WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO

PUBLIC EMPLOYEE SAFETY AND HEALTH

OCTOBER 2012

State of Wisconsin
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INTRODUCTION

PUBLIC EMPLOYEE SAFETY AND HEALTH

The development of statutes and rules is ongoing. Therefore, these statutes and rules may be revised subsequent to the printing of this book. Most local libraries maintain current sets of the Wisconsin Statutes. Both statutes and rules are available at Web pages of the Wisconsin Legislature.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: http://www.legis.state.wi.us/rsb/statutes.html
Rules: http://www.legis.state.wi.us/rsb/code/codtoc.html

Division of Industry Services establishes and enforce occupational safety and health standards for public sector employees. Consultation and inspections are provided. Wisconsin's Clean Indoor Air Act and the Right to Know Law, which provide information to employees concerning workplace conditions, are administered by the Division.

CHAPTER 101

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES — REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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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 safety and professional services.

(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, long−term 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 any of the following:

(a) An adult family home, as defined in s. 50.01 (1).

(b) 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.

(c) A home−based business, as defined by the department by rule.

(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 any of the following:

(a) 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.

(b) An adult family home, as defined in s. 50.01 (1).

(c) A home−based business, as defined by the department by rule.

(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 safety and professional services.

(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; 2007 a. 20; 2011 a. 32, 146.

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) [now sub. (6)]. 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), 97−0332.

"Tenants" under sub. (12) refers to the number of units available in the building, not to the number of individuals in the building. Raymaker v. American Family Mutual Insurance Co. 2006 WI App 117, 293 Wis. 2d 392, 718 N.W.2d 154, 05−1557.

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

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(6) (e) to (i), petition the department for a hearing on the ground that such local order is unreasonable and in conflict with the order of the department. The petition for such hearing shall conform to the requirements set forth for a petition in s. 101.02 (6) (e) to (i).

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

(7m) Notwithstanding sub. (7) (a), no city, village or town may make or enforce any ordinance that is applied to any multifamily dwelling, as defined in s. 101.971 (2), and that does not conform to subch. VI and this section or is contrary to an order of the department under 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.

(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.

2009−10 Wis. Stats. database current through 2011 Wis. Act 286. Includes all Legislative Acts and all Supreme Court Orders enacted before Oct. 1, 2012. Statutory changes effective on or prior to Oct. 1, 2012 are printed as currently in effect. Changes effective after Oct. 1, 2012 are designated by NOTES. See Are the Statutes on this Website Official? (10−18−12)

(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 frequenters of places of employment.

(j) The department shall ascertain, fix and order such reasonable standards or rules for the construction, repair and maintenance of places of employment and public buildings, as shall render them safe.

(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. 20.165 (2) (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 services, develop a report form to document contact with blood or body fluids that constitutes a significant exposure, for use under s. 252.15 (5g) (c). The form shall contain the following language for use by a person who may have had a significant exposure: "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 $50,000 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 for an occupation or profession under s. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.147, 101.15 (2) (e), 101.16 (3g), 101.17, 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (1m), (1v), and (2), 101.935, 101.95, 101.951, 101.952, 101.96 (2), 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18, or 167.10 (6m) or under rules promulgated under ch. 101 or 145.

(b) Except as provided in par. (e), the department of safety and professional services may not issue or renew a license unless each applicant who is an individual provides the department of safety and professional services with his or her social security number and each applicant that is not an individual provides the department of safety and professional services with its federal employer identification number. The department of safety and professional services 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 safety and professional services 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 safety and professional services 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 safety and professional services that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families.

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 for an occupation or profession under s. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.147, 101.15 (2) (e), 101.16 (3g), 101.17, 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (1m), (1v), and (2), 101.935, 101.95, 101.951, 101.952, 101.96 (2), 101.985 (1) to (3), 145.02 (4),

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145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18, or 167.10 (6m) or under rules promulgated under ch. 101 or 145.

(b) As provided in the memorandum of understanding under s. 49.857 and except as provided in par. (e), the department of safety and professional services may not issue or renew a license unless the applicant provides the department of safety and professional services with his or her social security number. The department of safety and professional services may not disclose the social security number except that the department of safety and professional services 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 children and families 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 children and families 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 children and families 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 safety and professional services that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families.

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

(22) (a) In this subsection, "insulating concrete form" means a hollow expandable polystyrene form that is filled with concrete.

(b) Except as provided in par. (c), no later than April 1, 2007, the department shall provide a designation on every standard building permit form prescribed by the department under this chapter to indicate whether insulating concrete forms are being used in the construction of the building for which the permit is issued.

(c) No later than June 1, 2006, the department shall provide the designation described under par. (b) on all electronic versions of every standard building permit form prescribed by the department under this chapter.

