislative purpose and intent."

101.28 Notification of position openings. (1) In this section:

(a) "Company" means any business operated for profit.

(b) "State agency" has the meaning given in s. 20.001 (1).

(2) Any company that receives a loan or grant from a state agency or an authority under ch. 231 or 234 shall notify the department and the area private industry council under the job training partnership act, 29 USC 1501 to 1798, of any position in the company that is related to the project for

which the grant or loan is received to be filled in this state within one year after receipt of the loan or grant. The company shall provide this notice at least 2 weeks prior to advertising the position.

(3) A state agency or an authority under ch. 231 or 234 shall notify the department of development if it makes a loan or grant to a company.

(4) (a) The department shall, upon complaint by any person or on its own motion, investigate any allegation that a company has violated sub. (2) if the complaint is filed with the department no more than 300 days after the alleged violation occurred.

(b) If after investigation under par. (a) the department finds probable cause to believe that a company has violated sub. (2), the department shall notify the company of the department's finding of probable cause, of the actions specified under par. (d) that the department proposes to take and of the company's right to request a hearing regarding the alleged violation of sub. (2).

(c) A company that receives a notice under par. (b) may, within 30 days after the date of the notice, request a contested case hearing under s. 227.42. If the department does not receive a request for a contested case hearing under s. 227.42 within 30 days after the date of the notice under par. (b), the department shall issue a final decision that the company has violated sub. (2) and take the actions specified under par. (d).

(d) If the department receives a request under par. (c) for a hearing, the department shall hold a hearing as provided under s. 227.44. If, after hearing, the department finds that a company has violated sub. (2), the department shall issue a final decision under s. 227.47 that the company has violated sub. (2) and shall order the company to take any remedial action that the department considers appropriate based on the severity of the noncompliance with sub. (2).

History: 1985 a. 285, 332; 1987 a. 27, 399; 1991 a. 39.

101.29 Local labor market information. (1) The department shall collect information concerning local labor markets and periodically prepare reports dealing with labor forces at a local level in this state for general circulation.

(2) The collection and distribution of local labor market information under sub. (1) shall be funded only from the appropriations under s. 20.445 (1) (m), (ma) and (n).

History: 1987 a. 27.

101.30 Work incentive demonstration program; AFDC recipients. The department may contract with the department of health and social services for the provision of supportive and employment services under the work incentive demonstration program under s. 49.50 (7). Fees charged for the contractual services provided shall be credited to the appropriation under s. 20.445 (1) (ka).

History: 1977 c. 418; 1983 a. 27; 1989 a. 31.

101.31 Trade adjustment assistance overpayment waiver. (1) On or before October 8, 1989, the department shall establish a policy for waiving recovery of overpayments made under the federal adjustment assistance for workers program under 19 USC 2272 to 2318.

(2) The waiver policy shall require the department to grant a waiver if all of the following apply:

(a) The overpayment was not the fault of the person who received it.

(b) Requiring repayment would be contrary to equity and good conscience.

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

(a) Notify all of the following persons of the waiver policy and the person's right to request a waiver:

1. A person from whom the department attempts to recover an overpayment made under 19 USC 2272 to 2318.

2. A person from whom the department is in the process of recovering an overpayment made under 19 USC 2272 to 2318.

(b) Comply with the guidelines issued by the U.S. secretary of labor under 19 USC 2315 in connection with the waiver policy.

(c) Establish the waiver policy by rule, using the procedure under s. 227.24.

History: 1989 a. 31.

101.35 Pilot Wisconsin job opportunity business subsidy program. (1) DEFINITIONS. In this section:

(a) "Business" means any person engaged in a business enterprise for profit in this state.

(c) "Eligible job applicant" means an individual who the department determines meets the requirements of sub. (9).

(cm) "Eligible unit of government" means a county described in sub. (2) (a) or designated under sub. (2) (b) or a unit of government designated under sub. (2) (d).

(d) "Local service agency" means an organization designated under sub. (3).

(e) "Minority business" has the meaning given in s. 560.036 (1) (e).

(f) "Small business" has the meaning given in s. 227.485 (2) (c).

(g) "Urban county" means a county located in a federal standard metropolitan statistical area.

(h) "Wisconsin job opportunity business subsidy program" means the program administered under this section.

(2) DESIGNATED UNITS OF GOVERNMENT. (a) The department shall provide funds under sub. (4) for wage subsidies to a local service agency located in an urban county with the most unemployed persons in this state.

(b) The department shall designate, in addition to the county described in par. (a), one urban and one rural county where the department shall provide funds under sub. (4) for wage subsidies to a local service agency. The department shall designate the 2 counties under this paragraph after considering all of the following:

1. The number of unemployed persons in the county.

2. The county's unemployment rate and the change in the unemployment rate during the preceding 12 months.

3. Major plant or business closings or announced closings.

3m. Closing of a major production line by a business, causing a significant negative impact on the county's economy.

4. The number of persons who are laid off as a result of a closing, or may be laid off as a result of announced plant closings, under subd. 3.

5. The percentage of the workforce made up of individuals who are, or may be, laid off under subd. 4.

(c) The department shall give greatest emphasis to the factors in par. (b) 3 to 5 when it designates the 2 counties under par. (b). The department shall base its consideration of the factors in par. (b) on the most recent information available to it.

(d) In addition to the counties designated under pars. (a) and (b), the department shall designate as an eligible unit of government under sub. (4) a federally recognized American Indian tribe or band.

(3) LOCAL SERVICE AGENCIES. (a) The department shall request proposals for the administration of the Wisconsin job opportunity business subsidy program from organizations described in pars. (c) and (d) and job service offices located in an eligible unit of government. A proposal submitted by a job service office shall be submitted jointly with an organization

described in par. (c) or (d). A proposal shall include an estimate of the cost of administering the Wisconsin job opportunity business subsidy program and a plan for at least the following activities:

1. Marketing and promoting the Wisconsin job opportunity business subsidy program, including recruiting participation from qualified businesses.

2. Coordinating with a social services agency to meet the guidelines under sub. (10) (c).

3. Any other activities the department considers relevant.

(b) After reviewing the proposals submitted under par. (a), the department shall designate a local service agency for an eligible unit of government from among the organizations submitting proposals. The department shall give emphasized consideration to cost estimates when reviewing proposals submitted under par. (a). The department may select a job service office in an eligible unit of government to provide administrative services together with the designated local service agency.

(c) A nonprofit organization may be designated a local service agency if the nonprofit organization is organized primarily to do one or more of the following:

1. Recruit low-income clients for participation in employment and training programs.

2. Vocational counseling or training.

3. Job training or development.

4. Any other activity the department considers appropriate.

(d) The department may designate an organization which is a private industry council under the federal job training partnership act, 29 USC 1501 to 1781, as a local service agency.

(4) ALLOCATION. (a) Subject to par. (b), the department shall distribute $70,000 to the local service agency for the unit of government under sub. (2) (d) to create at least 25 jobs and shall distribute the remainder of the amount appropriated under s. 20.445 (1) (e) to local service agencies in eligible units of government as follows:

1. Fifty percent to the local service agency for the county described in sub. (2) (a) to create at least 300 new jobs.

2. Thirty-three percent to the local service agency in the urban county designated under sub. (2) (b) to create at least 200 new jobs.

3. Seventeen percent to the local service agency in the rural county designated under sub. (2) (b) to create at least 100 new jobs.

(b) The department shall provide to each local service agency funds in a manner established by the department.

(c) If a local service agency in any eligible unit of government has not fully expended, encumbered or otherwise committed the funds allocated to it under par. (b) by March 31 of any year, the department may reallocate the funds among the local service agencies in the other eligible units of government.

(d) A local service agency may retain not more than 10% of the funds distributed to it under this subsection for administrative expenses associated with the Wisconsin job opportunity business subsidy program.

(5) WAGE SUBSIDIES. A local service agency may subsidize wages paid to an eligible job applicant by a business, as provided under sub. (6).

(6) CONDITIONS OF SUBSIDY. A local service agency may subsidize wages under sub. (5) if all of the following apply:

(a) The wage subsidy is for an eligible job applicant hired for a position described in sub. (8) by a business that qualifies under sub. (7).

(b) The amount of the subsidy for a wage does not exceed $4 per hour.

(d) 1. Except as provided in subd. 2, the subsidy is paid for a period not to exceed 26 weeks and for not more than 1,040 hours.

2. If the eligible job applicant is enrolled in a job training program, the subsidy is paid for a period not to exceed 52 weeks and for not more than 1,040 hours.

(e) The local service agency evaluates and approves the plan submitted under sub. (7) (a).

(7) QUALIFIED BUSINESSES. A local service agency may determine that a business is a qualified business for the purposes of sub. (6) (a) if all of the following apply:

(a) The business submits to the local service agency a plan containing all of the following:

1. A description of the duties of and wages paid for each position that the business intends to fill with an eligible job applicant.

2. A description of how the wage subsidy will help the business succeed and lead to the continued employment of the eligible job applicant.

4. A statement whether during the 12 months immediately preceding submission of the plan the employer has acquired the ownership or control, as defined in s. 600.03 (13), of another employer or has become the surviving corporation or new corporation following a merger or consolidation with another employer.

(b) The business enters into a contract with the local service agency and agrees to do all of the following:

1. Use any funds received for wage subsidies exclusively for wages paid to eligible job applicants who fill positions described in sub. (8).

2. Provide eligible job applicants whose wages are subsidized under this section with wages equal to those paid to employes of the business who perform the same duties.

3. Cooperate with the local service agency in collecting data to assess the result of Wisconsin job opportunity business subsidy program.

4. Repay funds received under this section as required in sub. (11).

(c) The business certifies to the local service agency that the business would not have created a position subsidized under this section without a wage subsidy.

(e) The local service agency determines, if the statement under par. (a) 4 is in the affirmative, that a position that the employer intends to fill with an eligible job applicant represents an increase in the number of jobs provided at that location by the employer over the number of jobs provided at that location by the employer that was acquired or that was a party to the merger or consolidation immediately before the acquisition, merger or consolidation.

(8) NATURE OF SUBSIDIZED POSITION. (a) The local service agency may subsidize wages paid to an eligible job applicant who fills a position with a business qualified under sub. (7) if all of the following apply:

1. The position is a new position and results in an increase in the number of jobs provided by the business.

2. The position does not displace a current employe or reduce the number of hours, other than overtime, worked by or available to a current employe.

3. The position does not include duties which are the same as, or substantially similar to, the duties of any employe who the business has laid off.

(b) Notwithstanding par. (a), a position is not a new position and does not result in an increase in the number of jobs provided by the employer if any of the circumstances described in sub. (7) (a) 4 apply and the position does not

represent an increase in the number of jobs provided by the employer under the criteria described in sub. (7) (e).

(9) ELIGIBLE JOB APPLICANT. The local service agency shall determine that an individual is an eligible job applicant if all of the following apply:

(a) The individual has been a resident of this state for at least one month.

(b) The individual is unemployed or is employed, but lives in a household described in sub. (10) (b) 5.

(c) The local service agency determines that the individual will likely be available to fill a position with a business qualified under sub. (7) for the duration of the position, or at least 12 months after the subsidy ends, whichever is longer.

(10) PRIORITIES. (a) When allocating funds among businesses qualified for wage subsidies under sub. (7), a local service agency shall give priority to a business if the local service agency determines any of the following:

1. That the business is an existing business with low employe turnover.

2. That the business is a small business with a high potential for growth.

3. That the positions for which the business is seeking a subsidy are likely to be long-term.

4. That the business is at least 51% owned, controlled and actively managed by a woman or women.

5. That the business is a minority business.

6. That the position for which the business is seeking a subsidy will pay at least $4 per hour and provide fringe benefits.

7. That the business has certified that it uses or will use techniques or processes that reduce or eliminate the use of chlorfluorocarbons, halons or other compounds or substances with ozone depletion weights, as set out in 40 CFR part 82 appendix A, of 0.1 or more.

(b) A local service agency shall expend at least 80% of the funds allocated to it under sub. (4) for wage subsidies to eligible job applicants to whom any of the following applies:

1. The eligible job applicant lives in a household with no source of earned income.

2. The eligible job applicant is eligible for general relief administered under s. 49.02.

3. The eligible job applicant is eligible for aid to families with dependent children under s. 49.19.

4. The person lives in a farm household and demonstrates severe financial need under a standard promulgated by the department by rule.

5. The eligible job applicant lives in a household whose total income for the 6-month period before application for this program, excluding unemployment compensation, child support payments and welfare payments, in relation to family size did not exceed the higher of the poverty level, determined under criteria established by the director of the federal office of management and budget, or 70% of the lower living standard income level, determined annually by the federal secretary of labor.

(c) A local service agency shall try to obtain grant diversion funding under s. 49.50 (7g) for at least 30% of the individuals whose wages it subsidizes under this section.

