

CHAPTER 101

DEPARTMENT OF COMMERCE—REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

SUBCHAPTER I	
REGULATION OF INDUSTRY: GENERAL PROVISIONS	
101.01	Definitions.
101.02	Powers, duties and jurisdiction of department.
101.025	Ventilation requirements for public buildings and places of employment.
101.027	Energy conservation code for public buildings and places of employment.
101.03	Testimonial powers of secretary and deputy.
101.05	Exempt buildings and projects.
101.055	Public employee safety and health.
101.07	Flushing devices for urinals.
101.09	Storage of flammable, combustible and hazardous liquids.
101.10	Storage and handling of anhydrous ammonia.
101.11	Employer's duty to furnish safe employment and place.
101.111	Excavations; protection of adjoining property and buildings.
101.12	Approval and inspection of public buildings and places of employment and components.
101.1205	Erosion control; construction of public buildings and buildings that are places of employment.
101.121	State historic building code.
101.1215	Abrasive cleaning of historic buildings.
101.122	Rental unit energy efficiency.
101.123	Smoking prohibited.
101.124	Heated sidewalks prohibited.
101.125	Safety glazing in hazardous locations.
101.126	Recycling space.
101.127	Building requirements for certain residential facilities.
101.128	Restroom equity.
101.13	Physically disabled persons; place of employment and public building requirements.
101.132	Physically disabled persons; housing requirements.
101.135	Uniform firewall identification.
101.137	Fire suppression; ozone–depleting substances.
101.14	Fire inspections, prevention, detection and suppression.
101.141	Record keeping of fires.
101.142	Inventory of petroleum product storage tanks.
101.143	Petroleum storage remedial action; financial assistance.
101.144	Petroleum storage tank discharges.
101.145	Smoke detectors.
101.15	Mines, tunnels, quarries and pits.
101.16	Liquefied petroleum gas.
101.17	Machines and boilers, safety requirement.
101.175	Local energy resource systems.
101.177	Refrigeration equipment and ozone–depleting refrigerant.
101.178	Installation and servicing of heating, ventilating and air conditioning equipment.
101.18	Electric fences.
101.19	Fees and records.
101.211	Lunchrooms.
101.55	Executive agreements to control sources of radiation.
101.563	Payments without regard to eligibility; calendar years 2000 to 2004.
101.573	Fire dues distribution.
101.575	Entitlement to dues.
101.578	Protection of medical waste incinerator employees.
101.58	Employees' right to know.
101.581	Notice requirements.
101.583	Toxic substance information requirements; employer to employee.
101.585	Infectious agent information requirements; employer to employee.
101.586	Pesticide information requirements; employer or agricultural employer to employee.
101.587	Information requirements; employer or agricultural employer to department.
101.588	Information collection and maintenance; department.
101.589	Extended time periods; exceptions.
101.59	Manufacturer, supplier; requirements.
101.592	Confidential information.
101.595	Employee rights.
101.597	Education and training programs.
101.598	Rules.
101.599	Remedies; civil forfeitures.
SUBCHAPTER II	
ONE– AND 2–FAMILY DWELLING CODE	
101.60	Purpose.
101.61	Definitions.
101.615	Application.
101.62	Dwelling code council; power.
101.625	Contractor financial responsibility council; duties.
101.63	Departmental duties.
101.64	Departmental powers.
101.645	Smoke detectors.
101.65	Municipal authority.
101.651	Special requirements for smaller municipalities.
101.653	Construction site erosion control.
101.654	Contractor financial responsibility certification.
101.66	Compliance and penalties.
SUBCHAPTER III	
MANUFACTURED BUILDING CODE	
101.70	Purpose.
101.71	Definitions.
101.715	Application.
101.72	Dwelling code council.
101.73	Departmental duties.
101.74	Departmental powers.
101.745	Smoke detectors.
101.75	Inspections, insignia and alterations.
101.76	Municipal authority.
101.761	Certain municipalities excepted.
101.77	Penalties.
SUBCHAPTER IV	
INSPECTION OF ELECTRICAL CONSTRUCTION AND CERTIFICATION OF MASTER ELECTRICIANS, CONTRACTORS, JOURNEYMEN AND BEGINNING ELECTRICIANS	
101.80	Definitions.
101.82	Departmental duties.
101.84	Departmental powers.
101.86	Municipal authority.
101.865	Regulation of electric wiring.
101.87	Certification.
101.88	Compliance and penalties.
SUBCHAPTER V	
MANUFACTURED HOMES AND MOBILE HOMES	
101.91	Definitions.
101.92	Departmental powers and duties.
101.9202	Excepted liens and security interests.
101.9203	When certificate of title required.
101.9204	Application for certificate of title.
101.9205	When department to issue certificate and to whom; maintenance of records.
101.9206	Contents of certificate of title.
101.9207	Lost, stolen or mutilated certificates.
101.9208	Fees.
101.9209	Transfer of interest in a manufactured home.
101.921	Transfer to or from dealer.
101.9211	Involuntary transfers.
101.9212	When department to issue a new certificate.
101.9213	Perfection of security interests.
101.9214	Duties on creation of security interest.
101.9215	Assignment of security interest.
101.9216	Release of security interest.
101.9217	Secured party's and owner's duties.
101.9218	Applicability of manufactured home security provisions.
101.9219	Withholding certificate of title; bond.
101.922	Suspension or revocation of certificate.
101.9221	Grounds for refusing issuance of certificate of title.
101.9222	Previously certificated manufactured homes.
101.925	Smoke detectors.
101.93	Plumbing in manufactured homes.
101.935	Manufactured home park regulation.
101.937	Water and sewer service to manufactured home parks.
101.94	Manufactured home and mobile home manufacturers, distributors and dealers; design and construction of manufactured homes and mobile homes.
101.95	Manufactured home manufacturers regulated.
101.951	Manufactured home dealers regulated.
101.952	Manufactured home salespersons regulated.
101.953	Warranty and disclosure.
101.954	Sale or lease of used manufactured homes.
101.955	Jurisdiction and venue over out-of–state manufacturers.
101.965	Penalties.
SUBCHAPTER VI	
MULTIFAMILY DWELLING CODE	
101.971	Definitions.
101.972	Multifamily dwelling code council duties.
101.973	Department duties.
101.974	Department powers.
101.975	Local government authority.
101.976	Fire chief and inspector powers and duties.
101.977	Compliance.
101.978	Penalties.

REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

SUBCHAPTER I

REGULATION OF INDUSTRY: GENERAL PROVISIONS

101.01 Definitions. In this chapter, the following words and phrases have the designated meanings unless a different meaning is expressly provided:

(1m) “Department” means the department of commerce.

(2m) “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.

(3) “Employee” means any 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.

(4) “Employer” means any person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district, family care 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 employee.

(5) “Employment” means 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 sub. (11).

(6) “Frequenter” means every person, other than an employee, 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.

(7) “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.

(8) “Local order” means any ordinance, order, rule or determination of any common council, board of alderpersons, board of trustees or the village board, of any village or city, a regulation or order of the local board of health, as defined in s. 250.01 (3), or an order or direction of any official of a municipality, upon any matter over which the department has jurisdiction.

(9) “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.

(10) “Owner” means any 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. This subchapter shall apply, so far as consistent, to all architects and builders.

(11) “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 the farm or employees 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, as defined in s. 50.01 (1), 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 residents who are not related to the operator or administrator.

(12) “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 residents who are not related to the operator or administrator or an adult family home, as defined in s. 50.01 (1).

(13) “Safe” or “safety”, as applied to an employment or a place of employment or a public building, means such freedom from danger to the life, health, safety or welfare of employees 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.

(14) “Secretary” means the secretary of commerce.

(15) “Welfare” includes 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; 1993 a. 27, 184, 327; 1995 a. 27 ss. 3611 to 3629, 9116 (5); 1997 a. 237; 1999 a. 9; 2001 a. 16.

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 sub. (2) (a) [now sub. (11)]. 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 Wis. 2d 446, 230 N.W.2d 863 (1975).

A vocational school was not place of employment. *Korenak v. Curative Workshop Adult Rehabilitation Center*, 71 Wis. 2d 77, 237 N.W.2d 43 (1976).

The right to make progress inspections and to stop construction for noncompliance with specifications is not an exercise of control sufficient to make an architect an owner under (2) (i) [now sub. (10)]. *Luterbach v. Mochon Schutte Hackworthy Juerisson, Inc.* 84 Wis. 2d 1, 267 N.W.2d 13 (1978).

“Safe employment” and “safe place of employment” are distinguished. There is a duty to provide safe employment to employees that does not extend to frequenters, while the duty to provide a safe place of employment does extend to frequenters. *Leitner v. Milwaukee County*, 94 Wis. 2d 186, 287 N.W.2d 803 (1980).

An Elks Club was a “place of employment.” *Schmorrow v. Sentry Ins. Co.*, 138 Wis. 2d 31, 405 N.W.2d 672 (Ct. App. 1987).

A person seeking directions to the location of an intended, but unknown, destination is a frequenter under sub. (2) (d). When such inquiry is not made, or has concluded, and the person deviates into an area he or she is not explicitly or impliedly invited into, frequenter status is lost. *Monsivais v. Winzenried*, 179 Wis. 2d 758, 508 N.W.2d 620 (Ct. App. 1993).

The duty of an owner of a multiple–unit residential dwelling under the safe place statute extends only to common areas. *Antwaun A. v. Heritage Mutual Insurance Co.* 228 Wis. 2d 44, 596 N.W.2d 456 (1999).

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 this subchapter to the department, the same powers as a supplemental court commissioner with regard to the taking of depositions and all powers granted by law to a supplemental 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 this subchapter is pending, shall aid the department in the investigation, hearing or trial and, under the supervision of the department, prosecute all necessary actions or proceedings for the enforcement and punishment of violations of this subchapter and all other laws of this state relating to the protection of life, health, safety and welfare.

(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 this subchapter.

(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 this subchapter may be construed to deprive the common council, the board of alderpersons, the board of trustees or the village board of any village or city, or a local board of health, as defined in s. 250.01 (3), 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 employment or places of employment or public buildings, the order shall, upon the filing by the department of a copy of the order 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 the order of the department. Thereafter no local officer may make or enforce any order contrary to the order of the department.

(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 multi-family 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 this subchapter, 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.

101.02 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

(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 this subchapter shall be sufficient to give effect to the orders of the department, and no order may be declared inoperative, illegal or void for any omission of a technical nature with respect to the requirements of this subchapter.

(10) Orders of the department under this subchapter 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 or corporation, or any officer, agent or employee of a person or corporation, fails to observe and comply with any order of the department or to perform any duty specified under this subchapter shall constitute a separate and distinct violation of the order or of the requirements of this subchapter, whichever is applicable.

(13) (a) If any employer, employee, owner, or other person violates this subchapter, or fails or refuses to perform any duty specified under this subchapter, 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 this subchapter, for each such violation, failure or refusal, such employer, employee, 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 employee 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 laundries, stores, licensed occupations, school attendance, bakeries, 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 employees 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 this subchapter.

(g) 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 employees, 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 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 employees 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

employees in employments and places of employment or fre-quenters 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.

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

(k) Every employer and every owner shall furnish to the department all information that the department requires to administer and enforce this subchapter, and shall provide specific answers to all questions that the department asks relating to any information that the department requires.

(L) Any employer receiving from the department any form requesting information that the department requires to administer and enforce this subchapter, along with directions to complete the form, shall properly complete the form and answer fully and correctly each question asked in the form. If the employer is unable to answer any question, the employer shall give a good and sufficient reason for his or her inability to answer the question. The employer's answers 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 the completed form shall be 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.

(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.

(18m) The department may perform, or contract for the performance of, testing of petroleum products other than testing provided under ch. 168. The department may establish a schedule of fees for such petroleum product testing services. The department shall credit all revenues received from fees established under this subsection to the appropriation account under s. 20.143 (3) (ga). Revenues from fees established under this subsection may be used by the department to pay for testing costs, including laboratory supplies and equipment amortization, for such products.

(19) (a) The department shall, after consulting with the department of health and family services, develop a report form to document significant exposure to blood or body fluids, for use under s. 252.15 (2) (a) 7. ak. The form shall contain the following language for use by a person who may have been significantly exposed: "REMEMBER — WHEN YOU ARE INFORMED OF AN HIV TEST RESULT BY USING THIS FORM, IT IS A VIOLATION OF THE LAW FOR YOU TO REVEAL TO ANYONE ELSE THE IDENTITY OF THE PERSON WHO IS THE SUBJECT OF THAT TEST RESULT. (PENALTY: POSSIBLE JAIL AND UP TO \$10,000 FINE)".

(b) The department shall determine whether a report form that is not the report form under par. (a) that is used or proposed for use to document significant exposure to blood or body fluids, is substantially equivalent to the report form under par. (a).

(20) (a) For purposes of this subsection, "license" means a license, permit or certificate of certification or registration issued by the department under ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935, 101.95, 101.951, 101.952, 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

(b) Except as provided in par. (e), the department of commerce may not issue or renew a license unless each applicant who is an

individual provides the department of commerce with his or her social security number and each applicant that is not an individual provides the department of commerce with its federal employer identification number. The department of commerce may not disclose the social security number or the federal employer identification number of an applicant for a license or license renewal except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(c) The department of commerce may not issue or renew a license if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes.

(d) The department of commerce shall revoke a license if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes.

(e) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license shall submit a statement made or subscribed under oath or affirmation to the department of commerce that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development.

2. Any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1. is invalid.

(21) (a) In this subsection, "license" means a license, permit or certificate of certification or registration issued by the department under s. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935, 101.95, 101.951, 101.952, 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

(b) As provided in the memorandum of understanding under s. 49.857 and except as provided in par. (e), the department of commerce may not issue or renew a license unless the applicant provides the department of commerce with his or her social security number. The department of commerce may not disclose the social security number except that the department of commerce may disclose the social security number of an applicant for a license under par. (a) or a renewal of a license under par. (a) to the department of workforce development for the sole purpose of administering s. 49.22.

(c) As provided in the memorandum of understanding under s. 49.857, the department may not issue or renew a license if the applicant or licensee is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or if the applicant or licensee fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and relating to paternity or child support proceedings.

(d) As provided in the memorandum of understanding under s. 49.857, the department shall restrict or suspend a license issued by the department if the licensee is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or if the licensee fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and relating to paternity or child support proceedings.

(e) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license shall submit a statement made or subscribed under oath or affirmation to the department of commerce that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development.

101.02 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

2. Any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1 is invalid.

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; 1993 a. 27, 184, 252, 414, 492; 1995 a. 27 ss. 3631 to 3649r, 9126 (19); 1995 a. 215; 1997 a. 191, 237; 1999 a. 9; 2001 a. 61.

Cross Reference: See also Comm. Wis. adm. code.

Cross-reference: See s. 66.0119 for a provision authorizing special inspection warrants.

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

Every infrequent business-related activity in the home does not subject the homeowner to liability under the safe place statute. *Geiger v. Milwaukee Guardian Insurance Co.* 188 Wis. 2d 333, 524 N.W.2d 909 (Ct. App. 1994).

The department's authority to adopt rules covering the safety of frequenters engaged in recreational activities at youth camps is limited to orders relating to the construction of public buildings on the premises, but only as to the structural aspects thereof, and 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 employees 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 employees 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 the number of beds or rooms. 62 Atty. Gen. 107.

The department cannot enact a rule that 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 employees 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 employees 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.

Cross Reference: See also ch. Comm 64, Wis. adm. code.

101.027 Energy conservation code for public buildings and places of employment. (1) In this section:

(a) "Energy conservation code" means the energy conservation code promulgated by the department that sets design requirements for construction and equipment for the purpose of energy conservation in public buildings and places of employment.

(b) "Standard 90.1 – 1989" means the American society of heating, refrigerating and air-conditioning engineers standard 90.1 – 1989 — energy efficient design of new buildings except low-rise residential buildings.

(2) The department shall review the energy conservation code and shall promulgate rules that change the requirements of the energy conservation code to improve energy conservation. No rule may be promulgated that has not taken into account the cost of the energy conservation code requirement, as changed by the rule, in relationship to the benefits derived from that requirement, including the reasonably foreseeable economic and environmental benefits to the state from any reduction in the use of imported fossil fuel. The proposed rules changing the energy conservation code shall be submitted to the legislature in the manner provided under s. 227.19. In conducting a review under this subsection, the department shall consider incorporating, into the energy conservation code, design requirements from the most current national energy efficiency design standards, including standard 90.1 – 1989 or an energy efficiency code other than standard 90.1 – 1989 if that energy efficiency code is used to prescribe design requirements for the purpose of conserving energy in buildings and is generally accepted and used by engineers and the construction industry.

(3) (a) The department shall begin a review under sub. (2) whenever one of the following occurs:

- 1. A revision of standard 90.1 – 1989 is published.
- 2. Five years have passed from the date on which the department last submitted to the legislature proposed rules changing the energy conservation code.

(b) The department shall complete a review under sub. (2) as follows:

1. If the department begins a review under sub. (2) because a revision of standard 90.1 – 1989 is published, the department shall complete its review of the energy conservation code and submit to the legislature proposed rules changing the energy conservation code no later than 18 months after the date on which the revision of standard 90.1 – 1989 is published.

2. If the department begins a review under sub. (2) because 5 years have passed from the date on which the department last submitted to the legislature proposed rules changing the energy conservation code, the department shall complete its review of the energy conservation code and submit to the legislature proposed rules changing the energy conservation code no later than 9 months after the last day of the 5-year period.

History: 1993 a. 242.

Cross Reference: See also ch. Comm 63, Wis. adm. code.

101.03 Testimonial powers of secretary and deputy.

The secretary or any deputy secretary may certify to official acts, and take testimony.

History: 1971 c. 228 s. 21; Stats. 1971 s. 101.03; 1977 c. 29; 1995 a. 27.

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. 254.61 (1), is not subject to building codes adopted by the department under this subchapter.

(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.

(4) No standard, rule, order, code or regulation adopted, promulgated, enforced or administered by the department under this chapter applies to a rural school building if all of the following are satisfied:

(a) The school building consists of one classroom.

(b) The school building is used as a school that is operated by and for members of a bona fide religious denomination in accordance with the teachings and beliefs of the denomination.

(c) The teachings and beliefs of the bona fide religious denomination that operates the school prohibit the use of certain products, devices or designs that are necessary to comply with a standard, rule, order, code or regulation adopted, promulgated, enforced or administered by the department under this chapter.

History: 1971 c. 329; 1983 a. 163; 1983 a. 538 s. 271; 1989 a. 31, 354; 1993 a. 27, 117; 1995 a. 27; 1999 a. 135.

Cross Reference: See also ch. Comm 61, Wis. adm. code.

101.055 Public employee safety and health. (1) INTENT. It is the intent of this section to give employees of the state, of any agency and of any political subdivision of this state rights and protections relating to occupational safety and health equivalent to those granted to employees 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 employee” or “employee” means any employee of the state, of any agency or of any political subdivision of the state.

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

(d) “Public employer” or “employer” means the state, any 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 employees. The standards shall provide protection at least equal to that provided to private sector employees 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 employees as necessary to provide protection at least equal to that provided to private sector employees 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 employees 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 employees 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 employee 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 employees’ exposure to the substance or agent.

(d) No standards adopted under this subsection may require a member of a volunteer or paid fire department maintained by a political subdivision of this state to complete more than 60 hours of training prior to participating in structural fire fighting.

(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 employee representatives and post a statement at the place where notices to employees are normally posted. The posted statement shall summarize the application, specify a place where employees may examine the application and inform employees of their right to request a hearing. Upon receipt of a written request by the employer, an affected employee or a public employee 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 employees 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 employees.

(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 employ-

101.055 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

ment 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 employee, a public employee 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 employee or public employee 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 employee or public employee representative requesting the inspection so designates, that person's name shall not be disclosed to the employer or any other person, including any agency except the department. If the department decides not to make an inspection, it shall notify in writing any employee or public employee 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 employee 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. 66.0119. 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 employee 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 employee. The public employee 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 employee 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 employee representative shall be allowed to accompany the representative of the department on the inspection without a loss of pay. Where no public employee representative accompanies the representative of the department on an inspection, the representative of the department shall consult with a reasonable number of employees concerning matters of employee 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 employee 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 employee. No public employee 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 employee, 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 employees 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 employee or public employee representative, the department shall also send a copy of the order to that employee or public employee 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 sub. 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 employee or public employee representative who requested the investigation. A decision under this subdivision is reviewable by the department under sub. 3.