(23) The department shall include the following language on every standard building permit form prescribed by the department under this chapter: "YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER."

(24) (a) In this subsection:

1. "Instruction" means any education, training, instruction or other experience related to an occupation or profession.

2. "License" means a license, permit, or certificate of certification or registration issued by the department for an occupation or profession under s. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.147, 101.15 (2) (e), 101.16 (3g), 101.17, 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.654, 101.73 (5) or (6), 101.82 (1m), (1v), and (2), 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18, or 167.10 (6m) or under rules promulgated under ch. 101 or 145.

Note: Section 101.177 was repealed. Corrective legislation is pending.

(b) The department shall count any relevant instruction that an applicant for a license has obtained in connection with any military service, as defined in s. 111.32 (12g), toward satisfying the requirements for instruction for that license if the applicant demonstrates to the satisfaction of the department that the instruction obtained by the applicant is substantially equivalent to the instruction required for the license.

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; 2005 a. 251, 456; 2007 a. 20 ss. 2609 to 2613, 9121 (6) (a); 2007 a. 63, 203; 2009 a. 16, 28, 209, 373; 2011 a. 32, 120, 146.

Cross−reference: See also SPS, 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).

When an inspector determines that there is a violation of safety orders and a condition of extreme and imminent danger to a worker's life exists, the inspector 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.

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 sub-

ject 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. SPS 364, Wis. adm. code.

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

(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 the International Energy Conservation Code or an energy efficiency code other than the International Energy Conservation Code 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 the International Energy Conservation Code is published.

2. Three 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 the International Energy Conservation Code is published, the department shall complete its review of the energy conservation code, as defined in sub. (1), and submit to the legislature proposed rules changing the energy conservation code, as defined in sub. (1), no later than 18 months after the date on which the revision of the International Energy Conservation Code is published.

2. If the department begins a review under sub. (2) because 3 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 3−year period.

History: 1993 a. 242; 2005 a. 141.

Cross−reference: See also ch. SPS 363, 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.

(5) No standard, rule, order, code, or regulation adopted, promulgated, enforced, or administered by the department under s. 101.025, 101.027, 101.12, 101.121, or 101.125 to 101.135 applies to a building used for farming, as defined by the department by rule.

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; 2011 a. 146.

Cross−reference: See also ch. SPS 361, 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, but excludes the Health Insurance Risk−Sharing Plan Authority.

(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 employment which is as safe and healthful as that provided under the standard from which the employer seeks a permanent variance. A permanent variance may be modified or revoked upon application by the employer, an affected 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 subd. 3. The employer shall ensure that the order is not altered, defaced or covered by other materials.

2. 'Decision not to issue.' If the department decides not to issue an order in response to a request for inspection filed under sub. (5) (a), it shall mail written notice of that decision to the public employee or public employee representative who requested the investigation. A decision under this subdivision is reviewable by the department under subd. 3.

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

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

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

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plaint 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.

Cross−reference: See also ch. DWD 223, Wis. adm. code.

(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; 2005 a. 74.

Cross−reference: See also chs. SPS 303, 330, and 332, 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), 98−1693.

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.

(cm) "Secondary containment" means a barrier, approved by the department, that is installed around a storage tank system and that is designed to prevent a leak from a primary tank or piping from contacting the surrounding earth or waters of the state.

(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 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).

(3m) SECONDARY CONTAINMENT REQUIREMENTS. (a) In this subsection, "hazardous substance" means a combustible liquid, a flammable liquid, or a federally regulated hazardous substance.

(b) The department may not impose any requirement that specifies that pipe connections at the top of a storage tank and beneath all freestanding pumps and dispensers that routinely contain a hazardous substance be placed within secondary containment sumps, if the pipe connections were installed or in place on or before February 1, 2009. This subsection does not apply after December 31, 2020.

(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 $5,000 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; 2007 a. 20; 2011 a. 32.

Cross−reference: See also ch. SPS 310, Wis. adm. code.

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101.10 Storage and handling of anhydrous ammonia; theft of anhydrous ammonia and anhydrous ammonia equipment. (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.

(f) Intentionally release or allow the escape of anhydrous ammonia belonging to another into the atmosphere. This paragraph does not apply if the owner has authorized the actor to exercise control over the anhydrous ammonia or has consented to its release.

(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; 2005 a. 14.

Cross−reference: See also ch. SPS 343, 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. SPS 361, 362, 363, 364, and 365, 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. Hartnell, 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. McCrossen 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 815 (Ct. App. 1998), 96−3640.

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), 97−3040.

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, 98−2557.

The duties imposed on employers and property owners under this section are nondelegable. Barry v. Employers Mutual Casualty Co. 2001 WI 101, 245 Wis. 2d 560, 630 N.W.2d 517, 98−2557.