(d) A local service agency shall emphasize subsidizing wages for positions in areas of an eligible unit of government with the greatest unemployment.

(11) REPAYMENT. (a) If an eligible job applicant leaves the employ of a business that received funds to subsidize the wages of the eligible job applicant under sub. (5), the business shall repay the following percentage of the funds:

1. If the eligible job applicant leaves while the position is subsidized, 70%.

2. If the eligible job applicant leaves less than 12 months after the subsidy ended, a percentage between 70% and 0%, decreasing proportionally to 0% 12 months after the subsidy has ended.

3. If the eligible job applicant leaves 12 months or more after the subsidy ended, 0%.

(b) A business need not repay funds under par. (a) if the business replaces the departing eligible job applicant with another eligible job applicant who remains employed with the business for at least 12 months after the subsidy paid to the departing eligible job applicant would have ended.

(c) The secretary may waive all or part of a repayment required under par. (a) if the secretary determines that waiving the repayment is in the best interests of the state.

(d) The local service agency shall use the amounts repaid under this subsection for additional wage subsidies.

(12) ANNUAL REPORT. On or before April 1 of each year, beginning in 1989, the department shall submit a report concerning the Wisconsin job opportunity business subsidy program to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2). The report shall include all of the following information for the period covered by the report:

(a) The average wage paid to an eligible job applicant when hired and 60 days after the subsidy for the eligible job applicant ends.

(b) The number of qualified businesses and eligible job applicants participating in each eligible unit of government.

(c) The age, education level, family status, gender, race and work experience of each eligible job applicant.

(d) The number of eligible job applicants meeting the criteria in subs. (10) (b) and (c).

(e) Any other information the department considers relevant.

(13) FINAL REPORT. On or before September 1, 1993, the department shall submit a final report concerning the Wisconsin job opportunity business subsidy program to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2). The report shall include all of the following information for the period covered by the report:

(a) The average wage paid to an eligible job applicant at the following times:

1. When hired.

2. Sixty days after the subsidy for the eligible job applicant ends.

3. Fourteen months after the subsidy for the eligible job applicant ends.

(b) The number of qualified businesses and eligible job applicants that participated in each eligible unit of government.

(c) The age, education level, family status, gender, race and work experience of each eligible job applicant.

(d) The number of eligible job applicants who met the criteria in sub. (10) (b) and (c).

(e) Any other information the department considers relevant.

(14) SUNSET. Subsections (1) to (10) and (12) do not apply after June 30, 1993.

History: 1987 a. 399; 1989 a. 31, 336; 1991 a. 32, 39, 315.

101.38 Wisconsin service corps program. (1) DEFINITIONS. In this section:

(a) "Community services activity" means an activity that addresses a social, health or economic need of the community.

(b) "Corps member" means a person enrolled in the Wisconsin service corps program under this section.

(c) "Financial support" includes in-kind services and materials.

(d) "In-kind services and materials" includes services such as training, supervision, administration, transportation, insurance liability coverage and similar services and materials such as supplies, fuel, tools, equipment, safety equipment and other materials for a project.

(e) "Local unit of government" means the governing body of any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or school district or the elected tribal governing body of a federally recognized American Indian tribe or band.

(f) "Nonprofit organization" has the meaning given in s. 108.02 (19).

(g) "Public assistance" means general relief under s. 49.02, relief of needy Indian persons under s. 49.046, aid to families with dependent children under s. 49.19, medical assistance under ss. 49.45 to 49.47, low-income energy assistance under s. 49.80 and the food stamp program under 7 USC 2011 to 2029.

(h) "State agency" has the meaning given in s. 227.01 (1) but also includes the office of district attorney.

(2) OBJECTIVES. The department shall develop guidelines for the Wisconsin service corps program designed to promote the objectives of:

(a) *Employment of young adults.* Providing employment for young men and women in a county with a population of 500,000 or more.

(b) *Personal development.* Encouraging and developing work skills, discipline, cooperation, meaningful work experiences and training and educational opportunities for corps members.

(c) *Community services.* Addressing the social, health and economic needs of a community within a county that has a population of 500,000 or more.

(3) APPLICATION FOR PROJECT APPROVAL. (a) *Eligible sponsors.* A state agency, local unit of government or private organization that operates in a county that has a population of 500,000 or more may apply to the department for approval of a project consisting of community services activities.

(b) *Eligible projects.* In order to qualify as an approved project, the project must provide employment opportunities, consist of community services activities and be located in a county that has a population of 500,000 or more. If the sponsor is a nonprofit organization, the project must serve a valid public purpose in order to qualify as an approved project.

(c) *Sponsor's application.* In order to qualify as an approved project, the sponsor must submit in the application:

1. A summary of the extent and value of all financial support it will provide for the project.

2. A preliminary cost estimate including a summary of all anticipated costs resulting from implementation of the project.

3. A preliminary work plan specifying the nature, scope and duration of the project.

(d) *Local government sponsors.* The department shall encourage local units of government to apply for the approval of projects and shall provide assistance and information to facilitate these applications.

(e) *Not to involve labor dispute or displace other employes.* No project may be approved by the department if corps members will be used in any manner in connection with a work or labor dispute or if approval of the project would impair existing contracts or collective bargaining agreements with existing employes of the sponsor. No project may be approved by the department if corps members will be used to displace existing permanent employes of the sponsor, including any employes who have been temporarily laid-off by the sponsor.

(4) GUIDELINES FOR PROJECT APPROVAL. The department shall establish guidelines to be used in selecting projects for approval. These guidelines shall include:

(a) *Employment opportunities.* The extent to which the project will provide employment in meaningful labor intensive work activities for corps members.

(b) *Community services.* The extent to which the project will address the social, health or economic needs of the community that is to be served by the project.

(c) *Implementation.* The degree of difficulty in implementing the project and its compatibility with other projects in the area.

(d) *Extent of sponsor's responsibility.* The value of financial support to be provided by the sponsor.

(e) *Public purpose and benefit.* The extent to which the project will serve a valid public purpose and benefit a large segment of the public.

(5) PROJECT FUNDING. (a) *Community services activities; appropriations.* Moneys appropriated under s. 20.445 (1) (cm), (jr) and (km) may be used for community services activities as authorized under those appropriations.

(b) *Other state agency appropriations.* A state agency may use moneys from any appropriation for that agency to sponsor a project if implementation of the project is consistent with any purpose for which the moneys are appropriated.

(6) ADMINISTRATION AND MATCHING FUNDS. (a) *Administration.* The department shall provide guidelines for administration of the Wisconsin service corps program and the program shall be administered according to those guidelines.

(b) *Requirements for matching funds.* The department shall set requirements as to the amount of financial support that a sponsor must provide. The department may waive the requirements for a project sponsored by a local unit of government or a state agency and may reduce the amount of matching funds required for a project sponsored by a private organization.

(7) PROJECT APPROVAL AND IMPLEMENTATION; CORPS MEMBERS SUPERVISION. (a) *Approval.* Projects shall be selected and approved by the department based on guidelines established under sub. (4) and the requirements established under sub. (6) (b).

(b) *Responsibility agreement, detailed work plan.* Before the approval of a project, the sponsor shall prepare and submit to the department a responsibility agreement that incorporates the complete project cost estimate and a detailed work plan and specifies in detail the responsibilities of the sponsor and of the department with respect to the project. The complete project cost estimate shall include a summary of all anticipated costs resulting from the implementation of the project. The detailed work plan shall specify the nature, scope and duration of the project; the number of corps members required for the project; training, supervisory, administrative and other service requirements; supply, fuel, tool, equipment, safety equipment and other material requirements; time schedules; and other details relating to the implementation of the project.

(c) *Signing of responsibility agreement.* A project is not authorized and may not be implemented until the sponsor and the secretary sign the responsibility agreement.

(d) *Implementation; supervision.* Except as provided in a responsibility agreement, the sponsor is responsible for the implementation of and the administrative services for an authorized project and the department is responsible for the

recruitment, supervision, control and training of corps members for the project.

(e) *Number of corps members on project.* The number of corps members serving on a project may not exceed 3.

(8) EDUCATION AND TRAINING. The department shall facilitate arrangements with local schools and institutions of higher education for academic study by corps members during nonworking hours to upgrade literacy skills, obtain equivalency diplomas or college degrees or enhance employment skills. The department shall encourage the development of training programs for corps members for use during periods when circumstances do not permit work on a project.

(9) CORPS MEMBERS. (a) *Authorization.* The department may employ corps members.

(b) *Outside civil service.* All corps members shall be employed outside the civil service.

(c) *Wages.* Corps members shall be paid at the prevailing federal minimum wage or the applicable state minimum wage established under ch. 104, whichever is greater. Corps members shall receive their pay for the previous pay period on the last working day of the current pay period.

(d) *Unemployment compensation.* A corps member is not eligible for unemployment compensation benefits by virtue of his or her employment in the Wisconsin service corps program. To the extent permitted by federal law, the Wisconsin service corps program shall be considered a work-relief and working-training program for the purpose of determining eligibility for benefits under s. 108.02 (15) (g) 1.

(e) *Worker's compensation.* A corps member is eligible for worker's compensation benefits as provided under ch. 102.

(f) *Health care and other benefits.* A corps member is not an eligible employe for health care benefits or other benefits under ch. 40.

(g) *Education voucher.* 1. A person who is employed as a corps member for the specified term of a project and who receives a satisfactory employment evaluation upon termination of employment is entitled to an education voucher that is worth at least $1,000 but not more than $1,800. The department may authorize a partial education voucher for a person who is employed as a corps member and who receives a satisfactory employment evaluation upon termination of employment if the person is employed as a corps member for less than the specified term of the project and if the department determines that employment was terminated because of special circumstances beyond the control of the corps member or was terminated in order to enable the corps member to attend an institution of higher education, vocational institution or other training program or to enable the corps member to obtain other employment.

2. The education voucher is valid for 3 years after the date of issuance for the payment of tuition and required program activity fees at any institution of higher education, as defined under s. 39.32 (1) (a), that accepts the voucher and the department shall authorize payment to the institution of face value of the voucher upon presentment.

(10) QUALIFICATIONS AND REQUIREMENTS FOR CORPS MEMBERS. (a) *Age.* In order to qualify for employment as a corps member, a person is required to have attained the age of 18 years but may not have attained the age of 26 years at the time he or she accepts employment.

(b) *Unemployed.* In order to qualify for employment as a corps member, a person is required to be unemployed at the time he or she applies for employment. In order to establish that a person is unemployed at the time of application for employment, the department may require the person to be certified as unemployed by a local job service office.

(c) *Enrollment period.* In order to qualify for employment as a corps member, a person is required to sign a statement of intention to serve in the Wisconsin service corps program for a 9-month period. This statement does not obligate the department to provide employment for the member for that period.

(d) *Training and skills.* No training or skills are required in order to qualify for employment as a corps member.

(e) *Physical examination.* No physical examination is required in order to apply for employment as a corps member but the department shall require a physical examination before employment. The department may accept evidence of a physical examination conducted within one year before employment if the examining physician signs a form containing the information required by the department.

(11) SELECTION OF CORPS MEMBERS. (a) *Standards.* The department shall establish standards for the selection of corps members from among those persons who are qualified and who seek employment.

(am) *Employment of certain persons.* The department shall attempt to hire at least 50% of its corps members from among those persons who are receiving public assistance at the time of application for employment, who have received public assistance within one year of the time of application for employment or who are likely to be eligible for public assistance if they do not obtain employment.

(b) *Affirmative action plan.* The department shall adopt a statewide affirmative action plan and shall comply with the requirements under s. 230.06 (1) (g) to (k). The standards established under par. (a) shall be consistent with this plan.

(c) *Hiring procedure.* The department shall develop procedures for the hiring of corps members. The department shall use any appropriate local job service office in the area of a project to distribute applications, conduct interviews and evaluate applicants and make recommendations concerning the hiring of corps members. The department may use project sponsors who are sponsoring long-term projects to conduct interviews, evaluate applicants and make recommendations concerning the hiring of corps members.

(12) ENROLLMENT PERIOD; EVALUATION; DISCIPLINE. (a) *Enrollment period.* The normal enrollment period for a corps member is from 6 to 9 months. The department may authorize the employment of a corps member beyond the end of the normal enrollment period for a limited time, not to exceed 3 months, under special circumstances where continued employment is required in order to complete a project in progress.

(b) *Evaluation, discipline.* The department shall establish standards and procedures to evaluate the performance, for discipline and for termination of employment of corps members.

(13) GUIDELINES. The department need not promulgate as rules the guidelines described under subs. (2), (4) and (6).

History: 1991 a. 39.