3. 'Review by department.' A public employer or employee affected by an order or decision issued by the department under sub. 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 sub. 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 sub. 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 employees 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 employees and the employees' 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 employee 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 employee and his or her public employee 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 employee 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 employee of any corrective action being taken.

(d) A public employer shall notify its employees 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 employees 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 employees. 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 EMPLOYEES EXERCISING THEIR RIGHTS. (ag) In this subsection, "division of equal rights" means the division of equal rights in the department of workforce development acting under the authority provided in s. 106.54 (4).

(ar) No public employer may discharge or otherwise discriminate against any public employee it employs because the public employee 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 public employee who believes that he or she has been discharged or otherwise discriminated against by a public employer in violation of par. (ar) may file a complaint with the division of equal rights alleging discrimination or discharge, within 30 days after the employee received knowledge of the discrimination or discharge.

(c) Upon receipt of a complaint, the division of equal rights 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. (ar) has occurred. If 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 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 division of equal rights shall issue its decision. If the division of equal rights determines that a violation of par. (ar) has occurred, it shall order appropriate relief for the employee, including restoration of the employee to his or her former position with back pay, and shall order any action necessary to ensure that no further discrimination occurs. If the division of equal rights determines that there has been no violation of par. (ar), it shall issue an order dismissing the complaint.

(d) Orders of 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 employees 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 employees unless it has received a complaint.

History: 1981 c. 360, 391; 1985 a. 182 s. 57; 1991 a. 39; 1995 a. 27 ss. 3652 to 3659, 9130 (4); 1995 a. 342; 1997 a. 3; 1999 a. 82; 1999 a. 150 s. 672; 2003 a. 33.

Cross Reference: See also chs. Comm 3, 30, 32 Wis. adm. code.

This section extends the coverage of OSHA to government employees. OSHA was meant to address tangible, measurable workplace hazards. The threat of on-the-job violence to a campus police officer is too abstract to be within the coverage afforded. The denial of a request for a hearing on a complaint seeking to require the provision of firearms to officers was proper. *West v. Department of Commerce*, 230 Wis. 2d 71, 601 N.W.2d 307 (Ct. App. 1999).

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.

101.09 Storage of flammable, combustible and hazardous 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.

(am) "Federally regulated hazardous substance" means a hazardous substance, as defined in 42 USC 9601 (14).

(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. 281.01 (18).

(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 liquid that is flammable or combustible or a federally regulated hazardous substance 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. 291.25.

(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.

(cm) Any rules promulgated under sub. (3) requiring an owner to test the ability of a storage tank, connected piping or ancillary equipment to prevent an inadvertent release of a stored substance do not apply to storage tanks that satisfy all of the following:

1. Are installed before October 29, 1999.

2. Have a capacity of less than 1,100 gallons.

3. Are used to store heating oil for residential, consumptive use on the premises where stored.

(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 liquids that are flammable or combustible or are federally regulated hazardous substances, 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 liquids that are flammable or combustible or are federally regulated hazardous substances. 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

101.09 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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.

(c) The rule promulgated under par. (a) may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration.

(d) The department shall promulgate a rule specifying fees for plan review and inspection of tanks for the storage, handling, or use of flammable or combustible liquids and for any certification or registration required under par. (c).

(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; 1993 a. 416.; 1995 a. 227; 1999 a. 9; 2001 a. 16.

Cross Reference: See also ch. Comm 10, Wis. adm. code.

101.10 Storage and handling of anhydrous ammonia.

(1) DEFINITIONS. In this section:

(a) “Agricultural activity” means planting, cultivating, propagating, fertilizing, nurturing, producing, harvesting, or manufacturing agricultural, horticultural, viticultural, or dairy products; forest products; livestock; wildlife; poultry; bees; fish; shellfish; or any products of livestock, wildlife, poultry, bees, fish, or shellfish.

(b) “Anhydrous ammonia equipment” means any equipment that is used in the application of anhydrous ammonia for an agricultural purpose or that is used to store, hold, transport, or transfer anhydrous ammonia.

(c) “Transfer” means to remove from a container.

(2) RULES. The department shall promulgate rules that prescribe reasonable standards relating to the safe storage and handling of anhydrous ammonia.

(3) PROHIBITIONS. No person may do any of the following:

(a) Store, hold, or transport anhydrous ammonia in a container that does not meet all applicable requirements established by rules of the department promulgated under sub. (2).

(b) Transfer or attempt to transfer anhydrous ammonia into a container that does not meet all applicable requirements established by rules of the department promulgated under sub. (2).

(c) Transfer or attempt to transfer anhydrous ammonia without the consent of the owner of the anhydrous ammonia.

(d) Intentionally cause damage to anhydrous ammonia equipment without the consent of the owner of the anhydrous ammonia equipment.

(e) Intentionally take, carry away, use, conceal, or retain possession of anhydrous ammonia belonging to another or anhydrous ammonia equipment belonging to another, without the other’s consent and with intent to deprive the owner permanently of possession of the anhydrous ammonia or anhydrous ammonia equipment.

(4) PENALTIES. (a) Any person who violates a rule of the department promulgated under sub. (2) may be required to forfeit not less than \$10 nor more than \$100 for each violation.

(b) Except as provided in par. (c), any person who violates sub. (3) is guilty of a Class I felony. Notwithstanding s. 101.02 (12), each act in violation of sub. (3) constitutes a separate offense.

(c) Any person who violates sub. (3) (a) or (b) while performing an agricultural activity or while performing an activity related to the construction, repair, alteration, location, installation, inspection, or operation of anhydrous ammonia equipment with the consent of the owner of the anhydrous ammonia equipment may be required to forfeit not less than \$10 nor more than \$100 for each violation.

History: 2001 a. 3, 16, 73, 109.

Cross Reference: See also ch. Comm 43, Wis. adm. code.

101.11 Employer’s duty to furnish safe employment and place.

(1) Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees 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 employees 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 employee 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 employees 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 employee 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 employee interfere with the use of any method or process adopted for the protection of any employee 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 employees 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.

Cross Reference: See also chs. Comm 61, 62, 63, 64, and 65, Wis. adm. code.

Ordinary negligence can be compared with negligence founded upon the safe place statute. In making the comparison, a violation of the statute is not to be considered necessarily as contributing more than the common–law contributory negligence. *Lovesee v. Allied Development Corp.* 45 Wis. 2d 340, 173 N.W.2d 196 (1970).

When 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. Harnell*, 46 Wis. 2d 374, 175 N.W.2d 248 (1970).

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 Wis. 2d 617, 178 N.W.2d 53 (1970).

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 Wis. 2d 429, 180 N.W.2d 562 (1970).

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 Wis. 2d 679, 180 N.W.2d 525 (1970).

The mere existence of a step up into a hospital lavatory was not an unsafe condition. *Prelipp v. Wausau Memorial Hospital*, 50 Wis. 2d 27, 183 N.W.2d 24 (1971).

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 Wis. 2d 251, 195 N.W.2d 451 (1972).

A parking lot owned by a city that 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 Wis. 2d 692, 196 N.W.2d 633 (1972).

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 Commission of Milwaukee*, 56 Wis. 2d 741, 203 N.W.2d 87 (1973).

In a safe place action the employee's contributory negligence is less when his or her act or omission has been committed in the performance of job duties. *McCrosen v. Nekoosa-Edwards Paper Co.* 59 Wis. 2d 245, 208 N.W.2d 148 (1973).

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 Insurance Co.* 59 Wis. 2d 355, 208 N.W.2d 388 (1973).

A private road on the ground of a private racetrack that connected the track and a parking lot was subject to this section as to frequenters. *Gross v. Denow*, 61 Wis. 2d 40, 212 N.W.2d 2 (1973).

A one-eighth inch variance in elevation between the sides of a 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 Wis. 2d 421, 225 N.W.2d 428 (1975).

An employer may be held liable under the safe place statute not only for failing to construct or maintain safety structures such as fences, but also for knowingly permitting employees or frequenters to venture into a dangerous area. *Kaiser v. Cook*, 67 Wis. 2d 460, 227 N.W.2d 50 (1975).

The safe place statute applies only to unsafe physical conditions, not to activities conducted on a premises. *Korenak v. Curative Workshop Adult Rehabilitation Center*, 71 Wis. 2d 77, 237 N.W.2d 43 (1976).

The duty to furnish a safe place of employment to employees does not impose a duty on a contractor for subcontractor's employees. A contractor can owe a duty to a frequenter, but only when a hazardous condition is under the supervision or control of the contractor. *Barth v. Downey Co., Inc.* 71 Wis. 2d 775, 239 N.W.2d 92 (1976).

Retention of control and supervision is required for recovery against a general contractor by a subcontractor's employee. *Lemacher v. Circle Construction Co., Inc.* 72 Wis. 2d 245, 240 N.W.2d 179 (1976).

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 Wis. 2d 30, 264 N.W.2d 574 (1978).

In safe place cases, comparative negligence instructions need not direct the jury to consider the defendant's higher duty of care. *Brons v. Bischoff*, 89 Wis. 2d 80, 277 N.W.2d 854 (1979).

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

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

Architects have liability under the safe place statute only if they have a right of supervision and control, which must be determined from the agreement between the owner and the architect. If the duty exists, it is nondelagable. *Hortman v. Becker Construction Co., Inc.* 92 Wis. 2d 210, 284 N.W.2d 621 (1979).

"Safe employment" and "safe place of employment" are distinguished. There is a duty to provide safe employment to employees that does not extend to frequenters, while the duty to provide a safe place of employment does extend to frequenters. *Leitner v. Milwaukee County*, 94 Wis. 2d 186, 287 N.W.2d 803 (1980).

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

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

The safe place duty to keep a swimming pool in a condition to protect customers from injury was overcome when a person unreasonably dove into a pool of unknown depth. *Wisnicky v. Fox Hills Inn*, 163 Wis. 2d 1023, 473 N.W.2d 523 (Ct. App. 1991).

A county house of correction is subject to the safe place statute. *Henderson v. Milwaukee County*, 198 Wis. 2d 748, 543 N.W.2d 544 (Ct. App. 1995).

An alarm system does not relate to the structure of a building and therefore does not relate to a safe place of employment. It is a safety device that is the responsibility of the employer and not the building owner. *Naaj v. Aetna Insurance Co.* 218 Wis. 2d 121, 579 N.W.2d 875 (Ct. App. 1998).

The obligation of a lessor of a building is limited to structural or physical defects. A temporary condition maintained by the lessee does not impose safe place liability on the lessor. *Powell v. Milwaukee Area Technical College District Bd.* 225 Wis. 2d 794, 594 N.W.2d 403 (Ct. App. 1999).

A defect is "structural" if it resulted from materials used in its construction or from improper layout or construction. Conditions "associated with the structure" are those that involve the structure being out of repair or not being maintained in a safe manner. An owner sustains safe place liability for a structural defect regardless of knowledge of the defect, but with conditions related to the structure, no liability attaches without actual or constructive notice. *Barry v. Employers Mutual Casualty Co.* 2001 WI 101, 245 Wis. 2d 560, 630 N.W.2d 517.

The duties imposed on employers and property owners under this section are non-delegable. *Barry v. Employers Mutual Casualty Co.* 2001 WI 101, 245 Wis. 2d 560, 630 N.W.2d 517.

This section does not apply to unsafe conditions caused by an injured party's own negligence or recklessness. If a structure's alleged disrepair requires reckless or negligent conduct by the plaintiff for the plaintiff to injure herself or himself, the initial disrepair may not be construed as having caused the injury. *Hofflander v. St. Catherine's Hospital*, 2003 WI 77, 262 Wis. 2d 539, 664 N.W.2d 545, 00–2467.

Generally, constructive notice cannot be assigned if it cannot be proved how long a hazardous condition existed. However, if there is a reasonable probability that an unsafe condition will occur because of the nature of the business and the manner in which it is conducted, an injured person does not have to prove the dangerous condition existed for a sufficient period of time to allow an owner to correct the condition. This exception, however, is very narrow. *Megal v. Green Bay Area Visitor & Convention*, 2003 WI App 230, 267 Wis. 2d 800, 672 N.W.2d 105, 02–2932.

Land that is merely appurtenant to a place where business is carried on is not a place of employment under sub. (11). An owner must have ownership, custody, or control of the place of employment and the premises appurtenant thereto. An owner of appurtenant land who does not also have ownership, custody, or control of the place cannot be liable for injuries sustained at the place. *Binsfeld v. Conrad*, 2004 WI App 77, ___ Wis. 2d ___, ___ N.W.2d ___, 03–1077.

The safe place statute does not extend 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) EMPLOYEES NOT LIABLE. No worker who is an employee 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.

Cross Reference: See also s. Comm 62.3300, Wis. adm. code.

101.12 Approval and inspection of public buildings and places of employment and components. (1) Except

101.12 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

for plans that are reviewed by the department of health and family services under ss. 50.02 (2) (b) and 50.36 (2), 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 inspectors of boilers, unfired pressure vessels, refrigeration plants, elevators, escalators and power dumbwaiters.

(d) Accept inspections at no cost performed by 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 for 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 that is or is anticipated to be owned by or leased to the state, the plans are not subject to the right of inspection or copying except as the department of administration otherwise provides by rule. If an application submitted under par. (b) requests inspection or copying of plans for any other 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; 1993 a. 16; 1995 a. 27 ss. 3660, 3660m, 9126 (19).

Cross Reference: See also chs. Comm 18, 34, and 61, Wis. adm. code.

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 Wis. 2d 591, 187 N.W.2d 849 (1971).

Plans and specifications filed under s. 101.12 are public records and are available for public inspection. 67 Atty. Gen. 214.

101.1205 Erosion control; construction of public buildings and buildings that are places of employment.

(1) The department, in consultation with the department of natural resources, shall establish statewide standards for erosion control at building sites for the construction of public buildings and buildings that are places of employment.

(2) The department shall require the submission of plans for erosion control at construction sites described in sub. (1) to the department or to a county, city, village or town to which the department has delegated authority under sub. (4) and shall require approval of those plans by the department or the county, city, village or town.

(3) The department shall require inspection of erosion control activities and structures at construction sites described in sub. (1) by the department or a county, city, village or town to which the department has delegated authority under sub. (4).

(4) The department may delegate authority under this section to a county, city, village or town.

(5) Except as provided in sub. (5m), the authority of a county, city, village or town with respect to erosion control at sites described in sub. (1) is limited to that authority delegated under sub. (4) and any other authority provided in rules promulgated under this section.

(5m) Notwithstanding subs. (1) and (5), a county, city, village or town that has in effect on January 1, 1994, an ordinance that establishes standards for erosion control at building sites for the construction of public buildings and buildings that are places of employment may continue to administer and enforce that ordinance if the standards in the ordinance are more stringent than the standards established under sub. (1).

(6) The department, or a county, city, village or town to which the department delegates the authority to act under this subsection, may issue a special order directing the immediate cessation of work on a construction site described in sub. (1) until any required plan approval is obtained or until the site complies with standards established by rules promulgated under this section.

(7) The department shall promulgate rules for the administration of this section.

History: 1993 a. 16.

Cross Reference: See also s. Comm 21.125, Wis. adm. code.

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, or has been nominated by the state historical society for listing 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, or has been nominated by the state historical society for listing 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;

2m. Is determined by the state historical society to be eligible for listing on the national register of historic places in Wisconsin or the state register of historic places;

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.

101.121 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

(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; 1993 a. 471.

Cross Reference: See also ch. Comm 70, Wis. adm. code.

101.1215 Abrasive cleaning of historic buildings.

(1) In this section:

(a) “Abrasive cleaning method” means any cleaning procedure that uses any of the following materials or tools:

1. Abrasive materials, including sand, glass beads, ground slag, volcanic ash, crushed nutshells, rice husks, ground corncobs or crushed eggshells, carried in high–pressure or low–pressure air or water.

2. High–pressure water.

(b) “Qualified historic building” has the meaning given in s. 101.121 (2) (c).

(2) No person may use an abrasive cleaning method on the exterior of qualified historic buildings, except as authorized by department rule.

(3) The department, in consultation with the state historical society and the department of administration, shall promulgate rules on the use of abrasive cleaning methods on the exterior of qualified historic buildings. The department may permit the use of any specific abrasive cleaning method on any specific building material only if it determines that the abrasive cleaning method will not cause irreparable damage to the building material to which it is applied.

(4) (a) Any person who uses an abrasive cleaning method in violation of this section may be required to forfeit not less than \$100 nor more than \$1,000 for each offense. Each day of continued violation constitutes a separate offense.

(b) Any owner of a qualified historic building who causes or permits the use of an abrasive cleaning method in violation of this section may be required to forfeit not less than \$100 nor more than \$1,000 for each offense. Each day of continued violation constitutes a separate offense.

History: 1993 a. 471.

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.

3. Any building constructed after April 15, 1976, which contains more than 2 dwelling units.

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

5. A building that is subject to a condominium declaration under ch. 703 and that contains 3 or more units, as defined in s. 703.02 (15).

(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 the attics, sill boxes, heat and plumbing supply systems in unheated crawl spaces, shower heads, furnaces, boilers, air conditioners, appliances, lighting systems and storm windows and doors of rental units. The rules shall include a standard that establishes a maximum air infiltration rate of the thermal envelope, as defined by the department by rule. At the request of the owner of a rental unit, the department shall apply this air infiltration standard in lieu of the standard for storm windows and doors. 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.

(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 and may determine whether new energy conservation technologies meet the standards under sub. (3) (a) and whether the rules promulgated under par. (a) should require the use of those technologies.

(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.

(c) Enforce stipulations entered into under sub. (4) (c) by use of the citation procedure under s. 778.25.

(4) CERTIFICATION. (a) Except as provided under pars. (b) and (c), no owner may transfer a rental unit unless 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.

(e) *Citation.* If a person fails to comply with the requirements of a stipulation under sub. (4) (c) by the date specified in the stipulation, the department or the city, village or town that entered into the stipulation with the person may, anytime after the first day of the first month beginning after the date specified in the stipulation, proceed under s. 778.25 to recover a forfeiture under par. (d). A person may be charged with multiple violations under par. (d) if each violation covers a period of at least 90 consecutive days of continued failure to comply, if there is no overlap between periods and if each period begins after the date by which a rental unit was to have been brought into compliance.

History: 1979 c. 221; 1981 c. 341; 1983 a. 27, 233; 1985 a. 174; 1987 a. 186, 399; 1989 a. 56; 1991 a. 269; 1997 a. 288.

Cross Reference: See also ch. Comm 70, Wis. adm. code.

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

101.123 Smoking prohibited. (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.

(ad) "Day care center" has the meaning given in s. 49.136 (1) (d).

(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.

(ar) "Immediate vicinity of the state capitol" means the area directly adjacent to the state capitol building, as determined by rule of the department of administration. "Immediate vicinity of the state capitol" does not include any location that is more than one fathom from the state capitol building.

(b) "Inpatient health care facility" means a county home established under s. 49.70, a county infirmary established under s. 49.72 or a community-based residential facility or a nursing home licensed under s. 50.03.

(bg) "Jail" means a county jail, rehabilitation facility established by s. 59.53 (8), 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.

(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. 254.61 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 resi-

101.123 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

dence and where support services, including meals from a common kitchen, are available to residents.

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

(i) “State institution” means a prison, 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).

(j) “Type 1 secured correctional facility” has the meaning given in s. 938.02 (19).

(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.

(ar) Notwithstanding par. (a) and sub. (3), no person may smoke in the state capitol building or in the immediate vicinity of the state capitol.

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

(bm) Notwithstanding par. (a) and sub. (3), no person may smoke on the premises, indoors or outdoors, of a day care center when children who are receiving day care services are present.

(br) Notwithstanding par. (a) and sub. (3), no person may smoke in any enclosed, indoor area of a Type 1 secured correctional facility or on the grounds of a Type 1 secured correctional facility.

(bv) Notwithstanding par. (a) and sub. (3), no person may smoke in a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System or in any location that is 25 feet or less from such a residence hall or dormitory.

(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) (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.

(gg) A Type 2 secured correctional facility, as defined in s. 938.02 (20).

(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) (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 the state capitol building, in the immediate vicinity of the state capitol, in a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional facility, in a motor bus, hospital, or physician’s office or on the premises, indoors or outdoors, of a day care center when children who are receiving day care services are present, in a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System or in any location that is 25 feet or less from such a residence hall or dormitory, 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 family 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, 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, 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 des-

ignating 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 willfully violates sub. (2) (a), (am) 1., (bm), (br), or (bv) after being advised by an employee of the facility that smoking in the area is prohibited or any person in charge or his or her agent who willfully fails to comply with sub. (5) shall forfeit not more than \$10.