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.

Land that is merely appurtenant to a place where business is carried on is not a place of employment under s. 101.01 (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, 272 Wis. 2d 341, 679 N.W.2d 341, 03−1077.

If constructive notice is relied on, generally, evidence of the length of time that the unsafe condition existed is required to establish it. Constructive notice, without a showing of temporal evidence of the unsafe condition, may be imputed in a narrow class of cases where the method of merchandizing articles for sale to the public in the area where the harm occurred should have made that harm reasonably foreseeable at that location. Megal v. Green Bay Area Visitor & Convention Convention Bureau, Inc. 2004 WI 98, 274 Wis. 2d 162, 682 N.W.2d 857, 02−2932.

Ten years after a structure is substantially completed, s. 893.89 bars safe place claims under this section resulting from injuries caused by structural defects, as opposed to safe place claims resulting from injuries caused by unsafe conditions associated with the structure. Mair v. Trollhaugen Ski Resort, 2006 WI 61, 291 Wis. 2d 132, 715 N.W.2d 598, 04−1252.

The owner of a public building is liable for: 1) structural defects; and 2) unsafe conditions associated with the structure of the building. A structural defect is a hazardous condition inherent in the structure by reason of its design or construction. An unsafe condition arises from the failure to keep an originally safe structure in proper repair or properly maintained. A property owner is liable for injuries caused by a structural defect regardless of whether it had notice of the defect, but only liable for an unsafe condition when it had actual or constructive notice of the condition. Rosario v. Acuity, 2007 WI App 194, 304 Wis. 2d 713, 738 N.W.2d 608, 06−2421.

Safe is a relative term that does not mean completely free of any hazards. What constitutes a safe place depends on the facts and conditions present and the use to which the place is likely to be put. That a place could be made more safe does not mean that an owner has breached the duty of care established by sub. (1). When the agency having power to adopt orders to secure the safety of employees and frequenters of public buildings has issued a safety order concerning a particular situation, it establishes what is safe, and a jury or court cannot establish any other standard. Szalacinski v. Campbell, 2008 WI App 150, 314 Wis. 2d 286, 760 N.W.2d 420, 07−0667.

The trial court erred in finding no unsafe condition under the safe place statute when it applied a height requirement to a sidewalk crack. There is no mathematical deviation rule that is a standard for a safe sidewalk. The ultimate question is not what is a defect, or how many inches high was the obstruction or deep the depression, but solely whether under all circumstances affecting the sidewalk it was in a reasonably safe condition for public travel by persons exercising ordinary care for their own safety. Gulbrandsen v. H & D, Inc. 2009 WI App 138, 321 Wis. 2d 410, 773 N.W.2d 506, 08−2990.

The safe place statute includes a duty on employers to inspect premises to ensure that they are safe. Failure to comply renders the employer liable for the violation of the safe place statute. The duty to maintain does not arise until constructive knowledge of the defect exists, but if an adequate inspection would have revealed the defect and that inspection was not performed, the jury may infer constructive notice of the defect. The safe place statute applies the duty to maintain to both owners and employers alike. Gennrich v. Zurich American Insurance Company, 2010 WI App 117, 329 Wis. 2d 91, 789 N.W.2d 106, 09−2111.

A "structural defect" for which an owner sustains safe place liability for the defect regardless of knowledge of the defect arises from design or construction flaws when a building element is put in place, whether as an original part of a structure or as a replacement. This contrasts with features of a structure that were installed safely and then developed into a hazard. Wagner v. Cincinnati Casualty Co. 2011 WI App 85, 334 Wis. 2d 516, 800 N.W.2d 27, 10−1195.

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. SPS 362.3300, Wis. adm. code.

101.12 Approval and inspection of public buildings and places of employment and components. (1) Except for plans that are reviewed by the department of health 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.

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(b) Industrial exhaust systems.

(c) Elevators, escalators, lifts, as defined in s. 167.33 (1) (f), 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

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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); 2007 a. 20 s. 9121 (6) (a); 2011 a. 199.

Cross−reference: See also chs. SPS 318, 334, and 361, 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.

101.1206 Erosion control; construction of public buildings and buildings that are places of employment. **(1)** The department shall establish statewide standards for erosion control at building sites for the construction of public buildings, as defined in s. 101.01 (12), and buildings that are places of employment, as defined in s. 101.01 (11).

(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: 2011 a. 32 ss. 2331, 2898c to 2905; Stats. 2011 s. 101.1206.

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.

(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. SPS 366, 375, 376, 377, 378, and 379, Wis. adm. code.

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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.

Cross−reference: See also ch. SPS 372, Wis. adm. code.

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 (1g) 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; 2011 a. 209.