101.40 Public works, unemployment. The department of health and social services shall ascertain from the various departments and state institutions tentative plans for such extension of public works of the state as shall be best adapted to supply increased opportunities for advantageous public labor during periods of temporary unemployment, together with estimates of the amount, character and duration of such employment, and the number of employes that could profitably be used therein, and the rates of wages and such other information as the department of health and social services deems necessary.

History: 1971 c. 164 s. 89.

101.42 Department of health and social services, expenditures to relieve depression. In the event that the department of industry, labor and human relations reports to the governor that a condition of extraordinary unemployment caused by industrial depression exists in the state, the department of health and social services may make such disposition of funds to be used for said purposes among the several institutions and departments for such extension of the public works of the state under the charge or direction thereof, including the purchase of materials and supplies necessary therefor, as shall, in the judgment and discretion of the department of health and social services, be best adapted to advance the public interest by providing the maximum of public employment, in relief for the existing conditions of extraordinary unemployment, consistent with the most useful, permanent and economic extension of the works aforesaid.

101.43 Depression, applicants for public employment. Immediately upon publication of a finding that a period of extraordinary unemployment due to industrial depression exists throughout the state, the department shall cause to be prepared by the various institutions and departments approved lists of applicants for public employment and secure from such applicants full information as to their industrial qualifications and submit the same to the department of health and social services. Preference for employments under ss. 101.40 to 101.43 shall be extended first to citizens of this state, second to other citizens of the United States at the time of making application, and last to aliens who are residents of this state at the time of making such application.

History: 1977 c. 29 s. 1651

101.47 Public insurrection; death and disability benefits. **(1)** DEFINITIONS. In this section:

(a) "Public insurrection" means a civil disturbance in which a group or groups of persons are simultaneously engaged in acts of violence against persons or property by the illegal use of weapons, by burning, pillaging or looting or by committing any other illegal acts, and which is of such a magnitude as to result in any of the following:

1. Extraordinary utilization of off-duty local law enforcement personnel.

2. Declaration of a public emergency by the governor.

3. The calling of the national guard or other troops.

(2) DEATH AND DISABILITY BENEFITS. If the department finds that the injury or death of a state or local government officer or employe arose out of the performance of duties in connection with a public insurrection, and finds that death or disability benefits are payable under ch. 102, a supplemental award equal to the amount of the benefits (other than medical expense) payable under ch. 102 shall be made to the persons and in the same manner provided by ch. 102, except that when benefits are payable under s. 102.49, a supplemental award equal to one-half the benefits payable under that section shall be made.

(3) PAYMENTS. All payments under this section shall be made from the general fund.

(4) BENEFITS ADDITIONAL TO ALL OTHERS. Death and disability benefits under this section are in addition to all other benefits provided by state law or by action of any municipality or public agency.

History: 1971 c. 40; 1975 c. 199; 1975 c. 404 s. 7; 1975 c. 405 s. 7; Stats. 1975 s. 101.47; 1977 c. 29 s. 1651.

101.55 Executive agreements to control sources of radiation. When the legislative council determines that it is in the interest of the state to enter into agreement with the government of the United States to provide for the discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by the state pursuant to authority granted by P.L. 86-373, it shall convey its determination to the governor together with its estimate of the initial and ultimate cost of the assumption of this responsibility by the state and the governor, on behalf of the state, may, after a finding by both the governor and the U.S. nuclear regulatory commission as to the adequacy of the state's program of regulation, enter into such an agreement.

History: 1977 c. 29.

101.573 Fire dues distribution. **(1)** The department shall include in the compilation and certification of fire department dues under sub. (3) 2% of the premiums paid to the state fire fund for the insurance of any public property, other than state property. The department shall notify the state treasurer of the amount certified under this subsection and the state treasurer shall charge the amount to the state fire fund.

(3) (a) On or before May 1 in each year, the department shall compile the fire department dues paid by all insurers under s. 601.93 and the dues paid by the state fire fund under sub. (1) and funds remaining under par. (b), withhold .5% and certify to the state treasurer the proper amount to be paid from the appropriation under s. 20.445 (1) (L) to each city, village or town entitled to fire department dues under s. 101.575. Annually, on or before August 1, the state treasurer shall pay the amounts certified by the department to the cities, villages and towns eligible under s. 101.575.

(b) The amount withheld under par. (a) shall be disbursed to correct errors of the department or the commissioner of insurance or for payments to cities, villages or towns which are first determined to be eligible for payments under par. (a) after May 1. The department shall certify to the state treasurer, as near as is practical, the amount which would have been payable to the municipality if payment had been properly disbursed under par. (a) on or prior to May 1, except the amount payable to any municipality first eligible after May 1 shall be reduced by 1.5% for each month or portion of a month which expires after May 1 and prior to the eligibility determination. The state treasurer shall pay the amount certified to the city, village or town. The balance of the amount withheld in a calendar year under par. (a) which is not disbursed under this paragraph shall be included in the total compiled by the department under par. (a) for the next calendar year. If errors in payments exceed the amount set aside for error payments, adjustments shall be made in the distribution for the next year.

(4) The department shall transmit to the treasurer of each city, village and town entitled to fire department dues, a statement of the amount of dues payable to it under this section and the commissioner of insurance shall furnish to the state treasurer, upon request, a list of the insurers paying dues under s. 601.93 and the amount paid by each.

History: 1981 c. 20 s. 1752; Stats. 1981 s. 101.58; 1981 c. 364 s. 3; Stats. 1981 s. 101.573; 1987 a. 27.

101.575 Entitlement to dues. **(1)** (a) Except as provided in par. (am), every city, village or town maintaining a fire department that complies with this subsection and the requirements of subs. (3) to (6) is entitled to a proportionate share of all fire department dues collected under ss. 101.573 and 601.93 after deducting the administrative expenses of the department under s. 101.573, based on the equalized valuation of real property improvements upon land within the city, village or town, but not less than the amount the municipality

received under s. 601.93 (3), 1977 stats., and chapter 26, laws of 1979, in calendar year 1979.

(am) If the department determines that a city, village or town fire department has failed to satisfy the requirements of this subsection or subs. (3) to (6), the department shall nonetheless pay dues for that calendar year to that city, village or town. The department shall issue a notice of noncompliance to the chief of the fire department, the governing body and the highest elected official of the city, village or town. If the fire department cannot demonstrate to the department that the fire department has met all requirements within one year after receipt of the notice or prior to the next audit by the department, whichever is later, the city, village or town shall not be entitled to dues under par. (a) for that year in which the city, village or town becomes not entitled to dues and for all subsequent calendar years until the requirements are met.

(b) Every city, village or town that contracts for fire protection and fire prevention services that comply with s. 101.14 (2) from another city, village or town is entitled to the dues specified in par. (a) if the department determines that the fire department furnishing the protection can provide the agreed protection without endangering property within its own limits and the fire prevention services comply with s. 101.14 (2).

(c) Any city, village or town, not maintaining a fire department, which that for the purpose of obtaining fire protection and prevention services for itself enters into an agreement with another city, village or town, is entitled to the dues specified in par. (a) if the department determines that the fire prevention services comply with s. 101.14 (2). Two or more municipalities that together have entered into a fire protection agreement in the manner prescribed in this paragraph shall each be entitled to dues under par. (a).

(2) If a city or village contracts to provide fire protection and the services of its fire department outside of its boundaries, it is subject to the same liability for property damage and personal injury when responding to calls and providing services outside of its boundaries as when providing the same services within its boundaries.

(3) No city, village or town is entitled to receive dues under this section unless the city, village or town complies with pars. (a) and (b).

(a) No city, village or town may receive fire department dues under this section unless it has a fire department which satisfies all of the following requirements:

1. Is organized to provide continuous fire protection in that city, village or town and has a designated chief.

2. Singly, or in combination with another fire department under a mutual aid agreement, can ensure the response of at least 4 fire fighters, none of whom is the chief, to a first alarm for a building.

3. Provides a training program prescribed by the department by rule, in consultation with the fire prevention council.

4. Provides facilities capable, without delay, of receiving an alarm and dispatching fire fighters and apparatus.

(b) Each city, village or town eligible for dues under this section shall maintain either a voluntary fire department that holds a meeting at least once each month, or a paid or partly paid fire department with sufficient personnel ready for service at all times.

(4) (a) The department may not pay any fire department dues for any year to a city, village, town or fire department unless all of the following conditions are satisfied:

1. The department determines that the city, village, town or fire department has complied with sub. (6) and s. 101.14 (2).

2. The city, village or town has submitted a form which is signed by the clerk of the city, village or town and by the chief of the fire department providing fire protection to that city, village or town, which is provided by the department by rule and which certifies that the fire department has complied with this section or the department has audited the city, village, town or fire department and determined that it complies with sub. (6) and s. 101.14 (2).

(b) If dues which would have been paid into any fire fighter's pension fund or other special funds for the benefit of disabled or superannuated fire fighters are withheld under this subsection, an amount equal to the fire department dues withheld shall be paid into the pension fund from any available fund of the city, village or town, and, if no fund is available, an amount equal to the amount withheld shall be included in and paid out of the next taxes levied and collected for the city, village or town.

(5) No city, village or town which has contracted with another city, village or town or any part thereof for fire protection may be paid any fire department dues unless the contract or contracts are sufficient to provide fire protection to the entire city, village or town for which the fire protection service is being provided.

(6) (a) No city, village or town maintaining a fire department under this section may use any dues received under s. 101.573 and this section for any purpose except the direct provision of the following:

1. The purchase of fire protection equipment.

2. Fire inspection and public education.

3. Training of fire fighters and fire inspectors performing duties under s. 101.14.

4. To fund wholly or partially fire fighters' pension funds or other special funds for the benefit of disabled or superannuated fire fighters.

(b) Any city, village or town that contracts for fire protection service shall give dues received under s. 101.573 and this section to the fire department providing the fire protection service. That fire department shall use those dues for any of the purposes specified in par. (a).

History: 1971 c. 185 s. 7; 1975 c. 94 s. 91 (9); 1975 c. 372 s. 15; Stats. 1975 s. 601.95; 1977 c. 29; 1979 c. 34, 221; 1981 c. 20 ss. 1754 to 1758, 2202 (26) (b); Stats. 1981 s. 101.59; 1981 c. 364 s. 3; Stats. 1981 s. 101.575; 1987 a. 399; 1989 a. 31; 1991 a. 187.

101.578 Protection of medical waste incinerator employes. (1) In this section, "medical waste incinerator" has the meaning given in s. 159.07 (7) (c) 1. cr.

(2) The department shall promulgate rules establishing requirements that protect persons who work at medical waste incinerators from exposure to blood and other potentially infectious materials. The rules shall be at least as strict as any federal requirements.

History: 1991 a. 39.

101.58 Employes' right to know. (1) SHORT TITLE. Sections 101.58 to 101.599 shall be known as the "Employes' Right to Know Law".

(2) DEFINITIONS. In ss. 101.58 to 101.599:

(a) "Agricultural employer" means any person, including the state and its political subdivisions, who engages the services of any employe to perform agricultural labor. If any employe is present at the workplace of an agricultural employer under an agreement between that agricultural employer and another agricultural employer or employer, "agricultural employer" means the agricultural employer with control or custody of a pesticide. An agricultural employer who engages some employes to perform agricultural labor and other employes for other purposes is only an agricultural

employer with respect to the employes engaged to perform agricultural labor.

(b) "Agricultural labor" has the meaning provided in s. 108.02 (2).

(c) "Employe" means any person whose services are currently or were formerly engaged by an employer or an agricultural employer, or any applicant at the time an employer or agricultural employer offers to engage his or her services.

(d) "Employe representative" means an individual or organization to whom an employe gives written authorization to exercise his or her rights to request information under s. 101.583, 101.585 or 101.586, a parent of a minor employe or a recognized or certified collective bargaining agent.

(e) "Employer" means any person, except an agricultural employer, with control or custody of any employment or workplace who engages the services of any employe. "Employer" includes the state and its political subdivisions. If any employe is present at the workplace of an employer under an agreement between that employer and another employer or agricultural employer, "employer" means the employer with control or custody of a toxic substance or infectious agent. An employer who engages some employes to perform agricultural labor and other employes for other purposes is only considered an employer with respect to the employes engaged for other purposes.

(f) "Infectious agent" means a bacterial, mycoplasmal, fungal, parasitic or viral agent identified by the department by rule as causing illness in humans or human fetuses or both, which is introduced by an employer to be used, studied or produced in the workplace. "Infectious agent" does not include such an agent in or on the body of a person who is present in the workplace for diagnosis or treatment.

(g) "Legal holiday" has the meaning provided in s. 895.20.

(h) "Overexposure" means any chronic or acute exposure to a toxic substance or infectious agent which results in illness or injury.