(b) Any person who willfully violates sub. (2) (ar) after being advised by an employee of the facility that smoking in the area is prohibited shall forfeit not more than \$50.

(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; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

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, as defined in s. 50.135 (1), or community-based residential facility, as defined in s. 50.01 (1g).

History: 1979 c. 221; 1983 a. 27; 1989 a. 56; 1991 a. 39; 1993 a. 27.

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

(a) “Building” means a place of employment or a public building 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

101.125 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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 employee 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); 1995 a. 27.

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. 287.07 (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; 1995 a. 227.

Cross Reference: See also s. Comm 62.0400, Wis. adm. code.

101.127 Building requirements for certain residential facilities. The department, after consultation with the department of health and family 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 residents who are not related to the operator or administrator. 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 family 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 residents who are not related to the operator or administrator 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; Stats. 1975 s. 101.127; 1981 c. 341; 1987 a. 161 s. 13m; 1995 a. 27 s. 9126 (19); 1997 a. 237.

Cross Reference: See also s. Comm 62.0400 (4), Wis. adm. code.

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. 254.61 (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. 254.61 (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; 1993 a. 27.

101.13 Physically disabled persons; place of employment and public 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 semi-ambulatory 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) (a) Except as provided in par. (b), 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.

(b) The department may not promulgate a rule requiring that a unisex toilet room be provided in any public building or place of employment.

(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 herself 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) (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

101.13 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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; 1993 a. 492; 1995 a. 27, 225, 285; 1997 a. 237.

Cross Reference: See also ch. Comm 18, Wis. adm. code.

While neither the U.S. nor Wisconsin constitutions compel states to require that public buildings and seats of government be constructed and maintained 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.

101.132 Physically disabled persons; housing requirements. (1) DEFINITIONS. In this section:

(a) “Accessible” means able to be approached, entered and used by persons with disabilities.

(b) “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.

(c) “ANSI A117.1” means the 1986 edition of the American national standards institute’s code for buildings and facilities providing accessibility and usability for people with physical disabilities.

(d) “Covered multifamily housing” means any of the following:

1. 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.

2. 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.

(e) “Disability” has the meaning given in s. 106.50 (1m) (g).

(f) “Dwelling unit” has the meaning given in s. 106.50 (1m) (i).

(g) “Housing” has the meaning given in s. 106.50 (1m) (L).

(h) “Remodel” means to substantially improve, alter, extend or otherwise change the structure of a building or change the location of exits, but does not include maintenance, redecoration, reroofing or alteration of mechanical or electrical systems.

(i) “Vehicular route” means a route intended for vehicular traffic including, but not limited to, a street, driveway or parking lot.

(2) DISCRIMINATION AGAINST PERSONS WITH PHYSICAL DISABILITIES PROHIBITED. (a) In addition to discrimination prohibited under s. 106.50 (2), (2m) and (2r) (b) and (bm), 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.

(b) *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. (a), 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. (a), 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. (a) 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. (a) 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. (c).

(c) *Permit and variance procedures.* 1. Plans and specifications for all covered multifamily housing subject to par. (a) and proposed remodeling subject to par. (b) 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. (a) 1. or (b), or from administrative rules promulgated under par. (c) 2., 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. (a) or the existing site for remodeling under par. (b) 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. (a) 1. or (b).

(d) *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 January 1, 1995.

(e) *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 the 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. (c).

History: 1997 a. 237 ss. 330, 335 to 351; 1999 a. 32, 82.

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.

101.137 Fire suppression; ozone-depleting substances. (1) **DEFINITION.** In this section, “class I substance” has the meaning given in 42 USC 7671 (3).

(2) **SERVICING PORTABLE FIRE EXTINGUISHERS.** Beginning on August 1, 1994, no person may perform portable fire extinguisher servicing that releases or may release a class I substance unless the person uses equipment approved by the department or an independent testing organization approved by the department to capture the class I substance for recycling or reclaiming.

(3) **FIRE FIGHTING TRAINING.** Beginning on August 1, 1994, no person may conduct fire fighting training using a portable fire extinguisher that contains a class I substance.

(4) **TESTING FIRE SUPPRESSION SYSTEMS.** Beginning on August 1, 1994, no person may test a fire suppression system that contains a class I substance by releasing the class I substance into the air from the system. This subsection does not apply to the testing of a fire suppression system on a ship that was constructed or is being constructed for an agency of the federal government.

(4m) **SERVICING FIRE SUPPRESSION SYSTEMS.** Beginning on August 1, 1994, no person may perform servicing on a fire suppression system that releases or may release a class I substance unless the person uses equipment approved by the department or an independent testing organization approved by the department to capture the class I substance for recycling or reclaiming.

(5) **PENALTY.** Any person who violates this section shall be required to forfeit not less than \$250 nor more than \$1,000. Each act of servicing in violation of sub. (2) constitutes a separate offense.

History: 1993 a. 243.

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.

(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

101.14 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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, employees and frequenters of places of employment and public buildings.

(b) 1. Except as provided in subs. 2. and 3., 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. Except as provided in subd. 3., subd. 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.

3. The rules of the department shall require every residence hall and dormitory over 60 feet in height, the initial construction of which was begun before April 26, 2000, that is owned or operated by the board of regents of the University of Wisconsin System to contain an automatic fire sprinkler system on each floor by January 1, 2006, except that those rules shall not apply to Ogg Residence Hall at the University of Wisconsin–Madison until January 1, 2008. Notwithstanding par. (c) 1., the rules of the department shall further require every residence hall and dormitory, the initial construction of which is begun on or after April 26, 2000, that is owned or operated by the board of regents of the University of Wisconsin System to have an automatic fire sprinkler system installed on each floor at the time the residence hall or dormitory is constructed.

(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, employees 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 nondwel-

ling 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) (a) Subject to par. (b), 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 a liquid that is flammable or combustible or a federally regulated hazardous substance, as defined in s. 101.09 (1) (am), the department 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 environmental management.

(b) Notwithstanding par. (a), an installation for the storage, handling or use of a liquid that is flammable or combustible or a federally regulated hazardous substance, as defined in s. 101.09 (1) (am), that has a capacity of less than 1,000 gallons is not subject to the groundwater fee under par. (a).

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; 1993 a. 261; 1995 a. 27; 1997 a. 27; 1999 a. 9, 43, 186; 2003 a. 269.

Cross-reference: See s. 66.0119 for provision authorizing special inspection warrants.

Cross Reference: See also ch. Comm 62, Wis. adm. code.

Inspection of buildings for safety and fire prevention purposes under s. 101.14 does not involve a quasi-judicial function within meaning of s. 895.43 (3) [now 893.80 (4)]. *Coffey v. Milwaukee*, 74 Wis. 2d 526, 247 N.W.2d 132 (1976).

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.

Cross Reference: See also s. Comm 47.11, Wis. adm. code.

101.143 Petroleum storage remedial action; financial assistance. (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 product discharge from a petroleum product storage system.

(am) “Case closure letter” means a letter provided by the department of natural resources that states that, based on information available to the department of natural resources, no further remedial action is necessary with respect to a discharge.

(b) “Discharge” has the meaning designated under s. 292.01 (3).

(bm) “Enforcement standard” has the meaning given in s. 160.01 (2).

(c) “Groundwater” has the meaning designated under s. 281.75 (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.

(cq) “Natural attenuation” means the reduction in the concentration and mass of a substance, and the products into which the substance breaks down, due to naturally occurring physical, chemical and biological processes.

(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.

3. A person who formerly owned a farm tank and who satisfies the criteria in sub. (4) (ei) 1m. b.

(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; residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale; farm tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, except as provided in sub. (4) (ei); tanks used for storing heating oil for consumptive use on the premises where stored, except for heating oil tanks owned by school districts and heating oil tanks owned by technical college districts and except as provided in sub. (4) (ei); 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 that 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. “Property damage” does not include the loss of fair market value resulting from contamination.

(gs) “Service provider” means a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender or any other person who provides a product or service for

101.143 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

which a claim for reimbursement has been or will be filed under this section, or a subcontractor of such a person.

(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.

(hm) “Terminal” means a petroleum product storage system that is itself connected to a pipeline facility, as defined in 49 USC 60101 (18) or is one of a number of connected petroleum product storage systems at least one of which is connected to a pipeline facility, as defined in 49 USC 60101 (18).

(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) POWERS AND 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. 20.143 (3) (v) for awards under this section to be used to fund emergency remedial action and claims that exceed the amount initially anticipated.

(e) The department shall promulgate rules, with an effective date of no later than January 1, 1996, specifying the methods the department will use under sub. (3) (ae), (ah), (am) and (ap) to identify the petroleum product storage system or home oil tank system which discharged the petroleum product that caused an area of contamination and to determine when a petroleum product discharge that caused an area of contamination occurred. The department shall write the rule in a way that permits a clear determination of what petroleum product contamination is eligible for an award under sub. (4) after December 31, 1995.

(em) 1. The department may promulgate rules that specify a fee that must be paid by a service provider as a condition of submitting a bid to conduct an activity under sub. (3) (c) for which a claim for reimbursement under this section will be submitted. Any fees collected under the rules shall be deposited into the petroleum inspection fund.

2. If the department promulgates rules under subd. 1., the department may purchase, or provide funding for the purchase of, insurance to cover the amount by which the costs of conducting activities under sub. (3) (c) exceed the amount bid to conduct those activities.

(f) The department shall promulgate a rule establishing a priority system for paying awards under sub. (4) for petroleum product storage systems that are owned by school districts and that are used for storing heating oil for consumptive use on the premises where stored.

(g) The department may promulgate, by rule, requirements for the certification or registration of persons who provide consulting services to owners and operators who file claims under this section. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration.

(h) The department of commerce and the department of natural resources, jointly, shall promulgate rules designed to facilitate

effective and cost–efficient administration of the program under this section that specify all of the following:

1. Information that must be submitted under this section, including quarterly summaries of costs incurred with respect to a discharge for which a claim is intended to be submitted under sub. (3) but for which a final claim has not been submitted.

2. Formats for submitting the information under subd. 1.

3. Review procedures that must be followed by employees of the department of natural resources and the department of commerce in reviewing the information submitted under subd. 1.

(i) The department of commerce and the department of natural resources, jointly, shall promulgate rules specifying procedures for evaluating remedial action plans and procedures to be used by employees of the department of commerce and the department of natural resources while remedial actions are being conducted. The departments shall specify procedures that include all of the following:

1. Annual reviews that include application of the method in the rules promulgated under sub. (2e) (b) to determine the risk posed by discharges that are the subject of the remedial actions.

2. Annual reports by consultants estimating the additional costs that must be incurred to comply with sub. (3) (c) 3. and with enforcement standards.

3. A definition of “reasonable time” for the purpose of determining whether natural attenuation may be used to achieve enforcement standards.

4. Procedures to be used to measure concentrations of contaminants.

(j) The department of commerce and the department of natural resources, jointly, shall promulgate rules specifying all of the following:

1. The conditions under which employees of the department of commerce and the department of natural resources must issue approvals under sub. (3) (c) 4.

2. Training and management procedures to ensure that employees comply with the requirements under subd. 1.

(k) In promulgating rules under pars. (h) to (j), the department of commerce and the department of natural resources shall attempt to reach an agreement that is consistent with those provisions. If the department of commerce and the department of natural resources are unable to reach an agreement, they shall refer the matters on which they are unable to agree to the secretary of administration for resolution. The secretary of administration shall resolve any matters on which the departments disagree in a manner that is consistent with pars. (h) to (j). The department of commerce and the department of natural resources, jointly, shall promulgate rules incorporating any agreement between the department of commerce and the department of natural resources under this paragraph and any resolution of disagreements between the departments by the secretary of administration under this paragraph.

(L) The department may promulgate rules for the assessment and collection of fees to recover its costs for providing approval under sub. (3) (c) 4. and for providing other assistance requested by applicants under this section. Any moneys collected under this paragraph shall be credited to the appropriation account under s. 20.143 (3) (Lm).

(2e) RISK–BASED ANALYSIS. (a) The department of commerce and the department of natural resources shall attempt to agree on a method, which shall include individualized consideration of the routes for migration of petroleum product contamination at each site, for determining the risk to public health, safety and welfare and to the environment posed by discharges for which the department of commerce receives notification under sub. (3) (a) 3.

(b) If the department of commerce and the department of natural resources are unable to reach an agreement under par. (a), they shall refer the matters on which they are unable to agree to the secretary of administration for resolution. The secretary of adminis-

tration shall resolve any matters on which the departments disagree in a manner that is consistent with par. (a). The department of commerce and the department of natural resources, jointly, shall promulgate rules incorporating any agreement between the department of commerce and the department of natural resources under par. (a) and any resolution of disagreements between the departments by the secretary of administration under this paragraph.

(c) The department of natural resources or, if the discharge is covered under s. 101.144 (2) (b), the department of commerce shall apply the method in the rules promulgated under par. (b) to determine the risk posed by a discharge for which the department of commerce receives notification under sub. (3) (a) 3.

(2m) INTERDEPARTMENTAL COORDINATION. Whenever the department of commerce receives a notification under sub. (3) (a) 3. or the department of natural resources receives a notification of a petroleum product discharge under s. 292.11, 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.* Subject to pars. (ae), (ah), (am) and (ap), 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 management in the department of military affairs or to the department of natural resources, according to the requirements under s. 292.11.

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.

(ae) *New systems.* An owner or operator or a person owning a home oil tank system is not eligible for an award under this section for costs incurred because of a petroleum product discharge from an underground petroleum product storage tank system or a home oil tank system that meets the performance standards in 40 CFR 280.20 or in rules promulgated by the department relating to underground petroleum product storage tank systems installed

after December 22, 1988, if the discharge is confirmed after December 31, 1995.

(ah) *New aboveground systems.* An owner or operator is not eligible for an award under this section for costs incurred because of a petroleum product discharge from a petroleum product storage system that is not an underground petroleum product storage tank system and that meets the performance standards in rules promulgated by the department relating to petroleum product storage systems that are not underground petroleum product storage tank systems and that are installed after April 30, 1991, if the discharge is confirmed after December 22, 2001.

(am) *Upgraded underground systems.* 1. An owner or operator or a person owning a home oil tank system is not eligible for an award under this section for costs incurred because of a petroleum product discharge from an underground petroleum product storage tank system or a home oil tank system if the discharge is confirmed after December 31, 1995, and the discharge is confirmed, or activities under par. (c) or (g) are begun with respect to that discharge, after the day on which the underground petroleum product storage tank system or home oil tank system first meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or in rules promulgated by the department relating to the upgrading of existing underground petroleum product storage tank systems, except as provided in subd. 2.

2. If an underground petroleum product storage tank system or home oil tank system first meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or in rules promulgated by the department relating to the upgrading of existing underground petroleum product storage tank systems, after December 31, 1993, and the owner or operator or person owning the home oil tank system applies for private pollution liability insurance covering the underground petroleum product storage tank system or home oil tank system within 30 days after the day on which the underground petroleum product storage tank system or home oil tank system first meets those upgrading requirements, then the owner or operator or person remains eligible for an award for costs incurred because of a petroleum product discharge, from that underground petroleum product storage tank system or home oil tank system, which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before the 91st day after the day on which the underground petroleum product storage tank system or home oil tank system first meets those upgrading requirements.

(ap) *Upgraded aboveground systems.* An owner or operator is not eligible for an award under this section for costs incurred because of a petroleum product discharge from a petroleum product storage system that is not an underground petroleum product storage tank system if the discharge is confirmed after December 22, 2001, and the discharge is confirmed, or activities under par. (c) or (g) are begun with respect to that discharge, after the day on which the petroleum product storage system first meets the upgrading requirements in rules promulgated by the department relating to the upgrading of existing petroleum product storage systems that are not underground petroleum product storage tank systems.

(av) *Claims submitted for petroleum product storage systems on tribal trust lands.* The owner or operator of a petroleum product storage system located on trust lands of an American Indian tribe may submit a claim for an award under sub. (4) if the owner or operator otherwise satisfies par. (a) and complies with the rules promulgated under this section and any other rules promulgated by the department concerning petroleum product storage systems.

(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

101.143 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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 a county or any other person under which that county or 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 and the agent 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. and submit the remedial action plan to the department.

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. 292.11.

4. Receive written approval from the department of natural resources or, if the discharge is covered under s. 101.144 (2) (b), from the department of commerce that the remedial action activities performed under subd. 3. meet the requirements of s. 292.11.

(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 or, if the discharge is covered under s. 101.144 (2) (b), the department of commerce, satisfy the requirements of par. (c) 2. and 3. by proposing and implementing monitoring to ensure the effectiveness of natural attenuation of petroleum product contamination.

(cp) *Bidding process.* 1. Except as provided in subds. 2. to 5., if the department of natural resources or, if the site is covered under s. 101.144 (2) (b), the department of commerce estimates that the cost to complete a site investigation, remedial action plan and remedial action for an occurrence exceeds \$60,000, the department of commerce shall implement a competitive public bidding process to obtain information to assist in making the determination under par. (cs).

2. The department of commerce or the department of natural resources may waive the requirement under subd. 1. if an enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other well used to provide water for human consumption.

5. The department of commerce or the department of natural resources may waive the requirement under subd. 1. after providing notice to the other department.

6. The department of commerce may disqualify a bid received under subd. 1. if, based on information available to the department and experience with remedial action at other sites, the bid is unlikely to establish an amount to sufficiently fund remedial action that will comply with par. (c) 3. and with enforcement standards.

7. The department of commerce may disqualify a person from submitting bids under subd. 1. if, based on past performance of the bidder, the department determines that the person has demonstrated an inability to complete remedial action within established cost limits.

(cs) *Determination of least costly method of remedial action.*

1. The department of commerce shall review the remedial action plan for a site that is classified as low or medium risk under s. 101.144 and shall determine the least costly method of complying with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that reimbursement for remedial action under this section is limited to the amount necessary to implement that method.

2. The department of natural resources and the department of commerce shall review the remedial action plan for a site that is classified as high risk under s. 101.144 and shall jointly determine the least costly method of complying with par. (c) 3. and with enforcement standards. The departments shall notify the owner or operator of their determination of the least costly method and shall notify the owner or operator that reimbursement for remedial action under this section is limited to the amount necessary to implement that method.

3. In making determinations under subds. 1. and 2., the department of natural resources and the department of commerce shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

4. The department of commerce may review and modify an amount established under subd. 1. if the department determines that new circumstances, including newly discovered contamination at a site, warrant those actions. The department of commerce and the department of natural resources may review and modify an amount established under subd. 2. if the departments determine that new circumstances, including newly discovered contamination at a site, warrant those actions.

(cw) *Annual reviews.* 1. The department of commerce shall conduct the annual review required under sub. (2) (i) 1. for a site that is classified as low or medium risk under s. 101.144 and shall determine the least costly method of completing remedial action at the site in order to comply with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that reimbursement under this section for any remedial action conducted after the date of the notice is limited to the amount necessary to implement that method.

2. The department of natural resources and the department of commerce shall conduct the annual review required under sub. (2) (i) 1. for a site that is classified as high risk under s. 101.144 and shall jointly determine the least costly method of completing remedial action at the site in order to comply with par. (c) 3. and with enforcement standards. The departments shall notify the owner or operator of their determination of the least costly method and shall notify the owner or operator that reimbursement under this section for remedial action conducted after the date of the notice is limited to the amount necessary to implement that method.

3. In making determinations under subds. 1. and 2., the department of natural resources and the department of commerce shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

4. The department of commerce may review and modify an amount established under subd. 1. if the department determines

that new circumstances, including newly discovered contamination at a site, warrant those actions. The department of commerce and the department of natural resources may review and modify an amount established under subd. 2. if the departments determine that new circumstances, including newly discovered contamination at a site, warrant those actions.

(d) *Final review of remedial action activities.* The department of natural resources or, if the discharge is covered under s. 101.144 (2) (b), the department of commerce shall complete a final review of the remedial action activities within 60 days after the claimant notifies the appropriate department that the remedial action activities are completed.

(e) *Notifications.* The department of natural resources shall notify the department when it gives a 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 or the department of commerce 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 an emergency existed which made the investigation under par. (c) 1. and the remedial action plan under par. (c) 2. inappropriate and, before conducting remedial action, the owner or operator or person notified the department of commerce and the department of natural resources of the emergency and the department of commerce and the department of natural resources authorized emergency action.

(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., except as follows:

a. The department may issue an award before all eligible costs have been incurred and written approval is received under sub. (3) (c) 4. if the department determines that the delay in issuing the award would cause a financial hardship to the owner or operator or the person.

b. The department shall issue an award if the owner or operator or the person has incurred at least \$50,000 in unreimbursed eligible costs and has not submitted a claim during the preceding 12 months.