Cross−reference: See also ss. SPS 366.0711 and 366.0808 and ch. SPS 367, Wis. adm. code.

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

101.123 Smoking prohibited. (1) DEFINITIONS. In this section:

(ab) "Assisted living facility" means a community−based residential facility, as defined in s. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01 (6d), or an adult family home, as defined in s. 50.01 (1) (b).

Note: The cross−reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

(abm) "Child care center" has the meaning given in s. 49.136 (1) (ad).

(ac) "Correctional facility" means any of the following:

1. A state prison, as defined or named in s. 302.01, except a correctional institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner's place of residence and no one is employed there to ensure the prisoner's incarceration.

2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility is a private residence in which the juvenile is placed and no one is employed there to ensure that the juvenile remains in custody.

3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under s. 302.30.

(ae) "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.

(aj) Notwithstanding s. 101.01 (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.

(ak) "Enclosed place" means a structure or area that has all of the following:

1. A roof.

2. More than 2 substantial walls.

(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 six feet from the state capitol building.

(b) "Inpatient health care facility" means a hospital, as defined in s. 50.33 (2), a county home established under s. 49.70, a county infirmary established under s. 49.72, a nursing home, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a Wisconsin veterans home under s. 45.50, or a treatment facility.

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

1. A bed and breakfast establishment, as defined in s. 254.61 (1).

2. A hotel, as defined in s. 254.61 (3).

3. A tourist rooming house, as defined in s. 254.61 (6).

(d) "Person in charge" means the person, or his or her agent, who ultimately controls, governs or directs the activities aboard a public conveyance or at a location where smoking is prohibited or regulated under this section.

(dj) Notwithstanding s. 101.01 (11), "place of employment" means any enclosed place that employees normally frequent during the course of employment, including an office, a work area, an

elevator, an employee lounge, a restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a lobby, a common area, a vehicle, or an employee cafeteria.

(dn) "Private club" means a facility used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose.

(e) "Public conveyance" means a mass transit vehicle as defined in s. 340.01 (28m), a school bus as defined in s. 340.01 (56), or any other device by which persons are transported, for hire, on a highway or by rail, water, air, or guidewire within this state, but does not include such a device while providing transportation in interstate commerce.

(eg) "Public place" means any enclosed place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited.

(f) "Restaurant" means an establishment as defined in s. 254.61 (5).

(g) "Retail establishment" means any store or shop in which retail sales is the principal business conducted.

(gg) "Retail tobacco store" means a retail establishment that does not have a "Class B" intoxicating liquor license or a Class "B" fermented malt beverages license and that generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories.

(h) "Smoking" means burning or holding, or inhaling or exhaling smoke from, any of the following items containing tobacco:

1. A lighted cigar.
2. A lighted cigarette.
3. A lighted pipe.
4. Any other lighted smoking equipment.

(hm) "Sports arena" means any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.

(i) "State institution" means a mental health institute, as defined in s. 51.01 (12), a center for the developmentally disabled, as defined in s. 51.01 (3), or a secure mental health facility at which persons are committed under s. 980.06.

(id) "Substantial wall" means a wall with no opening or with an opening that either does not allow air in from the outside or is less than 25 percent of the wall's surface area.

(im) "Tavern" means an establishment, other than a restaurant, that holds a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license.

(in) "Tobacco bar" means a tavern that generates 15 percent or more of its annual gross income from the sale on the tavern premises, other than from a vending machine, of cigars and tobacco for pipes.

(io) "Tobacco product" means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

(ip) "Treatment facility" means a publicly or privately operated inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons.

(j) "Type 1 juvenile correctional facility" has the meaning given in s. 938.02 (19).

(2) PROHIBITION AGAINST SMOKING. (a) Except as provided in sub. (3), no person may smoke in any of the following enclosed places:

1g. The state capitol.

1m. Residence halls or dormitories owned or operated by a college or university.

1r. Child care centers.

2. Educational facilities.

3. Inpatient health care facilities.

4. Theaters.

5m. Correctional facilities.

5t. State institutions.

7. Restaurants.

7m. Taverns.

7r. Private clubs.

8. Retail establishments.

8d. Common areas of multiple−unit residential properties.

8g. Lodging establishments.

8r. State, county, city, village, or town buildings.

9. All enclosed places, other than those listed in subds. 1g. to 8r., that are places of employment or that are public places.

(d) No person may smoke at any of the following outdoor locations:

1. In the immediate vicinity of the state capitol.

2. Anywhere on the premises of a child care center when children who are receiving child care services are present.

3. Anywhere on the grounds of a Type 1 juvenile correctional facility.

4. A location that is 25 feet or less from a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System.

(e) No person may smoke in any of the following:

1. A sports arena.

2. A bus shelter.

3. A public conveyance.

(2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge may allow any person to smoke in violation of sub. (2) at a location that is under the control or direction of the person in charge.