(i) "Pesticide" means any substance or mixture of substances which is registered with the federal environmental protection agency under 7 USC 136 to 136y or the department of agriculture, trade and consumer protection under ch. 94, and which is labeled, designed or intended to prevent, destroy, repel or mitigate any pest or as a plant regulator, defoliant or desiccant.

(j) 1. "Toxic substance" means any substance or mixture containing a substance regulated by the federal occupational safety and health administration under title 29 of the code of federal regulations part 1910, subpart z, which is introduced by an employer to be used, studied or produced in the workplace.

2. "Toxic substance" does not include:

a. Any article, including but not limited to an item of equipment or hardware, which contains a substance regulated by the federal occupational safety and health administration under title 29 of the code of federal regulations part 1910, subpart z, if the substance is present in a solid form which does not cause any acute or chronic health hazard as a result of being handled by an employe.

b. Any mixture containing a substance regulated under title 29 of the code of federal regulations part 1910, subpart z, if the substance is less than one percent, or, if the substance is an impurity, less than 2%, of the product.

c. Any consumer product packaged for distribution to and used by the general public, for which the employe's exposure during use is not significantly greater than the consumer's exposure occurring during the principal use of the product.

d. Any substance received by an employer in a sealed package and subsequently sold or transferred in that package, if the seal remains intact while the substance is in the employer's workplace.

e. Any waste material regulated under the federal resource conservation and recovery act, P.L. 94-580.

f. Lutefisk.

(k) "Workplace" means any location where an employe performs a work-related duty in the course of his or her employment, except a personal residence.

(3) RELATIONSHIP TO FEDERAL REGULATIONS. (a) If the federal occupational safety and health administration promulgates a hazards communication regulation which, with respect to toxic substances, has requirements comparable to those in s. 101.583, 101.59 or 101.597 (1), and has time periods no less stringent than s. 101.589 and confidentiality requirements no less stringent than s. 101.592, an employer, manufacturer or supplier may apply to the department for an exemption from s. 101.583, 101.59 or 101.597 (1).

(b) An employer applying to the department for an exemption under par. (a) shall provide a copy of the application to appropriate certified collective bargaining agents and shall post a statement at the place where notices to employes are normally posted. The posted statement shall summarize the application, specify a place where employes may examine it and inform employes of their right to request a hearing on it.

(c) Upon receipt of a written request from an affected employer, manufacturer, supplier, employe or employe representative, the department shall hold a hearing on the application. If a hearing has been requested, the department is prohibited from approving the application until a hearing has been held. In no case may the department approve the application within less than 60 days after receiving it.

History: 1981 c. 364, 391; 1983 a. 189 s. 329 (28); 1983 a. 192 s. 304.

Wisconsin's new "right to know" law. McCauley. WBB Jan. 1983.

101.581 Notice requirements. (1) EMPLOYER. An employer who uses, studies or produces a toxic substance, infectious agent or pesticide shall post in every workplace at the location where notices to employes are usually posted a sign which informs employes that the employer is required, upon request, to provide an employe or employe representative with all of the following:

(a) The identity of any toxic substance or infectious agent which an employe works with or is likely to be exposed to.

(b) A description of any hazardous effect of the toxic substance or infectious agent.

(c) Information regarding precautions to be taken when handling the toxic substance or infectious agent.

(d) Information regarding procedures for emergency treatment in the event of overexposure to the toxic substance or infectious agent.

(e) Access to the information contained on the label of any pesticide with which the employe works or to which the employe is likely to be exposed.

(2) AGRICULTURAL EMPLOYER. An agricultural employer who uses pesticides shall post in a prominent place in the workplace a sign which informs employes that the agricultural employer is required, upon request, to provide an employe or employe representative with access to the information contained on the label of any pesticide with which the employe works or to which the employe is likely to be exposed.

(3) MINOR EMPLOYE. If an employe is a minor, an employer or agricultural employer shall send to the employe's parent or

guardian, at the address provided by the employe, notice of the employe's rights under sub. (1) or (2).

History: 1981 c. 364; 1983 a. 392.

"Produces" under (1) means to create, bring forth, or cause hazardous substances to exist in work place. Door Cty. Highway Dept. v. DILHR, 137 W (2d) 280, 404 NW (2d) 548 (Ct. App. 1987).

101.583 Toxic substance information requirements; employer to employe. (1) RETENTION OF INFORMATION; LISTS. Except as provided by department rule under s. 101.598, an employer shall:

(a) Retain any material safety data sheet relating to a toxic substance and containing the information required to be provided to employes under sub. (2) for 30 years after the date upon which the employer last received the toxic substance in the workplace; or

(b) 1. Maintain a written list identifying any toxic substance present in a workplace on or after May 10, 1984, except as provided in subd. 2, and the dates that the toxic substance is present in the workplace. If a list is maintained, each toxic substance required to be on the list shall be included on the list until 30 years after the last date on which the substance is received in the workplace. Within 30 days after a written request by an employe or employe representative, exclusive of weekends and legal holidays, the employer shall provide to the employe or employe representative a copy of any list maintained for the employe's workplace or the workplace of the employes represented by the employe representative.

2. a. A toxic substance need not be included on a list if in the area in which any employe usually works the toxic substance is received in packages of one kilogram or less and if no more than 10 kilograms of the toxic substance are used in or purchased for that area per year.

b. A toxic substance need not be included on a list if it is a mixture containing one or more mineral dusts listed in 29 CFR 1910.1000, table z-3.

(1m) Any employer with less than 10 employes and less than $750,000 in gross sales in the most recent calendar or fiscal year, whichever the employer uses for income or franchise tax purposes, is not subject to the requirements of sub. (1).

(2) INFORMATION. (a) Except as provided in s. 101.589, within 15 days after a written request by an employe or employe representative, exclusive of weekends and legal holidays, an employer shall provide to the employe or employe representative in writing the following information regarding any toxic substance with which the employe works or worked or to which the employe is likely to be or has been exposed:

1. The trade name of the toxic substance.

2. The chemical name and any commonly used synonym for the toxic substance and the chemical name and any commonly used synonym for its major components.

3. The boiling point, vapor pressure, vapor density, solubility in water, specific gravity, percentage volatile by volume, evaporation rate for liquids and appearance and odor of the toxic substance.

4. The flash point and flammable limits of the toxic substance.

5. Any permissible exposure level, threshold limit value or other established limit value for exposure to the toxic substance.

6. The stability of the toxic substance.

7. Recommended fire extinguishing media, special fire fighting procedures and any unusual fire and explosion hazard information for the toxic substance.

8. Any effect of overexposure to the toxic substance, emergency and first aid procedures and a telephone number to be called in an emergency.

9. Any condition or material which is incompatible with the toxic substance and must be avoided.

10. Any personal protective equipment to be worn or used and special precautions to be taken when handling or coming into contact with the toxic substance.

11. Procedures for the handling, cleanup and disposal of toxic substances leaked or spilled.

(b) An employer is not required to provide information regarding a toxic substance under par. (a) if the employe or employe representative making the request has requested information about the toxic substance under par. (a) within the preceding 12 months, unless the employe's job assignment has changed or there is new information available concerning any of the subjects about which information is required to be provided.

History: 1981 c. 364; 1983 a. 392; 1991 a. 39.

101.585 Infectious agent information requirements; employer to employe. (1) Except as provided in s. 101.589 (1) and (3), within 72 hours after a written request by an employe or employe representative, exclusive of weekends and legal holidays, an employer shall provide in writing to the employe or employe representative the following information regarding any infectious agent which the employe works with or is likely to be exposed to if the infectious agent is present in the workplace when the request is made or at any time during the 30 days immediately preceding the request:

(a) The name and any commonly used synonym of the infectious agent.

(b) Any method or route of transmission of the infectious agent.

(c) Any symptom or effect of infection, emergency and first aid procedures and a telephone number to be called in an emergency.

(d) Any personal protective equipment to be worn or used and special precautions to be taken when handling or coming into contact with the infectious agent.

(e) Procedures for handling, cleanup and disposal of infectious agents leaked or spilled.

(2) An employer is not required to provide information regarding an infectious agent under sub. (1) if the employe or employe representative making the request has requested information about the infectious agent under sub. (1) within the preceding 12 months, unless the employe's job assignment has changed or there is new information available concerning any of the subjects about which information is required to be provided.

History: 1981 c. 364.

101.586 Pesticide information requirements; employer or agricultural employer to employe. Within 72 hours of a request from an employe or employe representative, exclusive of weekends and legal holidays, an employer or agricultural employer shall provide the requesting employe or employe representative with access to the container label or the information required by the federal environmental protection agency or the department of agriculture, trade and consumer protection to be on the container label, for any pesticide with which the employe works or to which the employe is likely to be exposed.

History: 1981 c. 364; 1983 a. 392.

101.587 Information requirements; employer or agricultural employer to department. The department or the department of health and social services may request the

information required to be provided to employes under ss. 101.583, 101.585 and 101.586. The employer or agricultural employer shall provide the information within the time periods provided in ss. 101.583, 101.585, 101.586 and 101.589.

History: 1981 c. 364

101.588 Information collection and maintenance; department. If an employer ceases business operations in this state, the employer shall provide the department with the information required under s. 101.583 or 101.585 relating to that employer. The department shall maintain that information and provide it to any employe upon request.

History: 1983 a. 392

101.589 Extended time periods; exceptions. (1) If an employer has not obtained the information required to be provided under ss. 101.583 (2) (a) and 101.585 (1) at the time of a request made under s. 101.583 (2) (a) or 101.585 (1), the employer shall provide the information within 30 days after the request, exclusive of weekends and legal holidays.

(2) If a toxic substance was present in the workplace at any time on or after December 1, 1982, but is not present in the workplace when a request is made under s. 101.583 (2) (a), the employer shall provide the information within 30 days after the request, exclusive of weekends and legal holidays.

(3) An employer who has requested from the manufacturer or supplier of a toxic substance or from the supplier of an infectious agent any information required to be provided under s. 101.583 (2) (a) or 101.585 (1), but who has not received and does not already have that information, is not required to provide the information but shall notify any requesting employe or employe representative that the employer has requested, has not received and does not otherwise have the information.

History: 1981 c. 364; 1981 c. 391 s. 210

101.59 Manufacturer, supplier; requirements. Within 15 days, exclusive of weekends and legal holidays, after receipt of a request from an employer, any manufacturer or supplier of a toxic substance transported or sold for use in this state, or any supplier of an infectious agent transported or sold for use in this state, shall provide to that employer the information the employer is required to provide employes under s. 101.583 (2) (a) or 101.585 (1).

History: 1981 c. 364

101.592 Confidential information. (1) A manufacturer or supplier of a toxic substance, a supplier of an infectious agent or an employer may declare that information required to be provided under s. 101.583, 101.585, 101.59 or 101.597, except information described in ss. 101.583 (2) (a) 7 to 11, 101.585 (1) (b) to (e) and 101.597 (5) (a) 2 to 7 and (b) 2 and 3, relates to a process or production technique which is unique to, or is information the disclosure of which would adversely affect the competitive position of, the manufacturer, supplier or employer. If an employer, employe or employe representative requests information under s. 101.583, 101.585 or 101.59 that is confidential, the manufacturer, supplier or employer shall inform the requester that part of the requested information is confidential, but shall provide any part of the requested information that is not confidential or that, under this subsection, may not be declared confidential. When a manufacturer, supplier or employer declares information confidential, it shall notify the department and shall state the general use of the toxic substance or infectious agent and the items of information which it did and did not provide to the requester.

(2) Notwithstanding sub. (1), a manufacturer, supplier or employer shall provide the information specified in s. 101.583 (2) (a) 1 and 2 or 101.585 (1) (a) upon a request from an employe's authorized physician stating that the information is necessary for medical treatment of the employe. No physician receiving information under this subsection may disclose it to any person without the written consent of the patient and of the manufacturer, supplier or employer.

History: 1981 c. 364; 1983 a. 392 s. 20.

101.595 Employe rights. (1) NOT TO WORK WITH TOXIC SUBSTANCE, INFECTIOUS AGENT OR PESTICIDE. Except as provided in ss. 101.589 (3) and 101.592, if an employe has requested information about a toxic substance, infectious agent or pesticide under s. 101.583, 101.585 or 101.586 and has not received the information required to be provided under s. 101.583, 101.585, 101.586 or 101.589 (1) or (2), the employe may refuse to work with or be exposed to the toxic substance, infectious agent or pesticide until such time as the employer or agricultural employer supplies the information under s. 101.583, 101.585 or 101.586 to the employe who has made the request.

(2) RETALIATION PROHIBITED. (a) No employer or agricultural employer may discharge or otherwise discipline or discriminate against any employe because the employe has exercised any rights under ss. 101.58 to 101.599.

(b) Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under ss. 101.58 to 101.599.

(3) WAIVER PROHIBITED. No person may request or require any employe to waive any rights under ss. 101.58 to 101.599.