5. The department shall review claims related to home oil tank discharges as soon as the claims are received. The department shall issue an award for an eligible home oil tank discharge as soon as it completes the review of the claim.

5m. The department shall review claims related to discharges from farm tanks described in par. (ei) as soon as the claims are received. The department shall issue an award for an eligible discharge from a farm tank described in par. (ei) as soon as it completes the review of the claim.

6. In any fiscal year, the department may not award more than 5% of the amount appropriated under s. 20.143 (3) (v) as awards for petroleum product storage systems described in par. (ei).

7. In any fiscal year, the department may not award more than 5% of the amount appropriated under s. 20.143 (3) (v) as awards for petroleum product storage systems that are owned by school districts and that are used for storing heating oil for consumptive use on the premises where stored.

8. If an owner or operator or person owning a home oil tank system is conducting approved remedial action activities that were necessitated by a petroleum product discharge from a petroleum product storage system or home oil tank system and those remedial action activities have not remedied the discharge, then the department may approve financial assistance under this section for enhancements to the approved remedial action activities or different remedial action activities that the department determines will remedy the discharge without increasing the overall costs of remedying the discharge. The total amount of an original award under this section plus additional financial assistance provided under this subdivision is subject to the limits in pars. (d) to (e), (ei) and (em) on amounts of awards.

(b) *Eligible costs.* Except as provided in par. (c) or (cc), eligible costs for an award under par. (a) include actual costs or, if the department establishes a usual and customary cost under par. (cm) for an item, usual and customary costs for the following items:

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 system.
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. 292.11.

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.

Cross Reference: See also s. Ins 6.35, Wis. adm. code.

(c) *Exclusions from eligible costs.* Eligible costs for an award under par. (a) do not include the following, regardless of whether a competitive bidding process is used:

1. Costs incurred before August 1, 1987.
2. Costs of retrofitting or replacing a petroleum product storage system or home oil tank system.

101.143 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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.

8. Interest costs incurred by an applicant that exceed interest at the following rate:

a. If the applicant has gross revenues of not more than \$25,000,000 in the most recent tax year before the applicant submits a claim, 1% under the prime rate.

d. If the applicant has gross revenues of more than \$25,000,000 in the most recent tax year before the applicant submits a claim, 4%.

9. Loan origination fees incurred by an applicant that exceed 2% of the principal amount of the loan.

10. Fees charged under sub. (2) (L) or s. 292.55 (2).

11. Costs that exceed the amount necessary to comply with sub. (3) (c) 3. and with enforcement standards using the least costly method.

12. Costs that are incurred after the date of a notice under sub. (3) (cw) 1. or 2. and that exceed the amount necessary to comply with sub. (3) (c) 3. and with enforcement standards using the method specified in the notice.

(cc) *Ineligibility for interest reimbursement.* 1. a. Except as provided in subd. 1m. or 2., if an applicant's final claim is submitted more than 120 days after receiving written notification that no further remedial action is necessary with respect to the discharge, interest costs incurred by the applicant after the 60th day after receiving that notification are not eligible costs.

c. Except as provided in subd. 2., if an applicant does not complete the investigation of the petroleum product discharge by the first day of the 61st month after the month in which the applicant notified the department under sub. (3) (a) 3. or October 1, 2003, whichever is later, interest costs incurred by the applicant after the later of those days are not eligible costs.

1m. If an applicant received written notification that no further remedial action is necessary with respect to a discharge before September 1, 2001, and the applicant's final claim is submitted more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120th day after September 1, 2001, are not eligible costs.

2. Subdivision 1. does not apply to any of the following:

a. An applicant that is a local unit of government, if federal or state financial assistance other than under this section, has been provided for that expansion or redevelopment.

b. An applicant that is engaged in the expansion or redevelopment of brownfields, as defined in s. 560.13 (1) (a), if federal or state financial assistance other than under this section, has been provided for that expansion or redevelopment.

(ce) *Eligible cost; service providers.* The department may promulgate rules under which the department selects service providers to provide investigation or remedial action services in speci-

fied areas. The rules may provide that the costs of a service for which the department has selected a service provider in an area are not eligible costs under par. (b), or that eligible costs are limited to the amount that the selected service provider would have charged, if an owner or operator of a petroleum product storage system located in that area, or a person owning a home oil tank system located in that area, uses a service provider other than the service provider selected by the department to perform the services. If the department selects service providers under this paragraph, it shall regularly update the list of service providers that it selects.

(cm) *Usual and customary costs.* The department shall establish a schedule of usual and customary costs for items under par. (b) that are commonly associated with claims under this section. The department shall use that schedule to determine the amount of eligible costs for an occurrence for which a competitive bidding process is not used, except in circumstances under which higher costs must be incurred to comply with sub. (3) (c) 3. and with enforcement standards. For an occurrence for which a competitive bidding process is used, the department may not use the schedule. In the schedule, the department shall specify the maximum number of reimbursable hours for particular tasks and the maximum reimbursable hourly rates for those tasks. The department shall use methods of data collection and analysis that enable the schedule to be revised to reflect changes in actual 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 December 22, 2001, by the owner or operator of an underground petroleum product storage tank system and for eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of an underground petroleum product storage tank system if the petroleum product discharge on which the claim is based is confirmed and activities under sub. (3) (c) or (g) are begun before December 22, 2001.

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 the deductible amount under par. (dg). 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., c. or d., \$500,000.

c. For an owner or operator of a petroleum product storage system described in par. (ei), \$100,000.

d. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, \$190,000.

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.

(dg) *Deductible; underground systems.* The amount of the deductible for an award under par. (d) is as follows for each occurrence:

2. For a school district or a technical college district with respect to a discharge from an underground petroleum product storage tank system that is used for storing heating oil for consumptive use on the premises, 25% of eligible costs.

4. For an owner or operator other than an owner or operator described in subd. 2., \$2,500, plus 5% of eligible costs.

(di) *Rules concerning deductible for underground systems.* The department may promulgate rules describing a class of owners and operators of underground petroleum product storage tank systems otherwise subject to par. (dg) for whom the deductible is based on financial hardship.

(dm) *Awards for aboveground systems for a specified period.*

1. The department shall issue an award under this paragraph for a claim for eligible costs, under par. (b), incurred on or after August 1, 1987, and before December 22, 2001, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system and for eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system if the petroleum product discharge on which the claim is based is confirmed and activities under sub. (3) (c) or (g) are begun before December 22, 2001.

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 the following deductible:

a. For the owner or operator of a terminal, \$15,000 plus 10% of the amount by which eligible costs exceed \$200,000.

b. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, 25% of eligible costs.

c. For the owner or operator of a petroleum product storage system that is described in par. (ei), \$2,500 plus 5% of eligible costs per occurrence.

d. For an owner or operator other than an owner or operator under subd. 2. a., b. or c., \$15,000 plus 2% of the amount by which eligible costs exceed \$200,000.

3. An award issued under this paragraph may not exceed the following for each occurrence:

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

b. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, \$190,000.

c. For an owner or operator of a petroleum product storage system described in par. (ei), \$100,000.

d. For an owner or operator other than an owner or operator under subd. 3. a., b. or c., \$500,000.

4. 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 petroleum product storage systems that are not underground petroleum product storage tank systems, \$1,000,000.

b. For an owner or operator of more than 100 petroleum product storage systems that are not underground petroleum product storage tank systems, \$2,000,000.

5. The department shall recalculate all awards issued under par. (e) before July 29, 1995, for eligible costs incurred before May 7, 1994, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system according to the eligibility requirements at the time that the awards were made except that the awards shall be subject to the deductible amounts under subd. 2. and the maximum amounts under subds. 3. and 4. 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 July 29, 1995.

(dr) *Deductible in certain cases.* If a person is the owner or operator of an underground petroleum product storage tank system and a petroleum product storage system that is not an underground petroleum product storage tank system, both of which have discharged resulting in one occurrence, and if the person is eligible for an award under pars. (d) and (dm), the department shall calculate the award using the deductible determined under par. (d) 2. if the predominant method of petroleum product storage at the site, measured in gallons, is underground petroleum product storage tank systems or using the deductible determined under par. (dm) 2. if the predominant method of petroleum product storage at the site is not underground petroleum product storage tank systems.

(e) *Awards for certain owners or operators.* 1. The department shall issue an award under this paragraph for a claim for any of the following:

b. Eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage system if those costs are not reimbursable under par. (dm) 1.

c. Eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of an underground petroleum product storage tank system if those costs are not reimbursable under par. (d) 1.

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 \$10,000, except that the deductible amount for a petroleum product storage system that is owned by a school district or a technical college district and that is used for storing heating oil for consumptive use on the premises where stored is 25% of eligible costs and except that the deductible for a petroleum product storage system that is described in par. (ei) is \$2,500 plus 5% of the eligible costs, but not more than \$7,500 per occurrence without regard to when the eligible costs are incurred.

2m. An award issued under this paragraph may not exceed \$190,000 for each occurrence, except that an award under this paragraph to the owner or operator of a petroleum product storage system described in par. (ei) may not exceed \$100,000 per 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 \$190,000.

(ee) *Waiver of deductible.* Notwithstanding par. (d) 2., (dm) 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 record a statement of lien with the register of deeds of the county in which the petroleum product storage system is located. If the department records 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.

(ei) *Awards for certain farm tanks.* A farm tank of 1,100 gallons or less capacity storing petroleum products that are not for

101.143 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

resale, together with any on-site integral piping or dispensing system, is a petroleum product storage system for the purposes of this section, if all of the following apply:

1m. One of the following conditions is satisfied:

a. The owner or operator of the farm tank owns a parcel of 35 or more acres of contiguous land, on which the farm tank is located, which is devoted primarily to agricultural use, as defined in s. 91.01 (1), including land designated by the department of natural resources as part of the ice age trail under s. 23.17, which during the year preceding submission of a first claim under sub. (3) produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or which, during the 3 years preceding that submission produced gross farm profits, as defined in s. 71.58 (4), of not less than \$18,000, or a parcel of 35 or more acres, on which the farm tank is located, of which at least 35 acres, during part or all of the year preceding that submission, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

b. The claim is submitted by a person who, at the time that the notification was made under sub. (3) (a) 3., was the owner of the farm tank and owned a parcel of 35 or more acres of contiguous land, on which the farm tank is or was located, which was devoted primarily to agricultural use, as defined in s. 91.01 (1), including land designated by the department of natural resources as part of the ice age trail under s. 23.17, which during the year preceding that notification produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or which, during the 3 years preceding that notification, produced gross farm profits, as defined in s. 71.58 (4), of not less than \$18,000, or a parcel of 35 or more acres, on which the farm tank is located, of which at least 35 acres, during part or all of the year preceding that notification, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

2m. The owner or operator of the farm tank has received a letter or notice from the department of commerce or department of natural resources indicating that the owner or operator must conduct a site investigation or remedial action because of a discharge from the farm tank or an order to conduct such an investigation or remedial action.

(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, except that if the home oil tank system is owned by a nonprofit organization that provides housing assistance to families with incomes below 80% of the median income, as defined in s. 234.49 (1) (g), of the county in which the home oil tank system is located, then the award shall equal 100% of the amount of the eligible costs. The department shall recalculate any award made to such a nonprofit organization under this paragraph before May 7, 1994, based on 100% of eligible costs and shall issue an award for the difference between the award as recalculated and the award issued before May 7, 1994.

3. 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 commerce 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 willfully failed to comply with laws or rules of this state concerning the storage of petroleum products.
7. The petroleum product discharge was caused by a person who provided services or products to the claimant or to a prior owner or operator of the petroleum product storage system or home oil tank system.

(h) *Reductions of awards.* 1. Notwithstanding pars. (d) 2. (intro.), (dm) 2. (intro.), (e) 2. and (em) 2., if an owner or operator or person owning a home oil tank system prepares and submits a claim that includes ineligible costs that are identified under subd. 2., the department shall calculate the award by determining the amount that the award would otherwise be under par. (d), (dm), (e) or (em) based only on the eligible costs and then by reducing that amount by 50% of the amount of the ineligible costs identified under subd. 2. that are included in the claim.

1m. If a consultant prepares a claim that is submitted by a claimant and that includes ineligible costs that are identified under subd. 2., the consultant shall pay to the department an amount equal to 50% of the ineligible costs identified under subd. 2. that are included in the claim. A consultant may not charge the owner or operator for any amount that the consultant is required to pay under this subdivision. Payments made under this subdivision shall be deposited in the petroleum inspection fund.

2. The department shall promulgate a rule identifying the ineligible costs to which subs. 1. and 1m. apply.

(4e) *PAYMENTS TO LENDERS.* (a) Notwithstanding sub. (4) (g), when the department denies a claim under sub. (3) because of fraud, gross negligence or willful misconduct on the part of an owner or operator, the department shall pay, to a person who loaned money to the owner or operator for the purpose of conducting activities under sub. (3) (c), an amount equal to the amount that would have been paid under sub. (4) for otherwise eligible expenses actually incurred, but not more than the amount specified under par. (b), if all of the following conditions are satisfied:

1. The lender assigns to the department an interest in the collateral pledged by the owner or operator for the sole purpose of securing the loan that was made to finance the activities under sub. (3) (c). If the amount of the payment under this subsection is less than the amount of the loan, the lender shall assign to the department that fraction of the lender's interest in the collateral that equals the ratio of the amount of the payment under this subsection to the amount of the loan.

2. For a loan that is made after July 29, 1995, before the lender made any disbursement of the loan the department provided a letter indicating its preliminary determination that the owner or operator was eligible for an award under sub. (4).

3. For a loan that is made after July 29, 1995, claims for payment under sub. (3) are made after completion of the site investigation and remedial action plan, after completion of the remedial

action and annually for any continuing maintenance, monitoring and operation costs.

(b) Payment under this section may not exceed the amount of the loan. If the loan is made after July 29, 1995, payment under this section may not exceed the amount of the loan disbursements made before the department notifies the lender that the claim may be denied.

(c) Assignment of an interest in collateral to the department under par. (a) 1. does not deprive a lender of its right to any cause of action arising out of the loan documents.

(d) Any payments made by the department under this subsection constitute a lien upon the property on which the remedial action is conducted if the department records the lien with the register of deeds in the county in which the property is located.

(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) *Sale of remedial equipment or supplies.* If a person who received an award under this section sells equipment or supplies that were eligible costs for which the award was issued, the person shall pay the proceeds of the sale to the department. The proceeds shall be paid into the petroleum inspection fund.

(am) *Right of action.* A right of action under this section shall accrue to the state against an owner, operator or other person only if one of the following applies:

1. The owner, operator or other person submits a fraudulent claim or does not meet the requirements under this section and an award is issued under this section to the owner, operator or other person for eligible costs under this section or payment is made to a lender under sub. (4e).

2. A person fails to make a payment required under par. (a).

(b) *Action to recover awards.* The attorney general shall take action as is appropriate to recover moneys to which the state is entitled under par. (am). 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.* The net proceeds of a recovery under par. (b) shall be paid into the petroleum inspection 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).

(6s) ARBITRATION. Upon the request of a person who files an appeal of a decision of the department under this section, if the amount at issue is \$100,000 or less, the appeal shall be heard by one or more individuals designated by the department to serve as arbitrator under rules promulgated for this purpose by the department. In such an arbitration, the arbitrator shall render a decision at the conclusion of the hearing, or within 5 business days after the conclusion of the hearing if the arbitrator determines that additional time is needed to review materials submitted during the

hearing, affirming, modifying or rejecting the decision of the department. The arbitrator shall promptly file his or her decision with the department. The decision of the arbitrator is final and shall stand as the decision of the department. An arbitrator's decision may not be cited as precedent in any other proceeding before the department or before any court. A decision under this subsection is subject to review under ss. 227.53 to 227.57 only on the ground that the decision was procured by corruption, fraud or undue means. The record of a proceeding under this subsection shall be transcribed as provided in s. 227.44 (8).

(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.

(9) RECORDS. (a) The department shall promulgate rules prescribing requirements for the records to be maintained by an owner or operator, person owning a home oil tank system or service provider and the periods for which they must retain those records.

(b) The department may inspect any document in the possession of an owner or operator, person owning a home oil tank system or service provider or any other person if the document is relevant to a claim for reimbursement under this section.

(9m) REVENUE OBLIGATIONS. (a) For purposes of subch. II of ch. 18, the petroleum storage remedial action program is a special fund program, and the petroleum inspection fund is a special fund. The petroleum inspection fund is a segregated fund created by the imposition of fees, penalties or excise taxes. The legislature finds and determines that a nexus exists between the petroleum storage remedial action program and the petroleum inspection fund in that fees imposed on users of petroleum are used to remedy environmental damage caused by petroleum storage.

(b) Deposits, appropriations or transfers to the petroleum inspection fund for the purposes of the petroleum storage remedial action program may be funded with the proceeds of revenue

101.143 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

obligations issued subject to and in accordance with subch. II of ch. 18 and, if designated a higher education bond, in accordance with subch. IV of ch. 18.

(e) The department shall have all other powers necessary and convenient to distribute the special fund revenues and to distribute the proceeds of the revenue obligations in accordance with subch. II of ch. 18 and, if designated a higher education bond, in accordance with subch. IV of ch. 18.

(f) The department may enter into agreements with the federal government or its agencies, political subdivisions of this state, individuals or private entities to insure or in any other manner provide additional security for the revenue obligations issued under this subsection.

(g) 1. Subject to the limitation under subd. 2., the building commission shall contract revenue obligations under this subsection, as soon as practicable after October 29, 1999, in the maximum amount that the building commission believes can be fully paid on a timely basis from moneys received or anticipated to be received.

2. Revenue obligations issued under this subsection may not exceed \$436,000,000 in principal amount, excluding any obligations that have been defeased under a cash optimization program administered by the building commission. In addition to this limit on principal amount, the building commission may contract revenue obligations under this subsection as the building commission determines is desirable to fund or refund outstanding revenue obligations, to pay issuance or administrative expenses, to make deposits to reserve funds, or to pay accrued or capitalized interest.

(h) Unless otherwise expressly provided in resolutions authorizing the issuance of revenue obligations or in other agreements with the owners of revenue obligations, each issue of revenue obligations under this subsection shall be on a parity with every other revenue obligation issued under this subsection and in accordance with subch. II of ch. 18 and, if designated a higher education bond, in accordance with subch. IV of ch. 18.

(i) Recognizing its moral obligation to do so, the legislature expresses its expectation and aspiration that, if the legislature reduces the rate of the petroleum inspection fee and if the funds in the petroleum inspection fund are insufficient to pay the principal and interest on the revenue obligations issued under subch. II or IV of ch. 18 pursuant to this subsection, the legislature shall make an appropriation from the general fund sufficient to pay the principal and interest on the obligations.

(10) PENALTIES. (a) Any owner or operator, person owning a home oil tank system or service provider who fails to maintain a record as required by rules promulgated under sub. (9) (a) may be required to forfeit not more than \$2,000. Each day of continued violation constitutes a separate offense.

(b) Any owner or operator, person owning a home oil tank system or service provider who intentionally destroys a document that is relevant to a claim for reimbursement under this section is guilty of a Class G felony.

(11) REPORTS. No later than each January 1 and July 1, the department of commerce and the department of natural resources shall submit to the governor, to the joint legislative audit committee, to the joint committee on finance and to the appropriate standing committees of the legislature, under s. 13.172 (3), a report on the program under this section. The departments shall include all of the following information in the report:

(a) All of the following information for each petroleum product storage system and home oil tank system from which a discharge has occurred for which remedial action activities are being conducted:

1. The date on which the record of the site investigation was received.

2. The environmental risk factors, as defined by the department of commerce by rule, identified at the site.

3. The year in which the approval under sub. (3) (c) 4. is expected to be issued.

(am) The number of notices received under sub. (3) (a) 3. and the number of approvals given under sub. (3) (c) 4.

(b) The percentage of sites classified as high risk under s. 101.144.

(c) The name of each person providing engineering consulting services to a claimant under this section and the number of claimants to whom the person has provided those services.

(d) The charges for engineering consulting services for sites for which approvals are given under sub. (3) (c) 4. and for other sites.

(e) The charges by service providers other than engineering consultants for services for which reimbursement is provided under this section, including excavating, hauling, laboratory testing and landfill disposal.

(em) Whether disputes have arisen between the departments under sub. (3) (cw) 2. and, if so, how those disputes have been resolved.

(f) Strategies for recording and monitoring complaints of fraud in the program under this section and for the use of employees of the department of commerce who conduct audits to identify questionable claims and investigate complaints.

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33.