(b) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.

(c) A person in charge shall make reasonable efforts to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:

1. Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.

2. Refusing to serve a person, if the person is smoking in a restaurant, tavern, or private club.

3. Asking a person who is smoking to refrain from smoking and, if the person refuses to do so, asking the person to leave the location.

(d) If a person refuses to leave a location after being requested to do so as provided in par. (c) 3., the person in charge shall immediately notify an appropriate law enforcement agency of the violation.

(e) A person in charge may take measures in addition to those listed in pars. (b) and (c) to prevent persons from being exposed to others who are smoking or to further ensure compliance with this section.

(3) EXCEPTIONS. The prohibition against smoking in sub. (2) (a) does not apply to the following:

(h) A private residence.

(i) A room used by only one person in an assisted living facility as his or her residence.

(j) A room in an assisted living facility in which 2 or more persons reside if every person who lives in that room smokes and each of those persons has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.

(L) A retail tobacco store that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.

(m) A tobacco bar that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.

(4m) LOCAL AUTHORITY. 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

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purpose of this section, protect the health and comfort of the public. If a county, city, village, or town enacts an ordinance, or if a school district adopts a policy, regulating or prohibiting outside smoking in certain areas as authorized under this subsection, the ordinance may apply only to public property under the jurisdiction of the county, city, village, town, or school district. Such ordinance shall provide that the person in charge of a restaurant, tavern, private club, or retail establishment located in an area subject to the ordinance may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club, or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke. Such ordinance may not define the term "reasonable distance" or set any specified measured distance as being a "reasonable distance."

(6) UNIFORM SIGNS. The department shall, by rule, specify uniform dimensions and other characteristics of the signs required under sub. (2m). 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 signs prepared and made available to state agencies for use in state facilities that set forth the prohibition against smoking.

(8) PENALTIES. (a) Any person who violates sub. (2) shall be subject to a forfeiture of not less than $100 nor more than $250 for each violation.

(d) Except as provided in par. (dm) or (em), any person in charge who violates sub. (2m) (b) to (d) shall be subject to a forfeiture of $100 for each violation.

(dm) For violations subject to the forfeiture under par. (d), if the person in charge has not previously received a warning notice for a violation of sub. (2m) (b) to (d), the law enforcement officer shall issue the person in charge a warning notice and may not issue a citation.

(em) No person in charge may be required under par. (d) to forfeit more than $100 in total for all violations of sub. (2m) (b) to (d) occurring on a single day.

(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; 2005 a. 344; 2007 a. 20 s. 9121 (6) (a); 2009 a. 12, 185, 276; s. 13.92 (1) (bm) 2.

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 homes, industrialized housing, lodging homes, and any other building used as a dwelling for one or more persons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) LIABILITY OF EMPLOYERS AND SELLERS. (a) No 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; 2005 a. 45.

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. SPS 362.0400, Wis. adm. code.

101.127 Building requirements for certain residential facilities. The department, after consultation with the department of health 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 services. The objectives of the code shall be to guarantee health and safety and to maintain insofar as possible a homelike environment. 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; 2007 a. 20 s. 9121 (6) (a); 2007 a. 144.

Cross−reference: See also s. SPS 362.0400 (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 semiambulatory or nonambulatory disabilities to enter, circulate

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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 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 quali-

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fied 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. SPS 318, 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. (e) 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.

(am) Notwithstanding par. (a), the department may not require the owner or operator of a mobile kitchen to install or maintain an automatic fire suppression system or an exhaust hood in, or as part of, the mobile kitchen if all of the following apply:

1. The mobile kitchen is less than 365 square feet in size.

2. The mobile kitchen is used on fewer than 12 days a year for the purpose of cooking.

(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.

(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 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,

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employees and frequenters of places of employment and public buildings.

(b) 1m. In this paragraph, "private student residential building" means a privately owned and operated residential building that has a capacity of at least 100 occupants, that is occupied by persons at least 80 percent of whom are enrolled in an institution of higher education, and that has attributes usually associated with a student residence hall or dormitory such as a food service plan or occupancy by a resident advisor.