History: 1981 c. 364; 1983 a. 392; 1989 a. 228

101.597 Education and training programs. (1) BY EMPLOYER; TOXIC SUBSTANCE, INFECTIOUS AGENT OR PESTICIDE. Except as provided in sub. (5) (b), prior to an employe's initial assignment to a workplace where the employe may be routinely exposed to any toxic substance, infectious agent or pesticide, an employer shall provide the employe with an education or training program under sub. (5) (a) or (c). The employer shall provide additional instruction whenever the employe may be routinely exposed to any additional toxic substance or infectious agent.

(2) BY AGRICULTURAL EMPLOYER; PESTICIDE. Prior to an agricultural employe's initial assignment to a workplace where the employe may be routinely exposed to a pesticide, an agricultural employer shall provide the employe with an education or training program under sub. (5) (c). The agricultural employer shall provide additional instruction whenever the employe may be routinely exposed to any additional pesticide.

(3) BY DEPARTMENT. The department shall inform manufacturers, suppliers, employers, agricultural employers and employes of their duties and rights under ss. 101.58 to 101.599. As part of this program, the department shall cooperate with the departments of development and revenue to notify any employer commencing operations on or after May 8, 1982, of that employer's duties and rights.

(4) DEFINITION. In this section, "routinely exposed to any toxic substance" means exposure of at least 30 days per year at exposure levels exceeding 50% of the permissible exposure level established by the federal occupational safety and health administration, or any exposure exceeding 100% of the permissible exposure level, regardless of the exposure period.

(5) PROGRAM CONTENTS. (a) *Toxic substances and infectious agents.* For each toxic substance or infectious agent to which the employe may be routinely exposed, the education or training program shall include:

1. a. For a toxic substance, the trade name, generic or chemical name and any commonly used synonym for the

toxic substance and the trade name, generic or chemical name and any commonly used synonym for its major components.

b. For an infectious agent, its name and any commonly used synonym.

2. The location of the toxic substance or infectious agent.

3. Any symptom of acute or chronic effect of overexposure to the toxic substance or infectious agent.

4. For a toxic substance, the potential for flammability, explosion and reactivity.

5. Proper conditions for safe use of and exposure to the toxic substance or infectious agent.

6. Special precautions to be taken and personal protective equipment to be worn or used, if any, when handling or coming into contact with the toxic substance or infectious agent.

7. Procedures for handling, cleanup and disposal of toxic substances or infectious agents leaked or spilled.

(b) *Toxic substances and infectious agents; exception.* In an area where employes usually work with a large number of toxic substances or infectious agents which are received in packages of one kilogram or less and no more than 10 kilograms of which are used or purchased per year, the employer may provide a general education or training program in lieu of the education or training program described in par. (a). The general training program shall be provided prior to an employe's initial assignment to the area and shall include:

1. The information specified in par. (a) 1 and 2.

2. The nature of the hazards posed by the toxic substances or infectious agents or both.

3. General precautions to be taken when handling or coming into contact with the toxic substances or infectious agents.

(c) *Pesticides.* For each pesticide to which the employe may be routinely exposed the education or training program shall include:

1. The trade name, generic or chemical name and any commonly used synonym for the pesticide and the trade name, generic or chemical name and any commonly used synonym for its major ingredients.

2. The location of the pesticide and the location where it is used.

3. Any symptom of acute or chronic effect of overexposure to the pesticide.

4. Proper conditions for safe use of and exposure to the pesticide.

5. Special precautions to be taken and personal protective equipment to be worn or used, if any, when handling or coming into contact with the pesticide.

6. Procedures for handling, cleanup and disposal of leaks or spills of the pesticide.

History: 1981 c. 364, 391; 1983 a. 392.

101.598 Rules. (1) The department shall, by rule, identify as an infectious agent any bacterial, mycoplasmal, fungal, parasitic or viral agent which causes illness in humans or human fetuses or both. The department shall consult with the department of health and social services in promulgating these rules.

(2) The department may, by rule, exempt employers from retaining a data sheet or maintaining a list, under s. 101.583 (1), regarding any mixture containing a toxic substance if the nature of the toxic substance or the quantity of toxic substance present in the mixture is such that the mixture is highly unlikely to pose an unreasonable acute or chronic health hazard to an employe who works with or is likely to be exposed to the mixture.

History: 1981 c. 364, 391; 1983 a. 392.

101.599 Remedies; civil forfeitures. (1) COMPLAINT. An employe or employe representative who has not been afforded his or her rights by an employer or agricultural employer in violation of s. 101.583, 101.585, 101.586, 101.595 (1), (2) (a) or (3) or 101.597 (1) or (2) may, within 30 days after the violation occurs or the employe or employe representative first obtains knowledge of the violation, whichever is later, file a complaint with the department alleging the violation. The department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after receipt by the department of the complaint.

(2) REMEDIES. The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer or agricultural employer has violated s. 101.583, 101.585, 101.586, 101.595 (1), (2) (a) or (3) or 101.597 (1) or (2), it may order the employer or agricultural employer to take such action as will remedy the effects of the violation, including instituting an education or training program, providing the requested information, reinstating an employe or providing back pay to an employe.

(3) CIVIL FORFEITURE. (a) Except as provided in par. (b), any person who violates ss. 101.58 to 101.599 or an order of the department issued under ss. 101.58 to 101.599 shall forfeit not more than $1,000 for each violation.

(b) Any person who wilfully violates or exhibits a pattern of violation of ss. 101.58 to 101.599 or an order of the department issued under ss. 101.58 to 101.599 shall forfeit not more than $10,000 for each violation.

History: 1981 c. 364; 1981 c. 391 ss. 101, 102; 1983 a. 392; 1989 a. 228.

SUBCHAPTER II

ONE- AND 2-FAMILY DWELLING CODE

101.60 Purpose. The purpose of this subchapter is to establish statewide construction standards and inspection procedures for one- and 2-family dwellings and to promote interstate uniformity in construction standards by authorizing the department to enter into reciprocal agreements with other states which have equivalent standards.

History: 1975 c. 404; 1977 c. 369, 447.

101.61 Definitions. In this subchapter:

(1) "Dwelling" means any building that contains one or 2 dwelling units. "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(2) "Owner" means any person having a legal or equitable interest in the dwelling. "Owner" does not include any person whose legal or equitable interest in the dwelling is a security interest derived solely from the extension of credit to permit construction or remodeling of the dwelling or purchase of the dwelling by a 3rd party.

History: 1975 c. 404; 1979 c. 89, 148; 1989 a. 109.

Code applies to additions of any buildings initially constructed after the effective date of the one- and two-family dwelling code act. 67 Atty. Gen. 191.

101.615 Application. This subchapter applies to a dwelling the initial construction of which was commenced on or after December 1, 1978, except as follows:

(1) Section 101.645 applies to a dwelling the initial construction of which was commenced before, on or after May 23, 1978.

(2) Section 101.653 applies to a dwelling the initial construction of which was commenced on or after May 16, 1992.

History: 1989 a. 109; 1991 a. 309

101.62 Dwelling code council; power. The dwelling code council shall review the standards and rules for one- and 2-family dwelling construction and recommend a uniform dwelling code for adoption by the department which shall include rules providing for the conservation of energy in the construction and maintenance of dwellings and for costs of specific code provisions to home buyers to be related to the benefits derived from such provisions. The council shall study the need for and availability of one-family and 2-family dwellings that are accessible to persons with disabilities, as defined in s. 101.22 (1m) (g), and shall make recommendations to the department for any changes to the uniform dwelling code that may be needed to ensure an adequate supply of one-family and 2-family dwellings. Upon its own initiative or at the request of the department, the council shall consider and make recommendations to the department pertaining to rules and any other matters related to this subchapter. The council shall recommend variances for different climate and soil conditions throughout the state.

History: 1975 c. 404; 1991 a. 295

101.63 Departmental duties. The department shall:

(1) Adopt rules which establish standards for the construction and inspection of one- and 2-family dwellings and components thereof. Where feasible, the standards used shall be those nationally recognized and shall apply to the dwelling and to its electrical, heating, ventilating, air conditioning and other systems, including plumbing, as defined in s. 145.01 (10). No set of rules may be adopted which has not taken into account the conservation of energy in construction and maintenance of dwellings and the costs of specific code provisions to home buyers in relationship to the benefits derived from the provisions. No standard under this subchapter may increase the maximum energy use, as defined in s. 101.08 (1) (f), allowed for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2) or decrease the minimum energy efficiency required for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2).

(1m) Adopt a rule which requires any one- and 2-family dwelling which uses electricity for space heating to be superinsulated.

(2) Adopt rules for the certification, including provisions for suspension and revocation thereof, of inspectors for the purpose of inspecting building construction, electrical wiring, heating, ventilating, air conditioning and other systems, including plumbing, as defined in s. 145.01 (10), of one- and 2-family dwellings under sub. (1). Persons certified as inspectors may be employes of the department, a city, village, town, county or an independent inspection agency. The department may not adopt any rule which prohibits any city, village, town or county from licensing persons for performing work on a dwelling in which the licensed person has no legal or equitable interest.

(3) Contract to provide inspection services, at municipal expense, to any municipality which requires such service under s. 101.65 or 101.651.

(5) Biennially review the rules adopted under this subchapter.

(6) Issue special orders which it deems necessary to secure compliance with this subchapter and enforce the same by all appropriate administrative and judicial proceedings.

(7) Prescribe and furnish to municipalities a standard building permit form for all new one- and 2-family dwellings.

(8) Hear petitions regarding the dwelling code, rules and special orders in accordance with s. 101.02 (6) (e) to (i) and (8).

(9) Establish by rule a schedule of fees sufficient to defray the costs incurred under this subchapter.

History: 1975 c. 404; 1979 c. 221; 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (8); 1987 a. 343.

101.64 Departmental powers. The department may:

(1) Hold hearings on any matter relating to this subchapter and issue subpoenas to compel the attendance of witnesses and the production of evidence at such hearings.

(2) At the request of the owner or renter enter, inspect and examine dwellings, dwelling units or premises necessary to ascertain compliance with the rules and special orders under this subchapter.

(3) Revise the rules under this subchapter after consultation with the dwelling code council.

(4) Provide for or engage in the testing, approval and certification of materials, devices and methods of construction.

(5) Collect and publish data secured from the building permits.

(6) Adopt rules prescribing procedures for approving new building materials, methods and equipment.

(7) Enter into reciprocal agreements with other states regarding the approval of building materials and methods where the standards of the other state meet the intent of the dwelling code and the rules promulgated under this subchapter.

(8) Study the operation of the dwelling construction code and other laws related to the construction of dwelling units to determine their impact upon the cost of building construction and their effectiveness upon the health, safety and welfare of the occupants.

History: 1975 c. 404.

101.645 Smoke detectors. (1) DEFINITION. The definition of "smoke detector" under s. 101.145 (1) (c) also applies to this section.

(2) APPROVAL AND INSTALLATION. A smoke detector required under this section shall be approved and installed as required under s. 101.145 (2) and (3) (a).

(3) REQUIREMENT. The owner of a dwelling shall install a functional smoke detector in the basement of the dwelling and on each floor level except the attic or storage area of each dwelling unit. The occupant of such a dwelling unit shall maintain any smoke detector in that unit, except that if any occupant who is not the owner, or any state, county, city, village or town officer, agent or employe charged under statute or municipal ordinance with powers or duties involving inspection of real or personal property, gives written notice to the owner that the smoke detector is not functional the owner shall provide, within 5 days after receipt of that notice, any maintenance necessary to make that smoke detector functional.

(4) INSPECTION. The department or a municipal authority may inspect new dwellings, may inspect the common areas of dwellings and, at the request of the owner or renter, may inspect the interior of a dwelling unit in a dwelling to ensure compliance with this section.

History: 1977 c. 388; 1983 a. 189 s. 329 (4); 1987 a. 376; 1989 a. 109.

101.65 Municipal authority. Except as provided by s. 101.651, cities, villages, towns and counties:

(1) May:

(a) Exercise jurisdiction over the construction and inspection of new dwellings by passage of ordinances, provided such ordinances meet the requirements of the one- and 2-family dwelling code adopted in accordance with this subchapter. Except as provided by s. 101.651, a county ordinance shall apply in any city, village or town which has not enacted such ordinance.

(b) Under s. 66.30, jointly exercise the jurisdiction granted under par. (a).

(c) By ordinance establish and collect fees to defray the cost of jurisdiction exercised under par. (a) or (b).

(d) By ordinance provide remedies and penalties for violation of the jurisdiction exercised under par. (a) or (b).

(2) Shall contract with the department for those inspection services which the municipality does not perform or contract for under sub. (1) (a) or (b) and reimburse the department for its reasonable and necessary expenses incurred in the performance of such services pursuant to s. 101.63 (9).