Cross Reference: See also ss. Comm 46.01 and 47.01, Wis. adm. code. That the commingling of contaminants from separate tanks was below DNR clean-up levels did not eliminate the fact that commingling can still occur resulting in one occurrence under sub. (1) (cs). *Mews v. Department of Commerce*, 2004 WI App 24, 269 Wis. 2d 641, 676 N.W.2d 160, 03-0055.

The meeting described in sub. (2m) is intended to promote interagency coordination and is directory in nature rather than mandatory. Interdepartmental coordination may occur outside of meetings. However, the commerce department is not absolved of its responsibility to hold the interdepartmental meeting with the site owner required under sub. (2m). *Mews v. Department of Commerce*, 2004 WI App 24, 269 Wis. 2d 641, 676 N.W.2d 160, 03-0055.

The proceeds of general obligation bonds may be used to fund awards under this section. 81 Atty. Gen. 114.

101.144 Petroleum storage tank discharges. (1) In this section:

(a) “Discharge” has the meaning given in s. 292.01 (3).

(ae) “Enforcement standard” has the meaning given in s. 160.01 (2).

(am) “Hazardous substance” has the meaning given in s. 299.01 (6).

(aq) Except as provided under sub. (3g), “high-risk site” means the site of a discharge of a petroleum product from a petroleum storage tank if at least one of the following applies:

1. Repeated tests show that the discharge has resulted in a concentration of contaminants in a well used to provide water for human consumption that exceeds a preventive action limit, as defined in s. 160.01 (6).

2. Petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, as shown by repeated measurements.

3. An enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other well used to provide water for human consumption.

4. An enforcement standard is exceeded in fractured bedrock.

(b) “Petroleum product” has the meaning given in s. 101.143 (1) (f).

(bm) “Petroleum storage tank” means a storage tank that is used to store petroleum products together with any on-site integral piping or dispensing system. “Petroleum storage tank” does not include a pipeline facility.

(c) “Remedial action” means action that is taken in response to a discharge and that is necessary to restore the environment to

the extent practicable and to minimize the harmful effects of the discharge to the air, lands and waters of this state.

(d) “Responsible person” means a person who owns or operates a petroleum storage tank, a person who causes a discharge from a petroleum storage tank or a person on whose property a petroleum storage tank is located.

(2) (a) The department shall administer a program under which responsible persons investigate, and take remedial action in response to, those discharges of petroleum products from petroleum storage tanks that are covered under par. (b). The department may issue an order requiring a responsible person to take remedial action in response to a discharge of a petroleum product from a petroleum storage tank if the discharge is covered under par. (b). In administering this section, the department shall follow rules promulgated by the department of natural resources for the cleanup of discharges of hazardous substances.

(b) The program under this section covers a discharge of a petroleum product from a petroleum storage tank if all of the following apply:

1. The site of the discharge is classified, as provided under sub. (3m) (a) 3., as medium risk or low risk, based on the threat that the discharge poses to public health, safety and welfare and to the environment.

2. The site of the discharge is not contaminated by a hazardous substance other than the petroleum product, including any additive, that was discharged from the petroleum storage tank.

(3) The department of natural resources may take action under s. 292.11 (7) (a) or may issue an order under s. 292.11 (7) (c) in response to a discharge that is covered under sub. (2) (b) only if one or more of the following apply:

(a) The action or order is necessary in an emergency to prevent or mitigate an imminent hazard to public health, safety or welfare or to the environment.

(b) The department of commerce requests the department of natural resources to take the action or issue the order.

(c) The secretary of natural resources approves the action or order in advance after notice to the secretary of commerce.

(d) The department of natural resources takes action under s. 292.11 (7) (a) after the responsible person fails to comply with an order that was issued under s. 292.11 (7) (c) in compliance with this subsection.

(e) The department of natural resources takes the action under s. 292.11 (7) (a) because the identity of the responsible person is unknown.

(3g) (a) If, on December 1, 1999, more than 35% of sites classified under this section, excluding sites that are contaminated by a hazardous substance other than a petroleum product or an additive to a petroleum product, are classified as high-risk sites, the department of commerce and the department of natural resources shall attempt to reach an agreement that specifies standards for determining whether the site of a discharge of a petroleum product from a petroleum storage tank is classified as high risk. The standards shall be designed to classify no more than 35% of those sites as high-risk sites and may not classify all sites at which an enforcement standard is exceeded as high-risk sites. If the department of commerce and the department of natural resources are unable to reach an agreement, they shall refer the matters on which they are unable to agree to the secretary of administration for resolution. The secretary of administration shall resolve any matters on which the departments disagree in a manner that is consistent with this paragraph. The department of commerce shall promulgate rules incorporating any agreement between the department of commerce and the department of natural resources under this paragraph and any resolution of disagreements between the departments by the secretary of administration under this paragraph.

(b) If, 6 months after rules under par. (a) are in effect, more than 35% of the sites classified under this section, excluding sites that are contaminated by a hazardous substance other than a petroleum

product or an additive to a petroleum product, are classified as high-risk sites, the department of commerce shall revise the rules using the procedure for promulgating the rules in par. (a).

(3m) (a) The department of commerce and the department of natural resources shall enter into a memorandum of understanding that does all of the following:

1. Establishes the respective functions of the 2 departments in the administration of this section and s. 101.143.

2. Establishes procedures to ensure that remedial actions taken under this section are consistent with actions taken under s. 292.11 (7).

3. Establishes standards for determining whether the site of a discharge of a petroleum product from a petroleum storage tank is classified as medium risk or low risk and establishes procedures and schedules for classifying sites of discharges of petroleum products from petroleum storage tanks.

(b) The department of commerce and the department of natural resources shall submit a memorandum of understanding under this subsection to the secretary of administration for review. A memorandum of understanding under this subsection does not take effect until it is approved by the secretary of administration.

(4) Any person who violates a rule promulgated or an order issued under this section shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.

History: 1995 a. 27 ss. 3685 and 9116 (5); 1995 a. 227; 1999 a. 9.

Cross Reference: See also ss. Comm 46.01 and 47.01, Wis. adm. code.

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 employee 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

101.145 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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 underground mines and similar establishments at least once every 2 months and shall cause the inspections of surface mines and similar establishments at least once each year. In the making of the inspections the owner and the labor union identified as the bargaining representative of the employees 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 employees.

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; 1993 a. 16.

Cross Reference: See also ss. Comm 7.01, 7.60, and 8.01, Wis. adm. code.

When a deputy inspector determines that there is a violation of safety orders and a condition of extreme and imminent danger to a workman's life exists, he or she may seek the assistance of a local law enforcement officer. The local law enforcement officer has a duty to render assistance unless in the officer's opinion other priority assignments 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.

Cross Reference: See also s. Comm 40.40, Wis. adm. code.

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 employees and frequenters in places of employment and public buildings and with the orders of the department adopted and published in conformity with this subchapter. 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; 1995 a. 27.

Cross Reference: See also chs. Comm 18, 33, 34, 41, 43, and 45, Wis. adm. code.

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.

Cross Reference: See also s. Comm 71.01, Wis. adm. code.

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).

(d) “State agency” means any office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including the legislature and the courts, the Wisconsin Housing and Economic Development Authority, the Bradley Center Sports and Entertainment Corporation, the University of Wisconsin Hospitals and Clinics Authority and the Wisconsin Health and Educational Facilities Authority.

(2) SERVICING. No person, including a state agency, may install or service a piece of refrigeration equipment that contains ozone-depleting refrigerant unless the person certifies all of the following to the department:

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

(b) 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.

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

(d) 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.

(e) That the person inspects and, if necessary, repairs refrigeration equipment that leaks, or is suspected of leaking, before putting additional ozone-depleting refrigerant into that refrigeration equipment.

(g) That, for the purposes of determining whether repairs are necessary under par. (e), the person uses a yearly leak rate identified by the federal environmental protection agency.

(3) SALE OF USED REFRIGERANT. (a) After December 31, 1991, no person, including a state agency, 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.

(3m) SALE OF NEW OR RECLAIMED REFRIGERANT. No person may sell or offer to sell new or reclaimed ozone-depleting refrigerant except as authorized in s. 100.45 (3) (b) or to one of the following:

(a) A person who intends to resell the ozone-depleting refrigerant.

(b) A person who provides certification to the department under sub. (2).

(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

101.177 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

ozone–depleting refrigerant from refrigeration equipment to storage containers.

2m. Qualifications, which may include training or certification requirements, for individuals who transfer ozone–depleting refrigerant from storage containers to approved refrigerant recycling equipment, approved refrigerant reclaiming equipment or other 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.

(4m) DEPARTMENT POWERS. The department may promulgate rules providing that any portion of sub. (2), (3) or (3m) applies with respect to a substance used as a substitute for an ozone–depleting refrigerant.

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

History: 1989 a. 284; 1991 a. 97; 1993 a. 243; 1997 a. 27.

Cross Reference: See also ss. Comm 5.70, 5.71, 5.72, and 45.01, Wis. adm. code.

101.178 Installation and servicing of heating, ventilating and air conditioning equipment. (1) In this section, “political subdivision” means a city, village, town or county.

(2) No person may engage in the business of installing or servicing heating, ventilating or air conditioning equipment unless the person registers with the department.

(3) (a) The department shall promulgate rules for a voluntary program under which a person who engages in the business of installing or servicing heating, ventilating or air conditioning equipment may obtain certification by passing an examination developed or selected by the department.

(b) A political subdivision may not require a person to obtain certification under par. (a) in order to engage in the business of installing or servicing heating, ventilating or air conditioning equipment in that political subdivision unless all of the following apply:

1. On April 23, 1994, the political subdivision requires certification, licensure or other approval by the political subdivision in order to engage in that business in the political subdivision.

2. The political subdivision allows a person who has the approval under subd. 1. on April 23, 1994, to continue to engage in that business in the political subdivision without obtaining certification under par. (a).

(c) A political subdivision may not require a person who is certified under par. (a) to obtain certification, licensure or other approval by the political subdivision in order to engage in the business of installing or servicing heating, ventilating or air conditioning equipment in that political subdivision.

(d) A political subdivision may not require a person to obtain certification, licensure or other approval by the political subdivision in order to engage in the business of installing or servicing heating, ventilating or air conditioning equipment in the political

subdivision unless the political subdivision requires that approval before November 1, 1993.

(4) The department may establish fees to cover the costs of administering this section.

(5) 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 separate violation.

History: 1993 a. 243.

Cross Reference: See also ss. Comm 5.70, 5.71, and 5.72, Wis. adm. code.

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, 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.

(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).

(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; 1993 a. 414; 1999 a. 53; 2001 a. 16.

Cross Reference: See also chs. Comm 2 and 61, Wis. adm. code.

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 employees therein.

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

101.55 Executive agreements to control sources of radiation. When the joint 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; 1993 a. 52.

101.563 Payments without regard to eligibility; calendar years 2000 to 2004. (1) ENTITLEMENT TO DUES. (a) *Payments from calendar year 2000 dues.* Notwithstanding ss. 101.573 (3) (a) and 101.575 (1) and (3) to (5), the department shall pay the amount determined under sub. (2) (a) to every city, village, and town that was ineligible to receive a proportionate share of fire department dues collected for calendar year 2000 as a result of that city, village, or town failing to satisfy all eligibility requirements under s. 101.575 (1) and (3) to (5) or to demonstrate to the department that the city, village, or town was eligible under s. 101.575 (1) and (3) to (5) to receive a proportionate share of the fire department dues.

(b) *Payments from dues for calendar years 2001 to 2004.* Notwithstanding ss. 101.573 (3) (a) and 101.575 (1) and (3) to (5) and except as otherwise provided in this paragraph, the department may not withhold payment of a proportionate share of fire department dues under ss. 101.573 and 101.575 to a city, village, or town based upon the failure of that city, village, or town to satisfy all eligibility requirements under s. 101.575 (1) and (3) to (5) or to demonstrate to the department that the city, village, or town is eligible under s. 101.575 (1) and (3) to (5) to receive a proportionate share of fire department dues. This paragraph applies only to the payment of a proportionate share of fire department dues collected for calendar years 2001 to 2004.

(2) DISTRIBUTION OF DUES. (a) *Payments from calendar year 2000 dues.* Notwithstanding s. 101.573 (3) (a), the department shall pay every city, village, and town that is entitled to payment under sub. (1) (a) the amount to which that city, village, or town would have been entitled to receive on or before August 1, 2001, had the city, village, or town been eligible to receive a payment on that date. The department shall calculate the amount due under this paragraph as if every city, village, and town maintaining a fire department was eligible to receive a payment on that date. By the date on which the department provides a certification or recertification to the secretary of administration under par. (b) 1., the department shall certify to the secretary of administration the amount to be paid to each city, village, and town under this paragraph. On or before August 1, 2002, the secretary of administration shall pay the amount certified by the department under this paragraph to each such city, village, and town. The secretary of administration may combine any payment due under this paragraph with any amount due to be paid on or before August 1, 2002, to the same city, village, or town under par. (b) 1.

(b) *Payments from dues for calendar years 2001 to 2004.* 1. 'Payments from calendar year 2001 dues.' Notwithstanding s. 101.573 (3) (a), by the 30th day following July 30, 2002, 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 s. 101.573 (1) and funds remaining under s. 101.573 (3) (b), subtract the total amount due to be paid under par. (a), withhold 0.5%, and certify to the secretary of administration the proper amount to be paid from the appropriation under s. 20.143 (3) (L) to each city, village, and town entitled to a proportionate share of fire department dues as provided under sub. (1) (b) and s. 101.575. If the department has previously certified an amount to the secretary of administration under s. 101.573 (3) (a) during calendar year 2002, the department shall recertify the amount in the manner provided under this subdivision. On or before August 1, 2002, the secretary of administration shall pay the amounts certified or

recertified by the department under this subdivision to each city, village, and town entitled to a proportionate share of fire department dues as provided under sub. (1) and s. 101.575. The secretary of administration may combine any payment due under this subdivision with any amount due to be paid on or before August 1, 2002, to the same city, village, or town under par. (a).

2. 'Payments from dues for calendar years 2002 to 2004.' Notwithstanding s. 101.573 (3) (a) and except as otherwise provided in this subdivision, 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 s. 101.573 (1) and funds remaining under s. 101.573 (3) (b), withhold 0.5% and certify to the secretary of administration the proper amount to be paid from the appropriation under s. 20.143 (3) (L) to each city, village, and town entitled to a proportionate share of fire department dues as provided under sub. (1) (b) and s. 101.575. Annually, on or before August 1, the secretary of administration shall pay the amounts certified by the department to each such city, village, and town. This paragraph applies only to payment of a proportionate share of fire department dues collected for calendar years 2002 to 2004.

3. 'Payments to correct errors.' The amounts withheld under subs. 1. and 2. shall be disbursed to correct errors of the department or the commissioner of insurance. The department shall certify to the secretary of administration the amount that must be disbursed to correct an error and the secretary of administration shall pay the amount to the specified city, village, or town. The balance of the amount withheld in a calendar year under subd. 1. or 2., as applicable, that is not disbursed under this subdivision shall be included in the total compiled by the department under subd. 2. for the next calendar year, except that amounts withheld under subd. 2. from fire department dues collected for calendar year 2004 that are not disbursed under this subdivision shall be included in the total compiled by the department under s. 101.573 (3) (a) for the next calendar year. If errors in payments exceed the amount withheld, adjustments shall be made in the distribution for the next year.

(3) NOTICES OF INELIGIBILITY AND DEPARTMENTAL AUDITS; EXCEPTIONS. Except as otherwise provided in this subsection and notwithstanding s. 101.575 (1) (am) and (4) (a) 2., the department may not issue a notice of noncompliance with regard to a city, village, or town that fails to satisfy all eligibility requirements under s. 101.575 (1) and (3) to (5) and may not audit any city, village, town, or fire department for purposes of determining whether the city, village, town, or fire department complies with s. 101.575 (6) and s. 101.14 (2). This subsection does not apply after August 1, 2005.

History: 2001 a. 109; 2003 a. 33, 321, 327.

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 secretary of administration of the amount certified under this subsection and the secretary of administration 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 secretary of administration the proper amount to be paid from the appropriation under s. 20.143 (3) (L) to each city, village, or town entitled to fire department dues under s. 101.575. Annually, on or before August 1, the secretary of administration 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

101.573 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

department shall certify to the secretary of administration, 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 secretary of administration 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, and the commissioner of insurance shall furnish to the secretary of administration, upon request, a list of the insurers paying dues under s. 601.93 and the amount paid by each.

(5) The department shall promulgate a rule defining “administrative expenses” for purposes of s. 20.143 (3) (La).

History: 1981 c. 20 s. 1752; Stats. 1981 s. 101.58; 1981 c. 364 s. 3; Stats. 1981 s. 101.573; 1987 a. 27; 1995 a. 27; 2001 a. 109; 2003 a. 33, 219.

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, 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.

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 is in substantial compliance with sub. (6) and s. 101.14 (2). The department shall establish by rule the meaning of “substantial compliance” for purposes of this subdivision.

NOTE: Subd. 1. is shown as amended eff. 12–1–04 by 2003 Wis. Act 219. Prior to 12–1–04 it reads:

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 is in substantial compliance with this section or the department has audited the city, village, town or fire department and determined that it is in substantial compliance with sub. (6) and s. 101.14 (2). The department shall establish by rule the meaning of “substantial compliance” for purposes of this subdivision.

NOTE: Subd. 2. is shown as amended eff. 12–1–04 by 2003 Wis. Act 219. Prior to 12–1–04 it reads:

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; 1993 a. 213; 1997 a. 27; 2003 a. 219.

101.578 Protection of medical waste incinerator employees. (1) In this section, "medical waste incinerator" has the meaning given in s. 287.07 (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; 1995 a. 227.

101.58 Employees' right to know. (1) SHORT TITLE. Sections 101.58 to 101.599 shall be known as the "Employees' 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 employee to perform agricultural labor. If any employee 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 employees to perform agricultural labor and other employees for other purposes is only an agricultural employer with respect to the employees engaged to perform agricultural labor.

(b) "Agricultural labor" has the meaning provided in s. 108.02 (2).

(c) "Employee" 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) "Employee representative" means an individual or organization to whom an employee 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 employee 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 employee. "Employer" includes the state and its political subdivisions. If any employee 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 employees to perform agricultural labor and other employees for other purposes is only considered an employer with respect to the employees 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 employee.

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 employee'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 employee 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 employees are normally posted. The posted statement shall summarize the application, specify a place where employees may examine it and inform employees of their right to request a hearing on it.

(c) Upon receipt of a written request from an affected employer, manufacturer, supplier, employee or employee 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.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

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 loca-

101.581 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

tion where notices to employees are usually posted a sign which informs employees that the employer is required, upon request, to provide an employee or employee representative with all of the following:

- (a) The identity of any toxic substance or infectious agent which an employee 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 employee works or to which the employee 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 employees that the agricultural employer is required, upon request, to provide an employee or employee representative with access to the information contained on the label of any pesticide with which the employee works or to which the employee is likely to be exposed.

(3) MINOR EMPLOYEE. If an employee is a minor, an employer or agricultural employer shall send to the employee's parent or guardian, at the address provided by the employee, notice of the employee's rights under sub. (1) or (2).

History: 1981 c. 364; 1983 a. 392.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

"Produces" under sub. (1) means to create, bring forth, or cause hazardous substances to exist in the work place. *Door County Highway Department v. DILHR*, 137 Wis. 2d 280, 404 N.W.2d 548 (Ct. App. 1987).

101.583 Toxic substance information requirements; employer to employee. **(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 employees 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 employee or employee representative, exclusive of weekends and legal holidays, the employer shall provide to the employee or employee representative a copy of any list maintained for the employee's workplace or the workplace of the employees represented by the employee representative.

2. a. A toxic substance need not be included on a list if in the area in which any employee 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 employees 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 employee or employee representative, exclusive of weekends and legal holidays, an employer shall provide to the employee or employee representative in writ-

ing the following information regarding any toxic substance with which the employee works or worked or to which the employee 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 employee or employee representative making the request has requested information about the toxic substance under par. (a) within the preceding 12 months, unless the employee'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.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

101.585 Infectious agent information requirements; employer to employee. **(1)** Except as provided in s. 101.589 (1) and (3), within 72 hours after a written request by an employee or employee representative, exclusive of weekends and legal holidays, an employer shall provide in writing to the employee or employee representative the following information regarding any infectious agent which the employee 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 employee or employee representative making the request has requested information about the infectious agent under sub. (1) within the preceding 12 months, unless the employee'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.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

101.586 Pesticide information requirements; employer or agricultural employer to employee. Within 72 hours of a request from an employee or employee representative, exclusive of weekends and legal holidays, an employer or agricultural employer shall provide the requesting employee or employee 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 employee works or to which the employee is likely to be exposed.