1r. Except as provided in subds. 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 1r. 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. 1r. 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 all of the following:

a. 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.

b. 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. Every residence hall and dormitory over 60 feet in height, the initial construction of which was begun before January 7, 2006, that is owned or operated by an institution of higher education, other than a residence hall or dormitory 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, 2014.

d. Every residence hall and dormitory, the initial construction of which is begun on or after January 7, 2006, that is owned or operated by an institution of higher education, other than a residence hall or dormitory 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.

e. Every student residential facility operated by a fraternity, sorority, or other organization authorized or sponsored by an institution of higher education, the initial construction of which was begun before January 7, 2006, and every private student residential building over 60 feet in height, the initial construction of which was begun before January 7, 2006, to contain an automatic fire sprinkler system on each floor by January 1, 2014.

f. Every student residential facility operated by a fraternity, sorority, or other organization authorized or sponsored by an institution of higher education, the initial construction of which is begun on or after January 7, 2006, and every private student residential building, the initial construction of which is begun on or after January 7, 2006, to have an automatic fire sprinkler system installed on each floor at the time the facility is constructed.

(c) 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 International Code Council, Inc., building code which relate to fire detection, prevention and suppression in public buildings and places of employment.

(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.

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

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

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

2. More than 8 dwelling units.

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

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

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

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

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

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

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

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

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

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

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

(5) (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; 2005 a. 78, 220; 2007 a. 148, 149, 173; 2011 a. 257.

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

Cross−reference: See also chs. SPS 314 and 362, 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).

Sub. (4m) (b) limits the authority of the department of commerce under s. 101.02 (15) and sub. (4) (a) only insofar as it mandates the department to require sprinkler systems in multifamily dwellings that exceed twenty units or the specified floor area. Sub. (4m) (b) plainly does not restrict the authority of the department under other statutory provisions to promulgate rules requiring fire protection devices in multifamily dwellings that have fewer dwelling units or a smaller floor area than that specified in the statute. Wisconsin Builders Association v. Department of Commerce, 2009 WI App 20, 316 Wis. 2d 301, 762 N.W.2d 845, 08−1438.

101.141 Record keeping of fires. (1) Each city, village, and town fire department shall file a report for each fire that involves a building and that occurs within the boundaries of the city, village, or town with the U.S. fire administration for placement in the fire incident reporting system maintained by the U.S. fire administration. The report shall be filed within 60 days after the fire occurs.

(2) Each report filed under sub. (1) shall include all of the following information:

(a) The age of the building.

(b) The purpose for which the building was used at the time of the fire.

(c) If the building was used as a home, whether the building was a multifamily dwelling complex, a single−family dwelling, or a mixed−use building with one or more dwelling units.

(d) The number of dwelling units in the building, if the building was a multifamily dwelling complex or a mixed−use building.

(e) Whether the building had an automatic fire sprinkler system at the time of the fire and, if so, whether the system was operational.

(f) Whether the building had a fire alarm system at the time of the fire and, if so, whether the system was operational.

(g) The cause of the fire.

(gg) An estimate of the amount of damages to the building as a result of the fire.

(gm) The number of human deaths due to the fire, if any.

(gr) The number of human injuries due to the fire, if any.

(h) Any other relevant information concerning the building, as determined by the fire department.

(3) The department may review, correct, and update any report filed by a fire department under this section.

History: 1975 c. 224; 2007 a. 75.

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. SPS 347.11, 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 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. 20.165 (2) (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 safety and professional services 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 safety and professional services 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 safety and professional services and the department of natural resources

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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 safety and professional services 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 safety and professional services and the department of natural resources shall attempt to reach an agreement that is consistent with those provisions. If the department of safety and professional services 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 safety and professional services and the department of natural resources, jointly, shall promulgate rules incorporating any agreement between the department of safety and professional services 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. 20.165 (2) (Lm).

(2e) RISK−BASED ANALYSIS. (a) The department of safety and professional services 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 safety and professional services receives notification under sub. (3) (a) 3.

(b) If the department of safety and professional services 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 administration shall resolve any matters on which the departments disagree in a manner that is consistent with par. (a). The department of safety and professional services and the department of natural resources, jointly, shall promulgate rules incorporating any agreement between the department of safety and professional services 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 safety and professional services shall apply the method in the rules promulgated under par. (b) to determine the risk posed by a discharge for which the department of safety and professional services receives notification under sub. (3) (a) 3.

(2m) INTERDEPARTMENTAL COORDINATION. Whenever the department of safety and professional services 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 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 safety and professional services 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 safety and professional services, 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 safety and professional services estimates that the cost to complete a site investigation, remedial action plan and remedial action for an occurrence exceeds $60,000, the department of safety and professional services shall implement a competitive public bidding process to obtain information to assist in making the determination under par. (cs).

2. The department of safety and professional services 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 safety and professional services or the department of natural resources may waive the requirement under subd. 1. after providing notice to the other department.

6. The department of safety and professional services 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 safety and professional services may disqualify a person from submitting bids under subd. 1. if, based on past performance of the bidder, the department determines that

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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 safety and professional services 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 safety and professional services 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 safety and professional services shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

4. The department of safety and professional services 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 safety and professional services 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 safety and professional services 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 safety and professional services 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 safety and professional services shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

4. The department of safety and professional services 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 safety and professional services 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 safety and professional services 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 safety and professional services 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 safety and professional services and the department of natural resources of the emergency and the department of safety and professional services 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. 20.165 (2) (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. 20.165 (2) (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.