(3) Shall use the standard building permit form prescribed and furnished by the department and file a copy of each such permit issued with the department.

History: 1975 c. 404; 1979 c. 221 s. 2025 (12); 1979 c. 355 s. 238; 1981 c. 20.

101.651 Certain municipalities excepted. (1) In this section, "municipality" means a city, village or town with a population of 2,500 or less.

(2) Except as provided under sub. (6), a municipality is exempt from:

(a) The requirements under s. 101.65 (2).

(b) Any rule adopted under s. 101.63 (1) regarding suspension or revocation of standard building permits.

(3) Except as provided in sub. (3m) or (3s), the department or a county may not enforce this subchapter or an ordinance enacted under s. 101.65 (1) (a) or provide inspection services in a municipality unless requested to do so by a person with respect to a particular dwelling or by the municipality. A request by a person or a municipality with respect to a particular dwelling does not give the department or a county authority with respect to any other dwelling. Costs shall be collected under s. 101.65 (1) (c) or ss. 101.63 (9) and 101.65 (2) from the person or municipality making the request.

(3m) The department may enforce s. 101.653 in a municipality that does not perform or contract for inspection services under s. 101.65 (1) (a) or (b). A county may enforce those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion in any city or village that does not perform or contract for inspection services under s. 101.65 (1) (a) or (b). The department or the county shall collect a fee for the inspection services under this subsection.

(3s) A county shall enforce those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion in its unincorporated area. A town may not enforce those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion unless the department delegates enforcement authority to the town. If the town requests delegation of enforcement authority, the department shall delegate that authority if the town submits information to the department that demonstrates the town's capacity to comply with s. 101.653 (5) (a).

(4) Municipalities shall furnish statistical data relating to housing starts to the department as requested by the department.

(5) This section does not affect the applicability of rules or an ordinance adopted under this subchapter to builders, designers and owners of dwellings located in a municipality.

(6) Any dwelling not inspected under s. 101.65 shall comply with the rules adopted under s. 101.63 (1) which take into account the conservation of energy in construction and maintenance of dwellings and the costs of specific code provisions to home buyers in relationship to the benefits derived from the provisions.

History: 1981 c. 20; 1989 a. 31; 1991 a. 309.

101.653 Construction site erosion control. (1) DEFINITION. In this section, "best management practices" means practices, techniques or measures that the department determines to be effective means of preventing or reducing pollutants of surface water generated from construction sites.

(2) SOIL EROSION PREVENTION RULES. The department shall promulgate rules that establish standards for practices to prevent soil erosion related to the construction of one- and 2-family dwellings, subject to all of the following requirements:

(a) At a minimum, the rules shall require the use of best management practices.

(b) The rules shall require the use of more restrictive or additional practices on an area with a slope that is greater than 12%.

(2m) RULES FOR ADMINISTRATION. The department shall promulgate rules for the administration of construction site erosion control under this subchapter by counties, cities, villages and towns, including provisions regarding the issuance of permits and the collection and distribution of fees.

(4) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a county, city, village or town under s. 236.45 may be exercised by it with respect to construction site erosion control regulation if the county, city, village or town has or provides a planning commission or agency.

(5) MUNICIPAL RESPONSIBILITIES; DEPARTMENT REVIEW. (a) Each city, village, town or county that enforces those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion shall do all of the following:

1. Obtain the services of an inspector certified to conduct all inspections related to the soil erosion control standards under this section.

2. Obtain the services of a plan reviewer certified to review all erosion control plans submitted under this section.

3. Review erosion control plans, conduct inspections of erosion control practices and enforce the requirements of this section as provided in s. 101.65 (1) (d).

4. Complete the review of an erosion control plan no later than the 15th working day after the day that the erosion control plan is submitted.

(b) The department shall review the construction site erosion control program for one- and 2-family dwellings of each city, village, town or county that enforces those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion to ascertain compliance with par. (a) and the rules promulgated under this section. This review shall include all of the following:

1. A performance audit of the erosion control program of the county, city, village or town.

2. A written determination by the department, issued every 3 years, of whether or not the county, city, village or town complies with par. (a).

(6m) REVIEW. The department and the department of natural resources shall enter into a memorandum of agreement that establishes a process for reviewing the standards established under sub. (2), periodically updating those standards and reviewing the training program. The memorandum of understanding shall ensure that local officials and other persons interested in the standards established under sub. (2) and the training program may participate in the process.

(7) ENFORCEMENT; REMEDIES. (a) A county, city, village or town may submit orders to abate violations of those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion to the district attorney, the corporation counsel or the attorney general for enforcement. The district attorney, the corporation counsel or the attorney general may enforce those orders.

(b) The department or a city, village, town or county may issue a special order directing the immediate cessation of work on a one- or 2-family dwelling until the necessary plan approval is obtained or until the site complies with the rules promulgated under sub. (2).

History: 1991 a. 309.

101.655 Pilot lights prohibited on gas appliances. (1) In this section:

(a) "Class of gas appliances" means a group of gas appliances all of which perform a similar function.

(b) "Gas appliance" means any furnace or heater requiring electrical supply for operation, air conditioner, refrigerator, stove having an electrical supply cord, dishwasher, dryer, swimming pool heater or other similar appliance or device used in a private residence or private dwelling, which uses a gaseous fuel for operation and is automatically ignited for operation by means of a pilot light or other ignition device.

(c) "Intermittent ignition device" means an ignition device which is actuated only when a gas appliance is in operation.

(d) "Manufacturer" means any person who manufactures, produces or assembles gas appliances.

(e) "Nationally recognized standards and testing procedures" means those standards adopted by the American national standards institute and those testing procedures developed by the American gas association laboratories or underwriters laboratories, or such other standards and testing procedures that are recognized nationally by the gas appliance industry.

(f) "Pilot light" means any gas-operated device that remains continually lighted in order to ignite a gas appliance to begin normal operation.

(2) The department shall develop the specifications for certifying intermittent ignition devices. Development of the specifications shall proceed with the cooperation of representatives designated by the department from the affected gas appliance industry and consumers. The development of specifications shall make the fullest possible use of nationally recognized standards and testing procedures for intermittent ignition devices.

(3) The specifications for certification shall be developed with consideration for:

(a) The conservation of primary energy resources.

(b) Provisions necessary for public health and safety.

(c) Initial consumer costs, including installation and maintenance costs.

(d) Any other criteria determined necessary by the department.

(4) The department shall demonstrate that an intermittent ignition device operates according to the established specifications. Based upon this demonstration, the department may determine that an intermittent ignition device is feasible and may so certify the device.

(5) Within 90 days after an intermittent ignition device has been certified by the department, the department shall notify all gas appliance manufacturers doing business in this state of the prohibition of affected pilot lights, including the effective date of the prohibition, and shall inform manufacturers of ignition devices available which comply with established specifications.

(6) (a) No person may sell, distribute or install or cause to be sold, distributed or installed in this state a new gas appliance that is not equipped with a certified intermittent ignition device, beginning 24 months after any intermittent ignition device has been certified by the department under sub. (5) as feasible for the class of gas appliances to which the gas appliance belongs, but no earlier than July 1, 1980.

(b) Commencing 24 months after an intermittent ignition device has been certified by the department, but no earlier than July 1, 1980, the department shall have all the powers conferred by s. 101.02 for purposes of enforcing this section.

(c) The department may seek a forfeiture or initiate a civil action for a temporary or permanent injunction for any violation of this section or any rule promulgated under this section.

(d) Any person who violates this section or any rule promulgated under this section shall be subject to a forfeiture of not more than $400 for each day of violation.

(7) The department shall include in the biennial report required under s. 15.04 (1) (d), a description of its enforcement activities under this section.

(8) The department shall make rules as it deems necessary to carry out its duties under this section.

History: 1977 c. 369; Stats. 1977 s. 101.60; 1977 c. 447; Stats. 1977 s. 101.655; 1979 c. 154; 1979 c. 175 s. 53; 1983 a. 122; 1987 a. 186; 1989 a. 56.

101.66 Compliance and penalties. (1) Every builder, designer and owner shall use building materials, methods and equipment which are in conformance with the one- and 2-family dwelling code.

(2) All inspections shall be by persons certified by the department.

(3) Whoever violates this subchapter shall forfeit to the state not less than $25 nor more than $500 for each violation. Each day that such violation continues constitutes a separate offense.

History: 1975 c. 404.

SUBCHAPTER III

MANUFACTURED BUILDING CODE

101.70 Purpose. The purpose of this subchapter is to establish statewide standards and inspection procedures for the manufacture and installation of manufactured buildings for dwellings and to promote interstate uniformity in standards for manufactured buildings by authorizing the department to enter into reciprocal agreements with other states which have equivalent standards.

History: 1975 c. 405.

101.71 Definitions. In this subchapter:

(1) "Closed construction" means any building, building component, assembly or system manufactured in such a manner that it cannot be inspected before installation at the building site without disassembly, damage or destruction.

(2) "Dwelling" means any building that contains one or more dwelling units. "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(3) "Insignia" means a device or seal approved by the department to certify compliance with this subchapter.

(4) "Installation" means the assembly of a manufactured building on-site and the process of affixing a manufactured building to land, a foundation, footing or an existing building.

(5) "Manufacture" means the process of making, fabricating, constructing, forming or assembling a product from raw, unfinished, semifinished or finished materials.

(6) (a) "Manufactured building" means any structure or component thereof which is intended for use as a dwelling and:

1. Is of closed construction and fabricated or assembled on-site or off-site in manufacturing facilities for installation, connection, or assembly and installation, at the building site; or

2. Is a building of open construction which is made or assembled in manufacturing facilities away from the building site for installation, connection, or assembly and installation, on the building site and for which certification is sought by the manufacturer.

(b) "Manufactured building" does not mean any manufactured home or mobile home under s. 101.91 or any building of open construction which is not subject to par. (a) 2.

(7) "Open construction" means any building, building component, assembly or system manufactured in such a manner that it can be readily inspected at the building site without disassembly, damage or destruction.

History: 1975 c. 405; 1979 c. 89; 1983 a. 27, 189; 1989 a. 109.

101.715 Application. This subchapter applies to a dwelling the initial construction of which was commenced on or after December 1, 1978, except that s. 101.745 applies to a manufactured building the initial manufacture of which was commenced on or after May 23, 1978.

History: 1989 a. 109.

101.72 Dwelling code council. The dwelling code council shall review the standards and rules for manufactured buildings for dwellings and recommend a statewide manufactured building code for adoption by the department which shall include rules providing for the conservation of energy in the construction and maintenance of dwellings. Such rules shall take into account the costs to home buyers of specific code provisions in relation to the benefits derived therefrom. Upon its own initiative or at the request of the department, the council shall consider and make recommendations to the department pertaining to rules and any other matters related to this subchapter.

History: 1975 c. 405.

101.73 Departmental duties. The department shall:

(1) Adopt rules which establish standards for the use of building materials, methods and equipment in the manufacture and installation of manufactured buildings for use as dwellings or dwelling units. Where feasible, the standards used shall be those nationally recognized and shall apply to the dwelling and to its electrical, heating, ventilating, air conditioning and other systems. Such rules shall take into account the conservation of energy in construction and maintenance of dwellings and the costs to home buyers of specific code provisions in relation to the benefits derived therefrom. No standard under this subchapter may increase the maximum energy use, as defined in s. 101.08 (1) (f), allowed for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2) or decrease the minimum energy efficiency required for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2).

(1m) Adopt a rule which requires any manufactured building which uses electricity for space heating to be superinsulated.

(2) Adopt rules for the examination of plans and specifications and for periodic in-plant and on-site inspections of manufacturing facilities, processes, fabrication, assembly and installation of manufactured buildings to ensure that examinations and inspections are made in compliance with the rules adopted for construction, electrical wiring, heating, ventilating, air conditioning and other systems under ss. 101.70 to 101.77 and with the rules for indoor plumbing adopted by the department under ch. 145.

(3) Provide for examination of plans and specifications and in-plant inspections when contracted for by the manufacturer under s. 101.75 (1) and shall contract to provide on-site inspection services for the installation of manufactured buildings for dwellings, at municipal expense, for any municipality which requires such service under s. 101.76 or 101.761.

(5) Adopt rules for the certification, including provisions for suspension and revocation thereof, of on-site inspectors of the installation of manufactured buildings for dwellings. Persons certified as on-site inspectors may be employes of the department, a city, village, town or county or an independent agency.

(6) Adopt rules for the certification, including provisions for suspension and revocation thereof, of independent inspection agencies to conduct in-plant inspections of manufacturing facilities, processes, fabrication and assembly of manufactured buildings for dwellings and to certify compliance with this subchapter.

(7) Issue or recognize an insignia of compliance for dwellings which conform to the manufactured building code.

(8) Biennially review the rules promulgated under this subchapter.