History: 1981 c. 364; 1983 a. 392.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

101.587 Information requirements; employer or agricultural employer to department. The department or the department of health and family services may request the information required to be provided to employees 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; 1995 a. 27 s. 9126 (19).

Cross Reference: See also ch. Comm 35, Wis. adm. code.

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 employee upon request.

History: 1983 a. 392.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

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 employee or employee 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.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

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 employees under s. 101.583 (2) (a) or 101.585 (1).

History: 1981 c. 364.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

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 disclo-

sure of which would adversely affect the competitive position of, the manufacturer, supplier or employer. If an employer, employee or employee 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 employee's authorized physician stating that the information is necessary for medical treatment of the employee. 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.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

101.595 Employee 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 employee 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 employee 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 employee who has made the request.

(2) RETALIATION PROHIBITED. (a) No employer or agricultural employer may discharge or otherwise discipline or discriminate against any employee because the employee 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 employee to waive any rights under ss. 101.58 to 101.599.

History: 1981 c. 364; 1983 a. 392; 1989 a. 228.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

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 employee's initial assignment to a workplace where the employee may be routinely exposed to any toxic substance, infectious agent or pesticide, an employer shall provide the employee with an education or training program under sub. (5) (a) or (c). The employer shall provide additional instruction whenever the employee may be routinely exposed to any additional toxic substance or infectious agent.

(2) BY AGRICULTURAL EMPLOYER; PESTICIDE. Prior to an agricultural employee's initial assignment to a workplace where the employee may be routinely exposed to a pesticide, an agricultural employer shall provide the employee with an education or training program under sub. (5) (c). The agricultural employer shall provide additional instruction whenever the employee may be routinely exposed to any additional pesticide.

(3) BY DEPARTMENT. The department shall inform manufacturers, suppliers, employers, agricultural employers and employees of their duties and rights under ss. 101.58 to 101.599. As part of this program, the department shall cooperate with the department of 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

101.597 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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 employee 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 employees 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 employee'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 employee 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; 1995 a. 27.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

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 family 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 employee who works with or is likely to be exposed to the mixture.

History: 1981 c. 364, 391; 1983 a. 392; 1995 a. 27 s. 9126 (19).

Cross Reference: See also ch. Comm 35, Wis. adm. code.

101.599 Remedies; civil forfeitures. (1) COMPLAINT. An employee or employee 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 employee or employee 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 employee or providing back pay to an employee.

(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 willfully 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.

Cross Reference: See also ch. Comm 35, Wis. adm. code.

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.

Cross Reference: See also chs. Comm 20, 21, 22, 23, 24, and 25, Wis. adm. code.

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.

The dwelling code applies to additions to 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.

(3) Sections 101.65 (1m) and (1r) and 101.654 apply to an application for a building permit filed on or after April 1, 1995, to perform work on a dwelling the initial construction of which was commenced before, on or after December 1, 1978.

History: 1989 a. 109; 1991 a. 309; 1993 a. 126; 1995 a. 392.

Cross Reference: See also chs. Comm 20, 21, 22, 23, 24, and 25, Wis. adm. code.

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. 106.50 (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; 1995 a. 27; 1999 a. 82.

101.625 Contractor financial responsibility council; duties. The contractor financial responsibility council shall recommend for promulgation by the department rules for certifying the financial responsibility of contractors under s. 101.654. These rules shall include rules providing for the assessment of fees upon applicants for certification of financial responsibility under s. 101.654 and for the suspension and revocation of that certification. The amount of the fees recommended under this section may not exceed an amount that is sufficient to defray the costs incurred in certifying the financial responsibility of applicants under s. 101.654.

History: 1993 a. 126.

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. Rules promulgated under this subsection do not apply to a bed and breakfast establishment, as defined under s. 254.61 (1), except that the rules apply to all of the following:

(a) The 3rd floor level of a bed and breakfast establishment that uses that level other than as storage.

(b) A structural addition that is specified under s. 254.61 (1) (f) 2.

(1m) Adopt a rule which requires any one- and 2-family dwelling which uses electricity for space heating to be superinsulated. A rule promulgated under this subsection does not apply to a bed and breakfast establishment, as defined under s. 254.61 (1), except as specified under sub. (1) (a) and (b).

(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 employees 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.

(2m) Promulgate rules for certifying the financial responsibility of contractors under s. 101.654. These rules shall include rules providing for the assessment of fees upon applicants for certification of financial responsibility under s. 101.654 and for the suspension and revocation of that certification. The amount of the fees assessed under this subsection may not exceed an amount that is sufficient to defray the costs incurred in certifying the financial responsibility of applicants under s. 101.654.

(3) Contract to provide inspection services, at municipal expense, to any municipality which requires such service under s. 101.65.

(3m) Contract with a private organization to provide education regarding construction standards and inspection requirements under this subchapter and under rules promulgated under this subchapter to builders of dwellings in this state. The department may only contract with an organization under this subsection if the organization is described in section 501 (c) (6) of the Internal Revenue Code and is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(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. The standard permit form shall include a space in which the municipal authority issuing the permit shall insert the name and license number of the master plumber engaged in supervising the installation of plumbing or installing the plumbing at a new one- or 2-family dwelling.

(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; 1993 a. 26, 126, 414; 1999 a. 9, 135; 2003 a. 90.

Cross Reference: See also chs. Comm 16, 20, 21, 22, 23, 24, 25, 81, 82, 83, 84, 85, 86, and 87, Wis. adm. code.

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 or with the contractor financial responsibility council, as appropriate.

(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

101.64 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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; 1993 a. 126.

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 employee 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.

Cross Reference: See also ch. Comm 28, Wis. adm. code.

This section is a safety statute the violation of which constitutes negligence per se. *Johnson v. Blackburn*, 220 Wis. 2d 260, 582 N.W.2d 488 (Ct. App. 1998).

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. 66.0301, 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).

(1m) May not issue a building permit to a person who is required to be certified under s. 101.654 unless that person, on applying for a building permit, produces a certificate of financial responsibility issued by the department showing that the person is in compliance with s. 101.654.

(1r) Shall provide an owner who applies for a building permit with a statement advising the owner that if the owner hires a contractor to perform work under the building permit and the contractor is not bonded or insured as required under s. 101.654 (2) (a), the following consequences might occur:

(a) The owner may be held liable for any bodily injury to or death of others or for any damage to the property of others that arises out of the work performed under the building permit or that is caused by any negligence by the contractor that occurs in connection with the work performed under the building permit.

(b) The owner may not be able to collect from the contractor damages for any loss sustained by the owner because of a violation by the contractor of the one- and 2-family dwelling code or an ordinance enacted under sub. (1) (a), because of any bodily injury

to or death of others or damage to the property of others that arises out of the work performed under the building permit or because of any bodily injury to or death of others or damage to the property of others that is caused by any negligence by the contractor that occurs in connection with the work performed under the building permit.

(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; 1993 a. 126; 1999 a. 150 s. 672.

Cross Reference: See also s. Comm 20.06, Wis. adm. code.

Municipalities may contract with independent contractors to provide inspection services under this section. *Giffin v. Poetzl*, 2001 WI App 207, 247 Wis. 2d 906, 634 N.W.2d 901.

101.651 Special requirements for smaller municipalities. (1) DEFINITION. In this section, “municipality” means a city, village or town with a population of 2,500 or less.

(2m) ENFORCEMENT OPTIONS. A municipality shall exercise jurisdiction over the construction and inspection of new one- and 2-family dwellings by enacting ordinances under s. 101.65 (1) (a) or shall exercise the jurisdiction granted under s. 101.65 (1) (a) jointly under s. 101.65 (1) (b), unless any of the following conditions are met:

(a) The municipality adopts a resolution requesting under sub. (3) (a) that a county enforce this subchapter or an ordinance enacted under s. 101.65 (1) (a) throughout the municipality and that a county provide inspection services in the municipality to administer and enforce this subchapter or an ordinance enacted under s. 101.65 (1) (a).

(c) Under sub. (3) (b), the department enforces this subchapter throughout the municipality and provides inspection services in the municipality to administer and enforce this subchapter.

(3) DEPARTMENTAL AND COUNTY AUTHORITY IN MUNICIPALITIES; GENERALLY. (a) Except as provided in par. (b), the department or a county may not enforce this subchapter 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 a person or municipality making a request under this subsection.

(b) The department shall provide inspection services and shall enforce this subchapter throughout any municipality that does not exercise jurisdiction under sub. (2m) and that has not adopted a resolution under sub. (2m) (a).

(4) DATA RELATING TO HOUSING STARTS IN MUNICIPALITIES. Municipalities shall furnish statistical data relating to housing starts to the department as requested by the department.

(5) EFFECT OF SECTION ON CERTAIN LAWS. 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.

History: 1981 c. 20; 1989 a. 31; 1991 a. 309; 1999 a. 9; 2003 a. 90.

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.

101.654 Contractor financial responsibility certification. (1) (a) Subject to par. (b), no person may obtain a building permit unless the person annually obtains from the department a certificate of financial responsibility showing that the person is in compliance with sub. (2).

(b) Paragraph (a) does not apply to an owner of a dwelling who resides or will reside in the dwelling and who applies for a building permit to perform work on that dwelling.

(2) An applicant for a certificate of financial responsibility shall provide to the satisfaction of the department proof of all of the following:

(a) That the applicant has in force one of the following:

1. A bond endorsed by a surety company authorized to do business in this state of not less than \$5,000, conditioned upon the applicant complying with all applicable provisions of the one- and 2-family dwelling code and any ordinance enacted under s. 101.65 (1) (a).

2. A policy of general liability insurance issued by an insurer authorized to do business in this state insuring the applicant in the amount of at least \$250,000 per occurrence because of bodily injury to or death of others or because of damage to the property of others.

(b) If the applicant is required under s. 102.28 (2) (a) to have in force a policy of worker's compensation insurance or if the applicant is self-insured in accordance with s. 102.28 (2) (b), that the applicant has in force a policy of worker's compensation insurance issued by an insurer authorized to do business in this state or is self-insured in accordance with s. 102.28 (2) (b).

(c) If the applicant is required to make state unemployment insurance contributions under ch. 108 or is required to pay federal unemployment compensation taxes under 26 USC 3301 to 3311, that the applicant is making those contributions or paying those taxes as required.

(2m) If an applicant wishes to use a bond under sub. (2) (a) 1. of less than \$25,000 to comply with sub. (2) (a), the applicant shall agree not to perform any work on a dwelling for which the estimated cost of completion is greater than the amount of the bond. The department shall indicate any restriction under this subsection on the certificate of financial responsibility issued under sub. (3).

(3) Upon receipt of the proof required under sub. (2) and the fee required by rules promulgated under s. 101.63 (2m), the department shall issue to the applicant a certificate of financial responsibility. A certificate of financial responsibility issued under this subsection is valid for one year after the date of issuance, unless sooner suspended or revoked.

(4) (a) A bond or insurance policy required under sub. (2) may not be canceled by the person insured under the bond or policy or by the surety company or insurer except on 30 days' prior written notice served on the department in person or by 1st class mail or, if the cancellation is for nonpayment of premiums to the insurer, on 10 days' prior written notice served on the department in person or by 1st class mail. The person insured under the bond or policy shall file with the department proof to the satisfaction of the department of a replacement bond or replacement insurance within the 30-day notice period or 10-day notice period, whichever is applicable, and before the expiration of the bond or policy. The department shall suspend without prior notice or hearing the certificate of financial responsibility of a person who does not file satisfactory proof of a replacement bond or replacement insurance as required by this subsection.

(b) A bond under sub. (2) (a) 1. shall be executed in the name of the state for the benefit of any person who sustains a loss as a result of the person insured under the bond not complying with an applicable provision of the one- and 2-family dwelling code or any ordinance enacted under s. 101.65 (1) (a), except that the aggregate liability of the surety to all persons may not exceed the amount of the bond.

History: 1993 a. 126; 1995 a. 392; 1997 a. 39.

Cross Reference: See also s. Comm 5.31, Wis. adm. code.

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.

101.66 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

- (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.

Cross Reference: See also s. Comm 5.63, Wis. adm. code.

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.

Cross Reference: See also chs. Comm 20, 21, 22, 23, 24, 25, and 27, Wis. adm. code.

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 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; 1999 a. 53.

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.

(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 employees 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; 1993 a. 414.

Cross Reference: See also s. Comm 16.01, Wis. adm. code.

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 con-

formance 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. 66.0301, 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; 1999 a. 150 s. 672.

Cross Reference: See also s. Comm 20.06, Wis. adm. code.

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 a 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; 1997 a. 35.

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” include all exterior wiring except wiring owned, leased, operated or main-

101.80 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

tained by a public utility including any electrical cooperative, in the exercise of its utility function.

History: 1979 c. 309; 1983 a. 189; 1995 a. 27.

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 (11), 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 employees 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; 1995 a. 27.

Cross Reference: See also s. Comm 16.01, Wis. adm. code.

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. 66.0301, 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; 1999 a. 150 s. 672.

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 violates the provisions of this section is guilty of a misdemeanor and shall be fined not less than \$25 nor more than \$100 or imprisoned in the county jail for not less than 30 days nor more than 6 months.

History: 1983 a. 164 s. 4; Stats. 1983 s. 101.865; 1989 a. 348; 1997 a. 253.

Cross Reference: See also s. Comm 16.01, Wis. adm. code.

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 or member if they are partnerships or limited liability companies, 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 employees 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; 1993 a. 112.

Cross Reference: See also ss. Comm 5.40, 5.41, 5.42, 5.43, 5.44, and 5.45, Wis. adm. code.

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.

Cross Reference: See also s. Comm 5.62, Wis. adm. code.

SUBCHAPTER V

MANUFACTURED HOMES AND MOBILE HOMES

101.91 Definitions. In this subchapter:

(1g) “Delivery date” means the date on which a manufactured home is physically delivered to the site chosen by the owner of the manufactured home.

(1m) “License period” means the period during which a license issued under s. 101.951 or 101.952 is effective, as established by the department under s. 101.951 (2) (b) 1. or 101.952 (2) (b) 1.

(2) “Manufactured home” means any 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.

(c) A mobile home, unless a mobile home is specifically excluded under the applicable statute.

(3) “Manufactured home dealer” means a person who, for a commission or other thing of value, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale or exchange of an interest in, manufactured homes or who is engaged wholly or partially in the business of selling manufactured homes, whether or not the manufactured homes are owned by the person, but does not include:

(a) A receiver, trustee, personal representative, guardian, or other person appointed by or acting under the judgment or order of any court.

(b) Any public officer while performing that officer’s official duty.

(c) Any employee of a person enumerated in par. (a) or (b).

(d) Any lender, as defined in s. 421.301 (22).

(e) A person transferring a manufactured home used for that person’s personal, family or household purposes, if the transfer is an occasional sale and is not part of the business of the transferor.

(4) “Manufactured home owner” means any person who purchases, or leases from another, a manufactured home primarily for use for personal, family or household purposes.

(5m) “Manufactured home park” means any plot or plots of ground upon which 3 or more manufactured homes that are occupied for dwelling or sleeping purposes are located. “Manufactured home park” does not include a farm where the occupants of the manufactured homes are the father, mother, son, daughter, brother or sister of the farm owner or operator or where the occupants of the manufactured homes work on the farm.

(6m) “Manufactured home park contractor” means a person, other than a public utility, as defined in s. 196.01 (5) (a), who, under a contract with a manufactured home park operator, provides water or sewer service to a manufactured home park occupant or performs a service related to providing water or sewer service to a manufactured home park occupant.

(7) “Manufactured home park occupant” means a person who rents or owns a manufactured home in a manufactured home park.

(8) “Manufactured home park operator” means a person engaged in the business of owning or managing a manufactured home park.

(9) “Manufactured home salesperson” means any person who is employed by a manufactured home manufacturer or manufactured home dealer to sell or lease manufactured homes.

(10) “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.

(11) “New manufactured home” means a manufactured home that has never been occupied, used or sold for personal or business use.

(12) “Used manufactured home” means a manufactured home that has previously been occupied, used or sold for personal or business use.

History: 1973 c. 116, 132; 1983 a. 27, 192; 1995 a. 362; 1999 a. 9, 53; 2001 a. 16 ss. 2533 to 2539, 2975 to 2977; 2001 a. 102.

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 that are manufactured, distributed, sold or offered for sale in this state.

(1m) Shall promulgate rules prescribing minimum installation standards for pier installation of new manufactured homes. The rules shall be consistent with the standards for pier installation established by the American National Standards Institute and the manufactured housing industry trade organizations.

(2) Shall license all manufacturers desiring to sell or distribute for sale manufactured homes in this state.

(3) Shall review annually the rules adopted under this subchapter.

(4) Shall provide for announced or unannounced inspection of manufacturing facilities, processes, fabrication and assembly of manufactured homes to ensure compliance with the rules adopted under this subchapter.

(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 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 manufactured homes where the laws or rules of other states meet the intent of this subchapter and where the laws or rules are actually enforced.

(7) Shall establish a staff for the administration and enforcement of this subchapter.

(8) May revoke the license of any manufacturer who violates this subchapter or any rules promulgated thereunder.

(9) Shall promulgate rules and establish standards necessary to carry out the purposes of ss. 101.953 and 101.954.

History: 1973 c. 116; 1979 c. 221; 1983 a. 27 ss. 1375pr, 1375q, 2200 (25); 1995 a. 27, 362; 1999 a. 9, 53.

Cross Reference: See also s. Comm 5.32, Wis. adm. code.

101.9202 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

101.9202 Excepted liens and security interests. Sections 101.9203 to 101.9218 do not apply to or affect:

(1) A lien given by statute or rule of law to a supplier of services or materials for the manufactured home.

(2) A lien given by statute to the United States, this state or any political subdivision of this state.

(3) A security interest in a manufactured home created by a manufactured home dealer or manufacturer who holds the manufactured home for sale, which shall be governed by the applicable provisions of ch. 409.

History: 1999 a. 9, 53.

101.9203 When certificate of title required. (1) Except as provided in subs. (3) and (4), the owner of a manufactured home situated in this state or intended to be situated in this state shall make application for certificate of title under s. 101.9209 for the manufactured home if the owner has newly acquired the manufactured home.

(2) Any owner who situates in this state a manufactured home for which a certificate of title is required without the certificate of title having been issued or applied for, knowing that the certificate of title has not been issued or applied for, may be required to forfeit not more than \$200. A certificate of title is considered to have been applied for when the application accompanied by the required fee has been delivered to the department or deposited in the mail properly addressed and with postage prepaid.

(3) Unless otherwise authorized by rule of the department, a nonresident owner of a manufactured home situated in this state may not apply for a certificate of title under this subchapter unless the manufactured home is subject to a security interest or except as provided in s. 101.9209 (1) (a).

(4) The owner of a manufactured home that is situated in this state or intended to be situated in this state is not required to make application for a certificate of title under s. 101.9209 if the owner of the manufactured home intends, upon acquiring the manufactured home, to permanently affix the manufactured home to land that the owner of the manufactured home owns.

History: 1999 a. 9, 53; 2001 a. 16.

101.9204 Application for certificate of title. (1) An application for a certificate of title shall be made to the department upon a form or in an automated format prescribed by it and shall be accompanied by the required fee. Each application for certificate of title shall include the following information:

(a) The name and address of the owner.

(b) A description of the manufactured home, including make, model, identification number and any other information or documentation that the department may reasonably require for proper identification of the manufactured home.

(c) The date of purchase by the applicant, the name and address of the person from whom the manufactured home was acquired and the names and addresses of any secured parties in the order of their priority.

(d) If the manufactured home is a new manufactured home being titled for the first time, the signature of the manufactured home dealer. The document of origin shall contain the information specified by the department.

(e) Any further evidence of ownership which the department may reasonably require to enable it to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the manufactured home.

(f) If the identification number of the manufactured home has been removed, obliterated or altered, or if the original casting has been replaced, or if the manufactured home has not been numbered by the manufacturer, the application for certificate of title shall so state.

(g) If the manufactured home is a used manufactured home that was last previously titled in another jurisdiction, the applicant shall furnish any certificate of ownership issued by the other juris-

dition and a statement, in the form prescribed by the the department, pertaining to the title history and ownership of the manufactured home.

(1m) On the form or in the automated format for application for a certificate of title, the department may show the fee under s. 101.9208 (1) (dm) separately from the fee under s. 101.9208 (1) (a) or (d).

(2) Any person who knowingly makes a false statement in an application for a certificate of title is guilty of a Class H felony.