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. 238.13 (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 specified 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 stor-

age 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 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 (2), 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 (2), 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 safety and professional services 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 family income, as determined annually by the U.S. department of housing and urban development for each county in the state, 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 safety and professional services 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,

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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 subds. 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 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

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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.

(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 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, and to make payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under this subsection.

(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 $386,924,000 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, to pay accrued or capitalized interest, and to make payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under this subsection.

(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 $5,000. 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.

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; 2005 a. 75; 2007 a. 20, 145; 2009 a. 28, 240; 2011 a. 32.

Cross−reference: See also chs. SPS 346 and 347, 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.

101.1435 Removal of abandoned underground petroleum storage tanks. (1) In this section:

(a) "Backfill" does not include landscaping or replacing sidewalk, asphalt, fence, or sod or other vegetation.

(b) "Underground petroleum product storage tank system" has the meaning given in s. 101.143 (1) (i).

(2) The department may contract with a person registered or certified under s. 101.09 (3) to empty, clean, remove, and dispose

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of an underground petroleum product storage tank system; to assess the site on which the underground petroleum product storage tank system is located; and to backfill the excavation if all of the following apply:

(a) The department determines that the underground petroleum product storage tank system is abandoned.

(b) Using the method that the department uses to determine inability to pay under s. 101.143 (4) (ee), the department determines that the owner of the underground petroleum product storage tank system is unable to pay to empty, clean, remove, and dispose of the underground petroleum product storage tank system; to assess the site on which the underground petroleum product storage tank system is located; and to backfill the excavation.

(3) If the department incurs costs under sub. (2), the department shall record a statement of lien with the register of deeds of the county in which the underground petroleum product storage tank system was located. Upon recording the statement of lien, the department has a lien on the property on which the underground petroleum product storage tank system was located in the amount of the costs incurred. The property remains subject to the lien until that amount is paid in full to the department. The department shall deposit payments received under this subsection into the petroleum inspection fund.

History: 2009 a. 28.

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 safety and professional services 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 safety and professional services.

(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 safety and professional services 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 safety and professional services 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 safety and professional services shall promulgate rules incorporating any agreement between the department of safety and professional services 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 safety and professional services shall revise the rules using the procedure for promulgating the rules in par. (a).

(3m) (a) The department of safety and professional services 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.

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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 safety and professional services 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; 2011 a. 32.
Cross−reference: See also chs. SPS 346 and 347, 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 bear an Underwriters Laboratories, Inc., listing mark or similar mark from an independent product safety certification organization.

(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 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; 2007 a. 205; 2011 a. 146.

101.147 Contractor registration. (1) No person may hold himself or herself out or act as a construction contractor unless that person is registered as a construction contractor by the department.

(2) The department shall promulgate rules to administer and enforce this section.

(3) The department may directly assess a forfeiture by issuing an order against any person who violates this section.

(4) The registration requirement under sub. (1) does not apply to any of the following:

(a) A person who engages in construction on property owned or leased by that person.

(b) A state agency or local governmental unit.

(c) A person who engages in construction in the course of his or her employment by a state agency or local governmental unit.

History: 2009 a. 28.

101.148 Contractor notices. (1) DEFINITIONS. In this section:

(a) "Consumer" means a person who enters into a written or oral contract with a contractor to construct or remodel a dwelling.

(b) "Contractor" means a person who enters into a written or oral contract with a consumer to construct or remodel a dwelling.

(c) "Deliver" means any of the following:

1. Depositing the document or written notice in the U.S. mail or with a commercial delivery service, addressed to the applicable person.

2. Giving the document or written notice personally to the applicable person.

(d) "Dwelling" means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. "Dwelling" includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

(e) "Remodel" means to alter or reconstruct a dwelling. "Remodel" does not include maintenance or repair work.

(2) NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Before entering into a written contract to construct or remodel a dwelling, or, if the parties enter into an oral contract, as soon as reasonably possible, but before commencing any work to construct or remodel a dwelling, the contractor shall deliver to the consumer a copy of the brochure prepared under s. 895.07 (13) and a notice worded substantially as follows:

NOTICE CONCERNING CONSTRUCTION DEFECTS

Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer. Section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obligated to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.

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(b) The notice required under par. (a) shall be conspicuous and in writing and may be included within the contract between the contractor and the consumer.

History: 2005 a. 201.

101.149 Carbon monoxide detectors. (1) DEFINITIONS. In this section:

(ag) "Bed and breakfast establishment" has the meaning given in s. 254.61 (1).