(9) Issue special orders which it deems necessary to secure compliance with this subchapter and enforce the same by all appropriate administrative and judicial proceedings.

(10) Prescribe and furnish to municipalities a standard building permit form for all new one- and 2-family dwellings.

(11) Hear petitions regarding the manufactured building code, rules and special orders in accordance with s. 101.02 (6) (e) to (i) and (8).

(12) Establish by rule a schedule of fees sufficient to defray the costs incurred under this subchapter.

History: 1975 c. 405; 1979 c. 221; 1981 c. 20; 1983 a. 27; 1987 a. 343.

101.74 Departmental powers. The department may:

(1) Hold hearings on any matter relating to this subchapter.

(2) At the request of the owner or renter enter, inspect and examine dwellings, dwelling units and premises necessary to ascertain compliance with the rules and special orders under this subchapter.

(2m) Study the operation of the dwelling construction code and other laws related to the construction of dwelling units to determine their impact upon the cost of building construction and their effectiveness upon the health, safety and welfare of the occupants.

(3) Revise the rules under this subchapter after consultation with the dwelling code council.

(4) Provide for or engage in the testing, approval and certification of materials, devices and methods for the manufacture or installation of manufactured buildings.

(5) Collect and publish data secured from the examinations and inspections under s. 101.73 (2) and (3), and from building permits.

(6) Adopt rules prescribing procedures for approving new building materials, devices and methods for the manufacture or installation of manufactured buildings for dwellings.

(7) Enter into reciprocal agreements with other states regarding the design, construction, inspection and labeling of manufactured buildings where the laws or rules of other

states meet the intent of the manufactured building code and the rules promulgated under this subchapter.

History: 1975 c. 405.

101.745 Smoke detectors. (1) DEFINITION. The definition of smoke detector under s. 101.145 (1) (c) also applies to this section.

(2) APPROVAL. A smoke detector required under this section shall be approved by underwriters laboratory.

(3) INSTALLATION. A smoke detector required under this section shall be installed according to the directions and specifications of the manufacturer.

(4) REQUIREMENT. The manufacturer of a manufactured building shall install a functional smoke detector on each floor level except the attic or storage area of each dwelling unit.

History: 1977 c. 388; 1983 a. 189 s. 329 (4); 1987 a. 376; 1989 a. 109.

101.75 Inspections, insignia and alterations. (1) INSPECTIONS AND COMPLIANCE. Manufacturers of manufactured buildings shall contract with a certified independent inspection agency or the department to conduct in-plant inspections and certify compliance with this subchapter. Manufacturers shall reimburse the independent inspection agency in accordance with the terms of the contract or reimburse the department in accordance with fees established under s. 101.73 (12). All inspections shall be performed by persons certified by the department.

(2) DISPLAY OF INSIGNIA REQUIRED. All manufactured buildings manufactured, sold for initial use or installed within this state shall display, in a manner determined by the department, the insignia issued or recognized under ss. 101.73 (7) and 101.74 (7). All manufactured buildings bearing such insignia shall be deemed to comply with the requirements of all building ordinances and regulations of any local government except those related to zoning and siting requisites including but not limited to building setback, side and rear yard requirements and property line requirements.

(3) DEPARTMENT APPROVAL OF ALTERATIONS. No person shall alter an approved manufactured building in any way prior to or during installation without the approval of the department.

(4) COUNTERFEIT INSIGNIA. No person may falsely or fraudulently make, forge, alter or counterfeit any insignia issued or recognized under ss. 101.73 (7) and 101.74 (7).

History: 1975 c. 405.

101.76 Municipal authority. Except as provided by s. 101.761, cities, villages, towns and counties:

(1) May:

(a) With the approval of the department, exercise jurisdiction over the installation of manufactured buildings for dwellings by passage of ordinances, provided such ordinances are in strict conformance with this subchapter and the on-site inspection is performed by persons certified by the department. Except as provided by s. 101.761, a county ordinance shall apply in any city, village or town which has not enacted such ordinance.

(b) Under s. 66.30, jointly exercise the jurisdiction granted under par. (a).

(c) By ordinance establish and collect fees to defray the cost of jurisdiction exercised under par. (a) or (b).

(d) By ordinance provide remedies and penalties for violation of the jurisdiction exercised under par. (a) or (b).

(2) Shall contract with the department for on-site installation inspection services which the municipality does not perform under sub. (1) (a) or (b) and reimburse the department for its reasonable and necessary expenses incurred in the performance of such services pursuant to s. 101.73 (12).

(3) Shall use the standard building permit form prescribed by the department and file a copy of each such permit issued with the department.

History: 1975 c. 405; 1981 c. 20.

101.761 Certain municipalities excepted. (1) In this section, "municipality" means a city, village or town with a population of 2,500 or less.

(2) Except as provided under sub. (6), a municipality is exempt from:

(a) The requirements under s. 101.76 (2).

(b) Any rule adopted under s. 101.73 regarding suspension or revocation of standard building permits.

(3) The department or a county may not enforce this subchapter or an ordinance adopted under s. 101.76 (1) (a) or provide inspection services in a municipality unless requested to do so by a person with respect to a particular manufactured building or by the municipality. A request by a person or a municipality with respect to particular manufactured building does not give the department or a county authority with respect to any other manufactured building. Costs shall be collected under s. 101.76 (1) (c) or ss. 101.73 (12) and 101.76 (2) from the person or municipality making the request.

(4) Municipalities shall furnish statistical data relating to housing starts to the department as requested by the department.

(5) This section does not affect the applicability of or ordinances adopted under this subchapter to manufacturers, builders and owners of manufactured buildings located in a municipality.

(6) Any dwelling not inspected under s. 101.76 shall comply with the rules adopted under s. 101.73 (1) which take into account the conservation of energy in construction and maintenance of dwellings and the costs of specific code provisions to home buyers in relationship to the benefits derived from the provisions.

History: 1981 c. 20, 314; 1989 a. 31.

101.77 Penalties. Whoever violates this subchapter shall forfeit to the state not less than $25 nor more than $500 for each violation and each day that such violation continues constitutes a separate offense.

History: 1975 c. 405.

SUBCHAPTER IV

INSPECTION OF ELECTRICAL CONSTRUCTION AND CERTIFICATION OF MASTER ELECTRICIANS, CONTRACTORS, JOURNEYMEN AND BEGINNING ELECTRICIANS

101.80 Definitions. In this subchapter:

(1) "Municipality" means city, town, village and county.

(2) "Public buildings" and "places of employment" have the meanings provided by s. 101.01 (2) and include all exterior wiring except wiring owned, leased, operated or maintained by a public utility including any electrical cooperative, in the exercise of its utility function.

History: 1979 c. 309; 1983 a. 189.

101.82 Departmental duties. The department shall:

(1) Adopt rules for the construction and inspection of electrical construction of public buildings and places of employment and for the inspection of electrical construction of places where farming, as defined in s. 101.01 (2) (f), is

conducted. Where feasible, the standards used shall be those nationally recognized. No rule may be adopted which does not take into account the conservation of energy in construction and maintenance of buildings.

(2) Adopt rules for the certification, including provisions for suspension and revocation thereof, of electrical inspectors for the purpose of inspecting the electrical wiring of public buildings and places of employment. Persons certified as inspectors may be employes of the department, a municipality or private inspection agency.

(3) Contract to provide inspection services, at municipal expense, to any municipality which requests such service under s. 101.86.

(3m) Provide inspection services in those municipalities which have not adopted and enforced ordinances providing for inspection of electrical construction under s. 101.86 and defray the cost of this inspection through fees charged to the owner of the inspected building.

(4) Establish by rule a schedule of fees sufficient to defray the costs incurred under this subchapter.

History: 1979 c. 309; 1989 a. 348.

101.84 Departmental powers. The department may:

(1) Hold hearings on any matter relating to this subchapter and issue subpoenas to compel the attendance of witnesses and the production of evidence at the hearings.

(2) At the request of the owner or tenant, enter, inspect and examine the exterior and interior wiring of a public building or place of employment necessary to ascertain compliance with the rules promulgated under this subchapter.

History: 1979 c. 309.

101.86 Municipal authority. (1) Municipalities may:

(a) Exercise jurisdiction over electrical construction and inspection of electrical construction in public buildings and places of employment by passage of ordinances, providing such ordinances meet the minimum requirements of the department's rules adopted under this subchapter. A county ordinance shall apply in any city, village or town which has not enacted such an ordinance.

(b) Under s. 66.30, jointly exercise the jurisdiction granted under par. (a).

(c) By ordinance, establish and collect fees to defray the cost of jurisdiction exercised under par. (a) or (b) or a contract under sub. (2).

(d) By ordinance, provide remedies and penalties for violation of the jurisdiction exercised under par. (a) or (b).

(2) A municipality may contract with the department for those inspection services which the municipality does not perform or contract for under sub. (1) (a) or (b) and reimburse the department for its reasonable and necessary expenses incurred in the performance of such services under s. 101.82 (4).

(3) The cost of inspection services provided by any county which has enacted an ordinance under sub. (1) or contracted under sub. (2) if not defrayed by fees shall be charged to or taxed upon the property within those cities, villages and towns in the county which have not enacted a local construction and inspection ordinance under sub. (1) or contracted under sub. (2), and no part of the cost of inspection services may be charged to or taxed against the property within any city, village or town which has enacted such an ordinance or contracted under sub. (2).

History: 1979 c. 309.

101.865 Regulation of electric wiring. (1) It is hereby made the duty of every contractor and other person who does any electric wiring in this state to comply with the Wisconsin state electrical code, and the company furnishing the electric current shall obtain proof of such compliance before furnishing such service; provided, that nothing therein contained shall be construed as prohibiting any municipality from making more stringent regulations than those contained in the Wisconsin state electrical code. Proof of such compliance shall consist of a certificate furnished by a municipal or other recognized inspection department or officer, or if there is no such inspection department or officer it shall consist of a written statement furnished by the contractor or other person doing the wiring, indicating that there has been such compliance.

(2) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months.

History: 1983 a. 164 s. 4; Stats. 1983 s. 101.865; 1989 a. 348.

101.87 Certification. (1) The department shall adopt rules establishing a uniform examination for the statewide certification of master electricians and establishing certification requirements for electrical contractors, journeymen electricians and beginning electricians. The rules shall specify that only master electricians and persons who employ at least one master electrician may be certified as electrical contractors; that persons who successfully complete an apprenticeship program lasting for at least 4 years and approved by the U.S. department of labor and by the department or pass an inside journeyman wireman examination and who have installed electrical wiring for at least 48 months and have maintained and repaired electrical wiring for at least one month shall be certified as journeymen electricians; and that only persons who have some experience installing and repairing electrical wiring may be certified as beginning electricians. The rules shall provide for the periodic administration of the examination, shall specify the certification period and examination fee and shall establish criteria for the suspension of the certificate by the department for violations of a municipality's electrical code upon notification of such violations by the municipality. Applicants for certification as electrical contractors shall provide the department with their social security number, their worker's compensation number, their unemployment insurance account number, their state and federal tax identification numbers and the name and address of each partner if they are partnerships, of the owner if they are individual proprietorships and of their officers if they are corporations.

(2) Any municipality which by ordinance requires the licensure of electrical contractors shall issue a license to any electrical contractor who wishes to perform electrical construction work in the municipality upon the submission by the electrical contractor of evidence that at least one of his or her full-time employes has been certified by the state as a master electrician under sub. (1), and upon the payment of the municipality's licensure fee and the posting of any required bond. The municipality's licensure fee may not exceed the amount required to cover the administrative costs of issuing the license.

(3) If a municipality that requires the licensure of electrical contractors on March 28, 1984, thereafter ceases to require such licensure but requires state certification under sub. (1), a person licensed by the municipality may continue to perform electrical construction work in that municipality upon application to the department for restricted certification limited to that municipality. The department may charge a fee for such certification.

(4) No municipality may, before January 1, 1995, require the licensure of electrical contractors unless that municipality requires that licensure on May 11, 1990.

History: 1983 a. 164; 1989 a. 348.

101.88 Compliance and penalties. (1) Every contractor, designer and owner shall use building materials, methods and equipment which are in conformance with the rules adopted by the department under this subchapter.

(2) All inspections shall be made by persons certified by the department.

(3) Except as provided under s. 101.865 (2), whoever violates this subchapter or any rule promulgated under this subchapter shall forfeit to the state not less than $25 nor more than $500 for each violation. Each day of violation constitutes a separate offense.

History: 1979 c. 309; 1983 a. 164.

SUBCHAPTER V

MANUFACTURED HOMES AND MOBILE HOMES; REGULATION OF MANUFACTURERS

101.90 Purpose. The purpose of this law is to establish uniform construction standards, inspection procedures and licensing of manufacturers of manufactured homes and mobile homes and to promote interstate uniformity and the ability to enter into reciprocal agreements with other states and the federal government.