History: 1999 a. 9, 53, 185; 2001 a. 38, 109.

101.9205 When department to issue certificate and to whom; maintenance of records. (1) The department shall maintain a record of each application for certificate of title received by it and, when satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a certificate of title, shall issue and deliver a certificate to the owner of the manufactured home.

(2) The department shall maintain a record of all applications, and all certificates of title issued by the department, indexed in the following manners:

(a) According to title number.

(b) Alphabetically, according to the name of the owner.

(c) In any other manner that the department determines to be desirable.

(3) The department shall charge a fee of not less than \$2 for conducting a file search of manufactured home title records.

History: 1999 a. 9, 53, 185.

101.9206 Contents of certificate of title. (1) Each certificate of title issued by the department shall contain all of the following:

(a) The name and address of the owner.

(b) The names of any secured parties in the order of priority as shown on the application or, if the application is based on another certificate of title, as shown on that certificate.

(c) The title number assigned to the manufactured home.

(d) A description of the manufactured home, including make, model and identification number.

(e) Any other data that the department considers pertinent and desirable.

(2) (a) The certificate of title shall contain spaces for all of the following:

1. Assignment and warranty of title by the owner.

2. Reassignment and warranty of title by a manufactured home dealer.

(b) The certificate of title may contain spaces for application for a certificate of title by a transferee and for the naming of a secured party and the assignment or release of a security interest.

(3) (a) Unless the applicant fulfills the requirements of par. (b), the department shall issue a distinctive certificate of title for a manufactured home last previously registered in another jurisdiction if the laws of the other jurisdiction do not require that secured parties be named on a certificate of title to perfect their security interests. The certificate shall contain the legend "This manufactured home may be subject to an undisclosed security interest" and may contain any other information that the department prescribes. If the department receives no notice of a security interest in the manufactured home within 4 months from the issuance of the distinctive certificate of title, the department shall, upon application and surrender of the distinctive certificate, issue a certificate of title in ordinary form.

(b) The department may issue a nondistinctive certificate of title if the applicant fulfills either of the following requirements:

1. The applicant is a manufactured home dealer and is financially responsible as substantiated by the last financial statement on file with the department, a finance company licensed under s. 138.09, a bank organized under the laws of this state, or a national bank located in this state.

2. The applicant has filed with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to 1.5 times the value of the manufactured home as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the manufactured home or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title for the manufactured home or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the manufactured home. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of 5 years or prior thereto if, apart from this section, a non-distinctive certificate of title could then be issued for the manufactured home.

(4) A certificate of title issued by the department is prima facie evidence of the facts appearing on it.

(5) The department may issue a certificate of title in an automated format.

History: 1999 a. 9, 53, 185.

101.9207 Lost, stolen or mutilated certificates. (1) If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a replacement upon furnishing information satisfactory to the department. The replacement certificate of title shall contain the legend "This is a replacement certificate and may be subject to the rights of a person under the original certificate".

(2) A person recovering an original certificate of title for which a replacement has been issued shall promptly surrender the original certificate to the department.

History: 1999 a. 9.

101.9208 Fees. (1) The department shall be paid the following fees:

(a) For filing an application for the first certificate of title, \$8.50, by the owner of the manufactured home.

(b) Upon filing an application under par. (a) or (d), an environmental impact fee of \$9, by the person filing the application. All moneys collected under this subsection shall be credited to the environmental fund for environmental management. This paragraph does not apply after December 31, 2003.

(c) For the original notation and subsequent release of each security interest noted upon a certificate of title, a single fee of \$4 by the owner of the manufactured home.

(d) For a certificate of title after a transfer, \$8.50, by the owner of the manufactured home.

(dm) Upon filing an application under par. (a) or (d), a supplemental title fee of \$7.50 by the owner of the manufactured home, except that this fee shall be waived with respect to an application under par. (d) for transfer of a decedent's interest in a manufactured home to his or her surviving spouse. The fee specified under this paragraph is in addition to any other fee specified in this section.

(f) For each assignment of a security interest noted upon a certificate of title, \$1 by the assignee.

(g) For a replacement certificate of title, \$8, by the owner of the manufactured home.

(h) For processing applications for certificates of title that have a special handling request for fast service, a fee established by the department by rule, which fee shall approximate the cost to the

department for providing this special handling service to persons so requesting.

(i) For the reinstatement of a certificate of title previously suspended or revoked, \$25.

(2) All fees collected under sub. (1), except fees collected under sub. (1) (b), shall be deposited in the transportation fund.

History: 1999 a. 9, 53, 185; 2001 a. 16.

101.9209 Transfer of interest in a manufactured home.

(1) (a) If an owner transfers an interest in a manufactured home, other than by the creation of a security interest, the owner shall, at the time of the delivery of the manufactured home, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate, and cause the certificate to be mailed or delivered to the transferee. This paragraph does not apply if the owner has no certificate of title as a result of the exemption under s. 101.9203 (4).

(b) Any person who holds legal title of a manufactured home with one or more other persons may transfer ownership of the manufactured home under this subsection if legal title to the manufactured home is held in the names of such persons in the alternative, including a manufactured home held in a form designating the holder by the words "(name of one person) or (name of another person)".

(2) Except as otherwise provided in this subsection, promptly after delivery to him or her of the manufactured home, the transferee shall execute the application for a new certificate of title in the space provided therefor on the certificate or as the department prescribes, and cause the certificate and application to be mailed or delivered to the department. This subsection does not apply to a transferee who is exempt from making application for a certificate of title under s. 101.9203 (4).

(3) A transfer by an owner is not effective until the applicable provisions of this section have been complied with. An owner who has delivered possession of the manufactured home to the transferee and has complied with the provisions of this section requiring action by him or her is not liable as owner for any damages thereafter resulting from use of the mobile home.

(4) Any owner of a manufactured home for which a certificate of title has been issued, who upon transfer of the manufactured home fails to execute and deliver the assignment and warranty of title required by sub. (1), may be required to forfeit not more than \$500.

(5) (a) Any transferee of a manufactured home who fails to make application for a new certificate of title immediately upon transfer to him or her of a manufactured home as required under sub. (2) may be required to forfeit not more than \$200.

(b) Any transferee of a manufactured home who, with intent to defraud, fails to make application for a new certificate of title immediately upon transfer to him or her of a manufactured home as required under sub. (2) may be fined not more than \$1,000 or imprisoned for not more than 30 days or both.

(c) A certificate is considered under this subsection to have been applied for when the application accompanied by the required fee has been delivered to the department or deposited in the mail properly addressed with postage prepaid.

History: 1999 a. 9, 53; 2001 a. 16.

101.921 Transfer to or from dealer. (1) (a) Except as provided in par. (b), if a manufactured home dealer acquires a manufactured home and holds it for resale or accepts a manufactured home for sale on consignment, the manufactured home dealer may not submit to the department the certificate of title or application for certificate of title naming the manufactured home dealer as owner of the manufactured home. Upon transferring the manufactured home to another person, the manufactured home dealer shall immediately give the transferee, on a form prescribed by the department, a receipt for all title, security interest and sales tax moneys paid to the manufactured home dealer for transmittal to the department when required. Unless the manufactured home

101.921 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

has no certificate of title as a result of the exemption under s. 101.9203 (4), the manufactured home dealer shall promptly execute the assignment and warranty of title, showing the name and address of the transferee and of any secured party holding a security interest created or reserved at the time of the resale or sale on consignment, in the spaces provided therefor on the certificate or as the department prescribes. Within 7 business days following the sale or transfer, the manufactured home dealer shall mail or deliver the certificate or application for certificate to the department with the transferee's application for a new certificate, unless the transferee is exempt from making application for a certificate of title under s. 101.9203 (4). A nonresident who purchases a manufactured home from a manufactured home dealer in this state may not, unless otherwise authorized by rule of the department, apply for a certificate of title issued for the manufactured home in this state unless the manufactured home dealer determines that a certificate of title is necessary to protect the interests of a secured party. The manufactured home dealer is responsible for determining whether a certificate of title and perfection of security interest is required. The manufactured home dealer is liable for any damages incurred by the department or any secured party for the manufactured home dealer's failure to perfect a security interest that the manufactured home dealer had knowledge of at the time of sale.

(b) Except when all available spaces for a manufactured home dealer's reassignment on a certificate of title have been completed or as otherwise authorized by rules of the department, a manufactured home dealer who acquires a manufactured home and holds it for resale or accepts a manufactured home for sale on consignment may not apply for a certificate of title naming the manufactured home dealer as owner of the manufactured home.

(c) Unless exempted by rule of the department, a manufactured home dealer who acquires a manufactured home and holds it for resale shall make application for a certificate of title naming the manufactured home dealer as owner of the manufactured home when all of the available spaces for a manufactured home dealer's reassignment on the certificate of title for such manufactured home have been completed.

(2) Every manufactured home dealer shall maintain for 5 years a record of every manufactured home bought, sold or exchanged, or received for sale or exchange. The record shall be open to inspection by a representative of the department or by a peace officer during reasonable business hours. The dealer shall maintain the record in the form prescribed by the department.

(3) Any manufactured home dealer who fails to comply with this section may be required to forfeit not more than \$200.

History: 1999 a. 9, 53, 185; 2001 a. 16.

101.9211 Involuntary transfers. (1) If the interest of an owner in a manufactured home passes to another other than by voluntary transfer, the transferee shall, except as provided in sub. (2), promptly mail or deliver to the department the last certificate of title, if available, and any documents required by the department to legally effect such transfer. The transferee shall also promptly mail or deliver to the department an application for a new certificate in the form that the department prescribes, unless the transferee is exempt from making application for a certificate of title under s. 101.9203 (4).

(2) If the interest of the owner is terminated or the manufactured home is sold under a security agreement by a secured party named in the certificate of title, the transferee shall promptly mail or deliver to the department the last certificate of title, unless there is no certificate of title as a result of the exemption under s. 101.9203 (4), an application for a new certificate in the form that the department prescribes, unless the transferee is exempt from making application for a certificate of title under s. 101.9203 (4), and a statement made by or on behalf of the secured party that the manufactured home was repossessed and that the interest of the owner was lawfully terminated or sold under the terms of the security agreement.

(3) A person holding a certificate of title whose interest in the manufactured home has been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate, and the action of the department in issuing a new certificate of title is not conclusive upon the rights of an owner or secured party named in the old certificate.

(4) (a) In all cases of the transfer of a manufactured home owned by a decedent, except under par. (b), ward, trustee or bankrupt, the department shall accept as sufficient evidence of the transfer of ownership all of the following:

1. Evidence satisfactory to the department of the appointment of a trustee in bankruptcy or of the issuance of letters testamentary or other letters authorizing the administration of a decedent's estate, letters of guardianship, or letters of trust.

2. The title executed by the personal representative, guardian, or trustee, except that this subdivision does not apply if there is no certificate of title as a result of the exemption under s. 101.9203 (4).

(b) 1. Except as provided under subd. 1m., the department shall transfer the decedent's interest in any manufactured home to his or her surviving spouse upon receipt of the title executed by the surviving spouse and a statement by the spouse that states all of the following:

a. The date of death of the decedent.

b. The approximate value and description of the manufactured home.

c. That the spouse is personally liable for the decedent's debts and charges to the extent of the value of the manufactured home, subject to s. 859.25.

1m. The department may not require a surviving spouse to provide an executed title to a manufactured home under subd. 1. if the manufactured home has no certificate of title as a result of the exemption under s. 101.9203 (4).

2. The transfer of a manufactured home under this paragraph shall not affect any liens upon the manufactured home.

3. Except as provided in subd. 4., this paragraph is limited to no more than 5 manufactured homes titled in this state that are less than 20 years old at the time of the transfer under this paragraph. There is no limit on transfer under this paragraph of manufactured homes titled in this state that are 20 or more years old at the time of transfer under this paragraph.

4. The limit in subd. 3. does not apply if the surviving spouse is proceeding under s. 867.03 (1g) and the total value of the decedent's solely owned property in the state, including the manufactured homes transferred under this paragraph, does not exceed \$10,000.

(c) Upon compliance with this subsection, the department shall bear neither liability nor responsibility for the transfer of such manufactured homes in accordance with this section.

(d) This subsection does not apply to transfer of interest in a manufactured home under s. 101.9209 (1) (b).

History: 1999 a. 9, 53, 185; 2001 a. 16, 102.

101.9212 When department to issue a new certificate.

(1) Except as otherwise provided in this subsection, the department, upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee and any other transfer documents required by law, to support the transfer, shall issue a new certificate of title in the name of the transferee as owner. The department may not require a person to provide a properly assigned certificate of title if the manufactured home for which the new certificate of title is requested has no certificate of title as a result of the exemption under s. 101.9203 (4).

(2) The department, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other docu-

ments required by law, shall issue a new certificate of title in the name of the transferee as owner. If the transfer constituted a termination of the owner's interest or a sale under a security agreement by a secured party named in the certificate, under s. 101.9211 (2), the new certificate shall be issued free of the names and addresses of the secured party who terminated the owner's interest and of all secured parties subordinate under s. 101.9213 to such secured party. If the outstanding certificate of title is not delivered to it, the department shall make demand therefor from the holder of such certificate.

(3) The department shall retain for 5 years a record of every surrendered certificate of title, the record to be maintained so as to permit the tracing of title for the manufactured home designated therein.

History: 1999 a. 9, 53, 185; 2001 a. 16.

101.9213 Perfection of security interests. (1) Unless excepted by s. 101.9202, a security interest in a manufactured home of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or secured parties of the manufactured home unless perfected as provided in ss. 101.9202 to 101.9218.

(2) Except as provided in sub. (3), a security interest is perfected by the delivery to the department of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the secured party, and the required fee. The security interest is perfected as of the later of the time of its delivery or the time of the attachment of the security interest.

(3) If a secured party whose name and address is contained on the certificate of title for a manufactured home acquires a new or additional security interest in the manufactured home, such security interest is perfected at the time of its attachment under s. 409.203.

(4) An unperfected security interest is subordinate to the rights of persons described in s. 409.317.

(5) The rules of priority stated in s. 409.322, the other sections therein referred to, and subch. III of ch. 409 shall, to the extent appropriate, apply to conflicting security interests in a manufactured home of a type for which a certificate of title is required, or in a previously certificated manufactured home, as defined in s. 101.9222 (1). A security interest perfected under this section or under s. 101.9222 (4) or (5) is a security interest perfected otherwise than by filing for purposes of s. 409.322.

(6) The rules stated in subch. VI of ch. 409 governing the rights and duties of secured parties and debtors and the requirements for, and effect of, disposition of a manufactured home by a secured party, upon default shall, to the extent appropriate, govern the rights of secured parties and owners with respect to security interests in manufactured homes perfected under ss. 101.9202 to 101.9218.

(7) If a manufactured home is subject to a security interest when brought into this state, s. 409.316 states the rules that apply to determine the validity and perfection of the security interest in this state.

(8) Upon request of a person who has perfected a security interest under this section, as shown by the records of the department, in a manufactured home titled in this state, whenever the department receives information from another state that the manufactured home is being titled in the other state and the information does not show that the security interest has been satisfied, the department shall notify the person. The person shall pay the department a \$2 fee for each notification.

History: 1999 a. 9, 53, 185; 2001 a. 10.

101.9214 Duties on creation of security interest. If an owner creates a security interest in a manufactured home, unless the name and address of the secured party already is contained on the certificate of title for the manufactured home:

(1) The owner shall immediately execute, in the space provided therefor on the certificate of title or on a separate form or in

an automated format prescribed by the department, an application to name the secured party on the certificate, showing the name and address of the secured party, and cause the certificate, application and the required fee to be delivered to the secured party.

(2) The secured party shall immediately cause the certificate, the application and the required fee to be mailed or delivered to the department.

(3) Upon receipt of the certificate of title, the application and the required fee, the department shall issue to the owner a new certificate containing the name and address of the new secured party. The department shall deliver to the new secured party and to the register of deeds of the county of the owner's residence memorandum, in such form as the department prescribes, evidencing the notation of the security interest upon the certificate; and thereafter, upon any assignment, termination or release of the security interest, additional memoranda evidencing such action.

(4) The register of deeds may record, and maintain a file of, all memoranda received from the department under sub. (3). Such recording, however, is not required for perfection, release or assignment of security interests, which shall be effective upon compliance with ss. 101.9213 (2), 101.9215 and 101.9216 (1) and (2).

History: 1999 a. 9, 53.

101.9215 Assignment of security interest. (1) Except as otherwise provided in s. 409.308 (5), a secured party may assign, absolutely or otherwise, the party's security interest in the manufactured home to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the secured party as the holder of the security interest and the secured party remains liable for any obligations as a secured party until the assignee is named as secured party on the certificate.

(2) Subject to s. 409.308 (5), the assignee may but need not, to perfect the assignment, have the certificate of title endorsed or issued with the assignee named as secured party, upon delivering to the department the certificate and an assignment by the secured party named in the certificate in the form that the department prescribes.

History: 1999 a. 9, 53; 2001 a. 10.

101.9216 Release of security interest. (1) Within one month, or within 10 days following written demand by the debtor, after there is no outstanding obligation and no commitment to make advances, incur obligations or otherwise give value, secured by the security interest in a manufactured home under any security agreement between the owner and the secured party, the secured party shall execute and deliver to the owner, as the department prescribes, a release of the security interest in the form and manner prescribed by the department and a notice to the owner stating in no less than 10–point boldface type the owner's obligation under sub. (2). If the secured party fails to execute and deliver the release and notice of the owner's obligation as required by this subsection, the secured party is liable to the owner for \$25 and for any loss caused to the owner by the failure.

(2) The owner, other than a manufactured home dealer holding the manufactured home for resale, upon receipt of the release and notice of obligation shall promptly cause the certificate and release to be mailed or delivered to the department, which shall release the secured party's rights on the certificate and issue a new certificate.

(3) The department may remove information pertaining to a security interest perfected under s. 101.9213 from its records when 20 years after the original perfection has elapsed unless the security interest is renewed in the same manner as provided in s. 101.9213 (2) for perfection of a security interest.

(4) Removal of information pertaining to a security interest from the records of the department under sub. (3) does not affect any security agreement between the owner of a manufactured

101.9216 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

home and the holder of security interest in the manufactured home.

History: 1999 a. 9, 53, 185.

101.9217 Secured party's and owner's duties. (1) A secured party named in a certificate of title shall, upon written request of the owner or of another secured party named on the certificate, disclose any pertinent information as to the party's security agreement and the indebtedness secured by it.

(2) (a) An owner shall promptly deliver the owner's certificate of title to any secured party who is named on it or who has a security interest in the manufactured home described in it under any other applicable prior law of this state, upon receipt of a notice from such secured party that the security interest is to be assigned, extended or perfected. Any owner who fails to deliver the certificate of title to a secured party requesting it under this paragraph shall be liable to such secured party for any loss caused to the secured party thereby and may be required to forfeit not more than \$200.

(b) No secured party may take possession of any certificate of title except as provided in par. (a). Any person who violates this paragraph may be required to forfeit not more than \$1,000.

(3) Any secured party who fails to disclose information under sub. (1) shall be liable for any loss caused to the owner by the failure to disclose information.

History: 1999 a. 9, 53, 185.

101.9218 Applicability of manufactured home security provisions. (1) **METHOD OF PERFECTING EXCLUSIVE.** Subject to s. 409.311 (4) and except as provided in sub. (2), the method provided in ss. 101.921 to 101.9217 of perfecting and giving notice of security interests subject to ss. 101.921 to 101.9217 is exclusive. Security interests subject to ss. 101.921 to 101.9217 are exempt from the provisions of law that otherwise require or relate to the filing of instruments creating or evidencing security interests.

(2) **FIXTURES EXCLUDED.** Notwithstanding ss. 101.921 to 101.9217, the method provided in ss. 101.921 to 101.9217 of perfecting and giving notice of security interests does not apply to a manufactured home that is a fixture to real estate or to a manufactured home that the owner intends, upon acquiring, to permanently affix to land that the owner of the manufactured home owns.

History: 1999 a. 9, 53, 185; 2001 a. 10, 16.

101.9219 Withholding certificate of title; bond. (1) The department may not issue a certificate of title until the outstanding evidence of ownership is surrendered to the department.

(2) If the department is not satisfied as to the ownership of the manufactured home or that there are no undisclosed security interests in it, the department, subject to sub. (3), shall either:

(a) Withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the manufactured home and that there are no undisclosed security interests in it; or

(b) Issue a distinctive certificate of title pursuant to s. 101.9206 (3) or 101.9222 (3).