History: 1973 c. 116; 1983 a. 27 s. 2200 (25).

101.91 Definitions. In ss. 101.90 to 101.96:

(1) "Mobile home" means a vehicle manufactured or assembled before June 15, 1976, designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction, which has an overall length in excess of 45 feet. "Mobile home" includes the mobile home structure, its plumbing, heating, air conditioning and electrical systems, and all appliances and all other equipment carrying a manufacturer's warranty.

(2) "Manufactured home" means either of the following:

(a) A structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

(b) A structure which meets all the requirements of par. (a) except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 USC 5401 to 5425.

History: 1973 c. 116, 132; 1983 a. 27, 192.

101.92 Departmental powers and duties. The department:

(1) Shall adopt, administer and enforce rules for the safe and sanitary design and construction of manufactured homes and mobile homes manufactured, distributed, sold or offered for sale in this state.

(2) Shall license all manufacturers desiring to sell or distribute for sale manufactured homes or mobile homes in this state.

(3) Shall review annually the rules adopted under ss. 101.90 to 101.96, and may revise rules upon recommendation by the advisory committee appointed under s. 101.96.

(4) Shall provide for announced or unannounced inspection of manufacturing facilities, processes, fabrication and assembly of manufactured homes and mobile homes to ensure compliance with the rules adopted under ss. 101.90 to 101.96.

(5) Shall establish standards for certification of inspection and testing agencies which shall include standards for in-plant inspection of manufacturing facilities, processes, fabrication and assembly of manufactured homes and mobile homes and for issuance of or acceptance of a label of approval.

(6) May enter into reciprocal agreements with other states regarding the design, construction, inspection and labeling of mobile homes where the laws or rules of other states meet the intent of ss. 101.90 to 101.96 and where the laws or rules are actually enforced.

(7) Shall establish within the division of safety and buildings a staff for the administration and enforcement of ss. 101.90 to 101.96.

(8) May revoke the license of any manufacturer who violates ss. 101.90 to 101.96 or any rules promulgated thereunder.

History: 1973 c. 116; 1979 c. 221; 1983 a. 27 ss. 1375pr, 1375q, 2200 (25).

101.925 Smoke detectors. (1) DEFINITION. The definition of smoke detector under s. 101.145 (1) (c) also applies to this section.

(2) APPROVAL. A smoke detector required under this section shall be approved by underwriters laboratory.

(3) INSTALLATION. A smoke detector required under this section shall be installed according to the directions and specifications of the manufacturer.

(4) REQUIREMENT. The manufacturer of a manufactured home shall install a functional smoke detector in each manufactured home manufactured on or after May 23, 1978.

History: 1977 c. 388; 1983 a. 27 s. 2200 (25); 1983 a. 189 s. 329 (4); 1987 a. 376.

101.93 Departmental powers and duties. (1) The department shall adopt rules relating to plumbing in the design and construction of manufactured homes and mobile homes. The rules shall be consistent with s. 101.94 (1) to (3) and shall be reviewed annually.

(2) The department shall establish qualification requirements for and shall certify persons to perform inspections of the plumbing systems in manufactured homes and mobile homes.

(3) The department shall review plans and specifications for approval of plumbing systems in manufactured homes and mobile homes.

History: 1973 c. 116; 1979 c. 221; 1983 a. 27 s. 2200 (25).

101.94 Manufactured home and mobile home manufacturers, distributors and dealers: design and construction of manufactured homes and mobile homes. (1) Mobile homes manufactured, distributed, sold or offered for sale in this state shall conform to the code promulgated by the American national standards institute and identified as ANSI 119.1, including all revisions thereof in effect on August 28, 1973, and further revisions adopted by the department and the department of health and social services. The department may establish standards in addition to those required under ANSI 119.1. This subsection applies to units manufactured or assembled after January 1, 1974, and prior to June 15, 1976.

(2) No person may manufacture, assemble, distribute or sell a manufactured home unless the manufactured home complies with 42 USC 5401 to 5425 and applicable regula-

tions as in effect on June 15, 1976. The department may establish, by rule, standards for the safe and sanitary design and construction of manufactured homes for the purpose of enforcement of this subchapter, and those standards may include standards in addition to any standards established by the secretary of housing and urban development under 42 USC 5401 to 5425.

(3) Each manufactured home or mobile home manufacturer shall submit to the department typical construction plans and specifications for review. The department shall, by its own inspectors whether inside or outside this state, perform sufficient inspections of manufacturing premises and manufactured units to ensure compliance with this section. The department may contract for inspection services, as provided in sub. (4), for inspections outside this state. Each manufactured home or mobile home, upon final assembly, shall display a label which shall be prescribed by and be available only from the department, or similar agency of other states where units are manufactured, providing reciprocal agreements have been executed and are effective between this state and such other states indicating that the manufactured home or mobile home meets the requirements of ss. 101.90 to 101.96 or the applicable laws of the state with which a reciprocal agreement has been executed. No manufactured home or mobile home which bears such label shall be required by any person to comply with any building, plumbing, heating or electrical code or any construction standards other than those promulgated under this section.

(4) The department shall inspect manufactured homes and mobile homes manufactured in other states to be sold or intended to be sold in this state. For such out-of-state inspections, the department may contract for 3rd party inspection by an inspection agency which has been approved by the department. The department shall monitor inspections conducted by 3rd party inspection agencies to ensure the quality of those inspections. To obtain departmental approval, the inspection agency shall submit an application to the department accompanied by written materials evidencing that the agency is:

(a) Not under the jurisdiction or control of any manufacturer or supplier of the manufactured home or mobile home industry.

(b) Professionally competent to determine that a manufactured home or mobile home is in compliance with the requirements and standards of this section by having sufficient expertise to:

1. Inspect manufactured homes or mobile homes.

2. Review manufactured home or mobile home plans and specifications.

3. Evaluate manufactured home or mobile home manufacturer quality control procedures.

4. Submit detailed reports regarding all of its findings to the department.

(5) No manufactured home or mobile home after once being approved to display the label prescribed shall be altered in any way by a manufacturer, factory branch, distributor, distributor branch, dealer or salesperson without first obtaining an approval from the department or its authorized agent.

(6) Fees for review of plans, construction inspections, department labels and licensing of manufacturers shall be established by department rule under s. 101.19.

(7) The department shall hear and decide petitions brought under ss. 101.90 to 101.96 in the manner provided under s. 101.02 (6) (e) to (i) and (8) for petitions concerning property.

(8) (a) A person who violates this subchapter or a rule or order issued under this subchapter shall forfeit not more than $1,000 for each violation. Each violation of this subchapter constitutes a separate violation with respect to each manufactured home or mobile home or with respect to each failure or refusal to allow or perform an act required by this subchapter, except the maximum forfeiture under this subsection may not exceed $1,000,000 for a related series of violations occurring within one year of the first violation.

(b) Any individual or a director, officer or agent of a corporation who knowingly and wilfully violates this subchapter in a manner which threatens the health or safety of a purchaser shall be fined not more than $1,000 or imprisoned not more than one year or both.

History: 1973 c. 116; 1977 c. 29; 1979 c. 221 ss. 552 to 556, 2202 (25); 1983 a. 27 ss. 1375r to 1375s, 2200 (25); 1989 a. 31.

101.95 Manufactured home and mobile home manufacturers regulated. The department shall by rule prescribe the manner by which a manufacturer shall be licensed for the manufacture, distribution or selling of manufactured homes or mobile homes in this state.

History: 1973 c. 116; 1983 a. 27 ss. 1375t, 2200 (25).

101.96 Advisory committee. The department shall appoint an advisory committee of 5 members to review the rules and standards for manufactured homes and mobile homes and recommend changes. The committee shall be composed of 2 members representing the manufactured home or mobile home industry, 2 public members and one member from the department. The committee shall submit an annual report to the department and to the department of health and social services. The annual report shall include recommended changes in this subchapter reflecting amendments to 42 USC 5401 to 5425 and rules and regulations issued under 42 USC 5401 to 5425.

History: 1973 c. 116; 1979 c. 221; 1983 a. 27, 192.

SUBCHAPTER VI

MULTIFAMILY DWELLING CODE

101.971 Definitions. In this subchapter:

(1) "Dwelling unit" has the meaning given in s. 101.61 (1).

(2) "Multifamily dwelling" means an apartment building, rowhouse, town house, condominium or manufactured building, as defined in s. 101.71 (6), that does not exceed 60 feet in height or 6 stories and that consists of 3 or more attached dwelling units the initial construction of which is begun on or after January 1, 1993. "Multifamily dwelling" does not include a facility licensed under ch. 50.

(3) "Owner" means a person having a legal or equitable interest in a multifamily dwelling.

(4) "Political subdivision" means a county, city, village or town.

History: 1991 a. 269.

101.972 Multifamily dwelling code council duties. The multifamily dwelling code council shall review the rules for multifamily dwelling construction and recommend a uniform multifamily dwelling code for promulgation by the department. The council shall consider and make recommendations to the department pertaining to rules and any other matters related to this subchapter. The council shall identify, consider and make recommendations to the department regarding variances in the rules for different climate and soil conditions and the variable conditions created by building and population densities.

History: 1991 a. 269.

101.973 Department duties. The department shall:

(1) Promulgate rules that establish standards for the construction of multifamily dwellings and their components.

(2) Biennially review the rules promulgated under this subchapter.

(3) Issue any special order that it considers necessary to secure compliance with this subchapter.

(4) Prescribe and furnish to political subdivisions a standard building permit format for all multifamily dwellings subject to this subchapter.

(5) Collect and publish the data secured from the building permits.

(6) Hear under s. 101.02 (6) (e) to (i) and (8) petitions regarding the rules promulgated and special orders issued under this subchapter.

(7) Establish by rule a schedule of fees sufficient to defray the costs incurred by the department under this subchapter.

(8) Deposit the moneys received from the fees under sub. (7) in the appropriation under s. 20.445 (1) (j).

(9) Incorporate by reference in the rules promulgated under this subchapter all rules promulgated under subch. I that apply to multifamily dwellings.

(10) Establish a program of quality control training for all inspectors who inspect multifamily dwellings for compliance with this subchapter.

(11) Contract with the legislative audit bureau to make periodic performance audits of any division of the department that is responsible for inspections of multifamily dwellings.

History: 1991 a. 269.

101.974 Department powers. The department may:

(1) Hold hearings on any matter relating to this subchapter and issue subpoenas to compel the attendance of witnesses and the production of evidence at such hearings.

(2) Promulgate the rules under this subchapter after consultation with the multifamily dwelling code council.

(3) Provide for or engage in the testing, approval and certification of materials, methods and equipment of construction.

(4) Promulgate rules prescribing procedures for approving new building materials, methods and equipment.

(5) Study the administration of the rules promulgated under this subchapter and other laws related to the construction of multifamily dwelling units to determine their impact on the cost of building construction and their effectiveness in ensuring the health, safety and welfare of the occupants.

History: 1991 a. 269.

101.975 Local government authority. (1) A political subdivision may regulate the construction and installation of windows and doors in multifamily dwellings if the regulation is related to preventing illegal entry.

(2) A political subdivision shall use the standard building permit format prescribed and furnished by the department under s. 101.973 (4) and file a copy of each permit issued with the department.

(3) (a) In this subsection, "preexisting stricter sprinkler ordinance" means an ordinance that fulfills all of the following requirements:

1. The ordinance requires an automatic sprinkler system in multifamily dwellings containing 20 or less attached dwelling units.

2. The ordinance was in effect on January 1, 1992, and remains in effect on May 1, 1992.

3. The ordinance does not conform to this subchapter and s. 101.02 (7m) or is contrary to an order of the department under ss. 101.01 to 101.25.

4. The ordinance is more stringent than the corresponding provision of this subchapter or s. 101.02 or the contrary provision of an order of the department under ss. 101.01 to 101.25.

(b) If a political subdivision has a preexisting stricter sprinkler ordinance, that ordinance remains in effect, except that the political subdivision may amend the ordinance to conform to this subchapter and s. 101.02 (7m) and to be not contrary to an order of the department under ss. 101.01 to 101.25.

History: 1991 a. 269.

101.976 Fire chief and inspector powers and duties. This subchapter does not restrict the duties and powers of fire chiefs or inspectors under s. 101.14 (2).

History: 1991 a. 269.

101.977 Compliance. A person who constructs a multifamily dwelling shall use building materials, methods and equipment that are in conformance with the standards prescribed under s. 101.973 (1).

History: 1991 a. 269.

101.978 Penalties. Any person who violates this subchapter or any rules promulgated under this subchapter shall forfeit not less than $25 nor more than $500 for each offense. Each day of continued violation constitutes a separate offense.

History: 1991 a. 269.