(3) Notwithstanding sub. (2), the department may issue a non-distinctive certificate of title if the applicant fulfills either of the following requirements:

(a) The applicant is a manufactured home dealer licensed under s. 101.951 and is financially responsible as substantiated by the last financial statement on file with the department, a finance company licensed under ss. 138.09 or 218.0101 to 218.0163, a bank organized under the laws of this state, or a national bank located in this state.

(b) The applicant has filed with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety busi-

ness in this state. The bond shall be in an amount equal to 1.5 times the value of the manufactured home as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the manufactured home or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title for the manufactured home or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the manufactured home. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of 5 years or prior thereto if, apart from this section, a non-distinctive certificate of title could then be issued for the manufactured home, or if the currently valid certificate of title for the manufactured home is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

History: 1999 a. 9, 53, 185; 2001 a. 38.

101.922 Suspension or revocation of certificate.

(1) The department shall suspend or revoke a certificate of title if it finds any of the following:

(a) That the certificate of title was fraudulently procured, erroneously issued or prohibited by law.

(b) That the manufactured home has been scrapped, dismantled or destroyed.

(c) That a transfer of title is set aside by a court of record by order or judgment.

(2) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

(3) When the department suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the department.

(4) The department may seize and impound any certificate of title that has been suspended or revoked.

History: 1999 a. 9, 53, 185.

101.9221 Grounds for refusing issuance of certificate of title. The department shall refuse issuance of a certificate of title if any required fee has not been paid or for any of the following reasons:

(1) The department has reasonable grounds to believe that:

(a) The person alleged to be the owner of the manufactured home is not the owner.

(b) The application contains a false or fraudulent statement.

(2) The applicant has failed to furnish any of the following:

(a) If applicable, the power of attorney required under 15 USC 1988 or rules of the department.

(b) Any other information or documents required by law or by the department pursuant to authority of law.

(3) The applicant is a manufactured home dealer and is prohibited from applying for a certificate of title under s. 101.921 (1) (a) or (b).

(4) Except as provided in ss. 101.9203 (3) and 101.921 (1) (a) for a certificate of title and registration for a manufactured home owned by a nonresident, the applicant is a nonresident and the issuance of a certificate of title has not otherwise been authorized by rule of the department.

History: 1999 a. 9, 53.

101.9222 Previously certificated manufactured homes. (1) In this section, "previously certificated manufactured home" means a manufactured home for which a certificate of title has been issued by the department of transportation prior to July 1, 2000.

(2) Sections 101.9213 to 101.9218 do not apply to a previously certificated manufactured home until one of the following occurs:

(a) There is a transfer of ownership of the manufactured home.

(b) The department issues a certificate of title for the manufactured home under this chapter.

(3) If the department is not satisfied that there are no undisclosed security interests, created before July 1, 2000, in a previously certificated manufactured home, the department shall, unless the applicant fulfills the requirements of s. 101.9219 (3), issue a distinctive certificate of title for the manufactured home containing the legend “This manufactured home may be subject to an undisclosed security interest” and any other information that the department prescribes.

(4) After July 1, 2000, a security interest in a previously certificated vehicle may be created and perfected only by compliance with ss. 101.9213 and 101.9218.

(5) (a) If a security interest in a previously certificated manufactured home is perfected under any other applicable law of this state on July 1, 2000, the security interest continues perfected:

1. Until its perfection lapses under the law under which it was perfected, or until its perfection would lapse in the absence of a further filing or renewal of filing, whichever occurs sooner.

2. If, before the security interest lapses as described in subd. 1., there is delivered to the department the existing certificate of title together with the application and fee required by s. 101.9214 (1). In such case the department shall issue a new certificate pursuant to s. 101.9214 (3).

(b) If a security interest in a previously certificated manufactured home was created, but was unperfected, under any other applicable law of this state on July 1, 2000, it may be perfected under par. (a).

History: 1999 a. 9, 53, 185; 2001 a. 10.

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 Plumbing in manufactured homes. (1) The department shall adopt rules relating to plumbing in the design and construction of manufactured 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.

(3) The department shall review plans and specifications for approval of plumbing systems in manufactured homes.

History: 1973 c. 116; 1979 c. 221; 1983 a. 27 s. 2200 (25); 1999 a. 53; 2001 a. 16.

101.935 Manufactured home park regulation. (1) The department shall license and regulate manufactured home parks. The department may investigate manufactured home parks and, with notice, may enter and inspect private property.

(2) (a) The department or a village, city or county granted agent status under par. (e) shall issue permits to and regulate manufactured home parks. No person, state or local government who has not been issued a permit under this subsection may conduct, maintain, manage or operate a manufactured home park.

(b) The department may, after a hearing under ch. 227, refuse to issue a permit or suspend or revoke a permit for violation of this section or any regulation or order that the department issues to implement this section.

(c) 1. Permits issued under this subsection are valid for a 2-year period that begins on July 1 of each even-numbered year and that expires on June 30 of the next even-numbered year. If a person applies for a permit after the beginning of a permit period, the permit is valid until the end of the permit period.

2. The department shall establish by rule the permit fee and renewal fee for a permit issued under this subsection. Beginning in fiscal year 2002–03, the department may increase the fees to recover the cost of administering s. 101.937. An additional penalty fee, as established by the department by rule, is required for each permit if the biennial renewal fee is not paid before the permit expires.

(d) A permit may not be issued under this subsection until all applicable fees have been paid. If the payment is by check or other draft drawn upon an account containing insufficient funds, the permit applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier’s check or other certified draft, money order or cash the fees to the department, late fees and processing charges that are specified by rules promulgated by the department. If the permit applicant fails to pay all applicable fees, late fees and the processing charges within 15 days after the applicant receives notice of the insufficiency, the permit is void. In an appeal concerning voiding of a permit under this paragraph, the burden is on the permit applicant to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the manufactured home park in question is considered to be operation without a permit.

(e) Section 254.69 (2), as it applies to an agent for the department of health and family services in the administration of s. 254.47, applies to an agent for the department of commerce in the administration of this section.

(2m) (a) The department shall inspect a manufactured home park in the following situations:

1. Upon completion of the construction of a manufactured home park.

2. Whenever a manufactured home park is modified, as defined by the department by rule.

3. Whenever the department receives a complaint about a manufactured home park

(b) The department may, with notice, inspect a manufactured home park whenever the department determines an inspection is appropriate.

(3) The department may promulgate rules and issue orders to administer and enforce this section.

History: 1991 a. 39; 1993 a. 16, 27, 491; 1995 a. 27 s. 9126 (19); 1999 a. 9 ss. 64g to 64r; Stats. 1999 s. 101.935; 1999 a. 53; 2001 a. 16.

Cross Reference: See also ch. Comm 95, Wis. adm. code.

101.937 Water and sewer service to manufactured home parks. (1) **RULES.** The department shall promulgate rules that establish standards for providing water or sewer service by a manufactured home park operator or manufactured home park contractor to a manufactured home park occupant, including requirements for metering, billing, depositing, arranging deferred payment, installing service, refusing or discontinuing service, and resolving disputes with respect to service. Rules promulgated under this subsection shall ensure that any charge for water or sewer service is reasonable and not unjustly discriminatory, that the water or sewer service is reasonably adequate, and that any practice relating to providing the service is just and reasonable.

(2) **PERMANENT IMPROVEMENTS.** A manufactured home park operator may make a reasonable recovery of capital costs for permanent improvements related to the provision of water or sewer service to manufactured home park occupants through ongoing rates for water or sewer service.

101.937 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

(3) ENFORCEMENT. (a) On its own motion or upon a complaint filed by a manufactured home park occupant, the department may issue an order or commence a civil action against a manufactured home park operator or manufactured home park contractor to enforce this section, any rule promulgated under sub. (1), or any order issued under this paragraph.

(b) The department of justice, after consulting with the department, or any district attorney may commence an action in circuit court to enforce this section.

(4) PRIVATE CAUSE OF ACTION. Any person suffering pecuniary loss because of a violation of any rule promulgated under sub. (1) or order issued under sub. (3) (a) may sue for damages and shall recover twice the amount of any pecuniary loss, together with costs, and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(5) PENALTIES. (a) Any person who violates any rule promulgated under sub. (1) or any order issued under sub. (3) (a) shall forfeit not less than \$25 nor more than \$5,000. Each violation and each day of violation constitutes a separate offense.

(b) Any person who intentionally violates any rule promulgated under sub. (1) or order issued under sub. (3) (a) shall be fined not less than \$25 nor more than \$5,000 or imprisoned not more than one year in the county jail or both. Each violation and each day of violation constitutes a separate offense.

History: 2001 a. 16 ss. 2541, 3003 to 3007.

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 family 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 regulations 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 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, 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 meets the requirements of this subchapter or the applicable laws of the state with which a reciprocal agreement has been executed. No manufactured 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 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 industry.

(b) Professionally competent to determine that a manufactured home is in compliance with the requirements and standards of this section by having sufficient expertise to do all of the following:

1. Inspect manufactured homes.
2. Review manufactured home plans and specifications.
3. Evaluate manufactured home manufacturer quality control procedures.

4. Submit detailed reports regarding all of its findings to the department.

(5) No manufactured 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 this subchapter in the manner provided under s. 101.02 (6) (e) to (i) and (8) for petitions concerning property.

(8) (a) Except as provided in par. (c), a person who violates this subchapter, a rule promulgated under this subchapter or an 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 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 willfully violates this subchapter in a manner which threatens the health or safety of a purchaser may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(c) A person who violates s. 101.935, a rule promulgated under s. 101.935 or an order issued under s. 101.935 may be required to forfeit not less than \$10 nor more than \$250 for each violation. Each day of continued violation constitutes a separate violation.

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; 1995 a. 27 s. 9126 (19); 1997 a. 283; 1999 a. 9, 53; 2001 a. 109.

101.95 Manufactured 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 in this state.

History: 1973 c. 116; 1983 a. 27 ss. 1375t, 2200 (25); 1999 a. 53.

101.951 Manufactured home dealers regulated. (1)

No person may engage in the business of selling manufactured homes to a consumer or to the retail market in this state unless first licensed to do so by the department as provided in this section.

(2) (a) Application for a license or a renewal license shall be made to the department on forms prescribed and furnished by the department, accompanied by the license fee required under par. (c) or (d).

(b) 1. The department shall, by rule, establish the license period under this section.

2. The department may promulgate rules establishing a uniform expiration date for all licenses issued under this section.

(c) Except as provided in par. (d), the fee for a license issued under this section equals \$50 multiplied by the number of years

in the license period. The fee shall be prorated if the license period is not evenly divisible into years.

(d) If the department issues a license under this section during the license period, the fee for the license shall equal \$50 multiplied by the number of calendar years, including parts of calendar years, during which the license remains in effect. A fee determined under this paragraph may not exceed the license fee for the entire license period under par. (c).

(3) The department shall issue a license only to a person whose character, fitness and financial ability, in the opinion of the department, are such as to justify the belief that the person can and will deal with and serve the buying public fairly and honestly, will maintain a permanent office and place of business in this state during the license year and will abide by all of the provisions of law and lawful orders of the department.

(5) A licensee shall conduct the licensed business continuously during the license year.

(6) The department may deny, suspend or revoke a license on any of the following grounds:

- (a) Proof of unfitness.
- (b) A material misstatement in the application for the license.
- (c) Filing a materially false or fraudulent income or franchise tax return as certified by the department of revenue.
- (d) Willful failure to comply with any provision of this section or any rule promulgated by the department under this section.
- (e) Willfully defrauding any retail buyer to the buyer's damage.
- (f) Willful failure to perform any written agreement with any retail buyer.
- (g) Failure or refusal to furnish and keep in force any bond required.
- (h) Having made a fraudulent sale, transaction or repossession.
- (i) Fraudulent misrepresentation, circumvention or concealment, through any subterfuge or device, of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the retail buyer.
- (j) Use of fraudulent devices, methods or practices in connection with compliance with the statutes with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods.
- (k) Having indulged in any unconscionable practice relating to the business of selling manufactured homes to a consumer or to the retail market.
- (m) Having sold a retail installment contract to a sales finance company, as defined in s. 218.0101 (34) (a), that is not licensed under ss. 218.0101 to 218.0163.
- (n) Having violated any law relating to the sale, distribution or financing of manufactured homes.

(7) (a) The department of commerce may, without notice, deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for the denial. Within 30 days after such notice, the applicant may petition the department of administration to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness. The division of hearings and appeals shall conduct the hearing. This paragraph does not apply to denials of applications for licenses under s. 101.02 (21).

(b) No license may be suspended or revoked except after a hearing thereon. The department of commerce shall give the licensee at least 5 days' notice of the time and place of the hearing. The order suspending or revoking such license shall not be effective until after 10 days' written notice thereof to the licensee, after such hearing has been had; except that the department of commerce, when in its opinion the best interest of the public or the trade demands it, may suspend a license upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the license. Matters involving suspensions and

revocations brought before the department of commerce shall be heard and decided upon by the department of administration. This division of hearings and appeals shall conduct the hearing. This paragraph does not apply to licenses that are suspended or revoked under s. 101.02 (21).

(c) The department of commerce may inspect the pertinent books, records, letters and contracts of a licensee. The actual cost of each such examination shall be paid by such licensee so examined within 30 days after demand therefor by the department, and the department may maintain an action for the recovery of such costs in any court of competent jurisdiction.

(8) Any person who violates any provision of this section shall be fined not less than \$25 nor more than \$100 for each offense.

History: 1999 a. 9, 53, 185; 2003 a. 321.

Cross Reference: See also chs. Comm 96, 97, and 98, Wis. adm. code.

101.952 Manufactured home salespersons regulated.

(1) No person may engage in the business of selling manufactured homes to a consumer or to the retail market in this state without a license therefor from the department. If a manufactured home dealer acts as a manufactured home salesperson the dealer shall secure a manufactured home salesperson's license in addition to the license for engaging as a manufactured home dealer.

(2) (a) Applications for a manufactured home salesperson's license and renewals thereof shall be made to the department on such forms as the department prescribes and furnishes and shall be accompanied by the license fee required under par. (c) or (d). The application shall include the applicant's social security number. In addition, the application shall require such pertinent information as the department requires.

(b) 1. The department shall, by rule, establish the license period under this section.

2. The department may promulgate rules establishing a uniform expiration date for all licenses issued under this section.

(c) Except as provided in par. (d), the fee for a license issued under this section equals \$4 multiplied by the number of years in the license period. The fee shall be prorated if the license period is not evenly divisible into years.

(d) If the department issues a license under this section during the license period, the fee for the license shall equal \$4 multiplied by the number of calendar years, including parts of calendar years, during which the license remains in effect. A fee determined under this paragraph may not exceed the license fee for the entire license period under par. (c).

(3) Every licensee shall carry his or her license when engaged in his or her business and display the same upon request. The license shall name his or her employer, and, in case of a change of employer, the manufactured home salesperson shall immediately mail his or her license to the department, which shall endorse that change on the license without charge.

(5) The provision of s. 218.0116 relating to the denial, suspension and revocation of a motor vehicle salesperson's license shall apply to the denial, suspension and revocation of a manufactured home salesperson's license so far as applicable, except that such provision does not apply to the denial, suspension or revocation of a license under s. 101.02 (21) (b).

(6) The provisions of ss. 218.0116 (9) and 218.0152 shall apply to this section, manufactured home sales practices and the regulation of manufactured home salespersons, as far as applicable.

History: 1999 a. 9, 53, 186.

Cross Reference: See also chs. Comm 96, 97, and 98, Wis. adm. code.

101.953 Warranty and disclosure. (1) A one-year written warranty is required for every new manufactured home sold, or leased to another, by a manufactured home manufacturer, manufactured home dealer or manufactured home salesperson in this state, and for every new manufactured home sold by any person who induces a resident of the state to enter into the transaction by personal solicitation in this state or by mail or telephone solici-

101.953 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

tation directed to the particular consumer in this state. The warranty shall contain all of the following:

(a) A statement that the manufactured home meets those standards prescribed by law or administrative rule of the department of administration or of the department of commerce that are in effect at the time of the manufacture of the manufactured home.

(b) A statement that the manufactured home is free from defects in material and workmanship and is reasonably fit for human habitation if it receives reasonable care and maintenance as defined by rule of the department.

(c) 1. A statement that the manufactured home manufacturer and manufactured home dealer shall take corrective action for defects that become evident within one year from the delivery date and as to which the manufactured home owner has given notice to the manufacturer or dealer not later than one year and 10 days after the delivery date and at the address set forth in the warranty; and that the manufactured home manufacturer and manufactured home dealer shall make the appropriate adjustments and repairs, within 30 days after notification of the defect, at the site of the manufactured home without charge to the manufactured home owner. If the manufactured home dealer makes the adjustment, the manufactured home manufacturer shall fully reimburse the dealer.

2. If a repair, replacement, substitution or alteration is made under the warranty and it is discovered, before or after expiration of the warranty period, a statement that the repair, replacement, substitution or alteration has not restored the manufactured home to the condition in which it was warranted except for reasonable wear and tear, such failure shall be considered a violation of the warranty and the manufactured home shall be restored to the condition in which it was warranted to be at the time of the sale except for reasonable wear and tear, at no cost to the purchaser or the purchaser's assignee notwithstanding that the additional repair may occur after the expiration of the warranty period.

(d) A statement that if during any period of time after notification of a defect the manufactured home is uninhabitable, as defined by rule of the department, that period of time shall not be considered part of the one-year warranty period.

(e) A list of all parts and equipment not covered by the warranty.

(2) Action by a lessee to enforce the lessee's rights under this subchapter shall not be grounds for termination of the rental agreement.

(3) The warranty required under this section shall apply to the manufacturer of the manufactured home as well as to the manufactured home dealer who sells or leases the manufactured home to the consumer, and shall be in addition to any other rights and privileges that the consumer may have under any instrument or law. The waiver of any remedies under any law and the waiver, exclusion, modification or limitation of any warranty, express or implied, including the implied warranty of merchantability and fitness for a particular purpose, is expressly prohibited. Any such waiver is void.

(4) The transfer of a manufactured home from one manufacturer to another during the effective period of the warranty does not terminate the warranty, and subsequent manufactured home owners shall be entitled to the full protection of the warranty for the duration of the warranty period as if the original manufactured home owner had not transferred the manufactured home.

History: 1999 a. 9, 53, 185.

101.954 Sale or lease of used manufactured homes. In the sale or lease of any used manufactured home, the sales invoice or lease agreement shall contain the point of manufacture of the used manufactured home, the name of the manufacturer and the

name and address of the previous owner of the manufactured home.

History: 1999 a. 9, 53.

101.955 Jurisdiction and venue over out-of-state manufacturers. (1) The importation of a manufactured home for sale in this state by an out-of-state manufacturer is considered an irrevocable appointment by that manufacturer of the department of financial institutions to be that manufacturer's true and lawful attorney upon whom may be served all legal processes in any action or proceeding against such manufacturer arising out of the importation of such manufactured home into this state.

(2) The department of financial institutions upon whom processes and notices may be served under this section shall, upon being served with such process or notice, mail a copy by registered mail to the out-of-state manufacturer at the nonresident address given in the papers so served. The original shall be returned with proper certificate of service attached for filing in court as proof of service. The service fee shall be \$4 for each defendant so served. The department of financial institutions shall keep a record of all such processes and notices, which record shall show the day and hour of service.

History: 1999 a. 9, 53.

101.965 Penalties. (1) Any person who violates ss. 101.953 to 101.955, or any rule promulgated under ss. 101.953 to 101.955, may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(2) In any court action brought by the department for violations of this subchapter, the department may recover all costs of testing and investigation, in addition to costs otherwise recoverable, if it prevails in the action.

(3) Nothing in this subchapter prohibits the bringing of a civil action against a manufactured home manufacturer, manufactured home dealer or manufactured home salesperson by an aggrieved consumer. If judgment is rendered for the consumer based on an act or omission by the manufactured home manufacturer, manufactured home dealer or manufactured home salesperson, that constituted a violation of this subchapter, the plaintiff shall recover actual and proper attorney fees in addition to costs otherwise recoverable.

History: 1999 a. 9, 53, 185.

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.

Cross Reference: See also chs. Comm 61, 62, 63, 64, and 65 and ss. Comm 61.01 and 61.40, Wis. adm. code.

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. 20.143 (3) (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; 1995 a. 27.

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 multi-

family 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.

Cross Reference: See also chs. Comm 61, 62, 63, 64, and 65 and ss. Comm 61.01 and 61.40, Wis. adm. code.

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 subch. I.

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 subch. I.

(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 subch. I.

History: 1991 a. 269; 1995 a. 27.

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.