(am) "Carbon monoxide detector" means an electronic or battery−operated device that sounds an alarm when an unsafe level of carbon monoxide is in the air.

(b) "Residential building" means a tourist rooming house, a bed and breakfast establishment, or any public building that is used for sleeping or lodging purposes. "Residential building" does not include a hospital or nursing home.

(c) "Sleeping area" has the meaning given in s. 101.145 (1) (b).

(cm) "Tourist rooming house" has the meaning given in s. 254.61 (6).

(d) "Unit" means a part of a residential building that is occupied by one or more persons as a home, residence, or sleeping place.

(2) INSTALLATION REQUIREMENTS. (a) Except as provided in par. (b), the owner of a residential building shall install a carbon monoxide detector in all of the following places not later than the date specified under par. (c):

1. In the basement of the building if the basement has a fuel−burning appliance.

2. Within 15 feet of each sleeping area of a unit that has a fuel−burning appliance.

3. Within 15 feet of each sleeping area of a unit that is immediately adjacent to a unit that has a fuel−burning appliance.

4. In each room that has a fuel−burning appliance and that is not used as a sleeping area. A carbon monoxide detector shall be installed under this subdivision not more than 75 feet from the fuel−burning appliance.

5. In each hallway leading from a unit that has a fuel−burning appliance, in a location that is within 75 feet from the unit, except that, if there is no electrical outlet within this distance, the owner shall place the carbon monoxide detector at the closest available electrical outlet in the hallway.

(b) If a unit is not part of a multiunit building, the owner of the residential building need not install more than one carbon monoxide detector in the unit.

(c) 1. Except as provided under subd. 2., the owner of a residential building shall comply with the requirements of this subsection before the building is occupied.

2. The owner of a residential building shall comply with the requirements of this subsection not later than April 1, 2010, if construction of the building was initiated before October 1, 2008, or if the department approved the plans for the construction of the building under s. 101.12 before October 1, 2008.

(d) Any carbon monoxide detector that bears an Underwriters Laboratories, Inc., listing mark or similar mark from an independent product safety certification organization satisfies the requirements of this subsection.

(e) The owner shall install every carbon monoxide detector required by this subsection according to the directions and specifications of the manufacturer of the carbon monoxide detector.

(3) MAINTENANCE REQUIREMENTS. (a) The owner of a residential building shall reasonably maintain every carbon monoxide detector in the residential building in the manner specified in the instructions for the carbon monoxide detector.

(b) An occupant of a unit in a residential building may give the owner of the residential building written notice that a carbon monoxide detector in the residential building is not functional or has been removed by a person other than the occupant. The owner of the residential building shall repair or replace the nonfunctional or missing carbon monoxide detector within 5 days after receipt of the notice.

(c) The owner of a residential building is not liable for damages resulting from any of the following:

1. A false alarm from a carbon monoxide detector if the carbon monoxide detector was reasonably maintained by the owner of the residential building.

2. The failure of a carbon monoxide detector to operate properly if that failure was the result of tampering with, or removal or destruction of, the carbon monoxide detector by a person other than the owner or the result of a faulty detector that was reasonably maintained by the owner as required under par. (a).

(4) TAMPERING PROHIBITED. No person may tamper with, remove, destroy, disconnect, or remove batteries from an installed carbon monoxide detector, except in the course of inspection, maintenance, or replacement of the detector.

(5) EXCEPTIONS. Subsections (2) and (3) do not apply to the owner of a residential building if the residential building does not have an attached garage and any of the following applies:

(a) The residential building does not have any fuel−burning appliances.

(b) All of the fuel−burning appliances in the residential building have sealed combustion units that are covered by the manufacturer's warranty against defects.

(c) All of the fuel−burning appliances in the residential building have sealed combustion units that are inspected as provided in the rules promulgated by the department under sub. (6) (b) or in the rules promulgated by the department of health services under s. 254.74 (1) (am).

(6) RULES. (a) The department shall promulgate rules establishing a procedure under which the owner of a residential building may apply to the department for a waiver of the requirements under sub. (2).

(b) The department shall promulgate rules, in consultation with the department of health services, under which the department of safety and professional services shall authorize certified heating, ventilating, and air conditioning inspectors to conduct regular inspections of sealed combustion units, as required under sub. (5) (c), for carbon monoxide emissions in residential buildings other than hotels, tourist rooming houses, and bed and breakfast establishments. The rules shall specify conditions under which it may issue orders as specified under sub. (8) (a). The rules may not require the department of safety and professional services to authorize inspection of sealed combustion units during the period in which the sealed combustion units are covered by a manufacturer's warranty against defects.

(7) INSPECTION. To ensure compliance with subs. (2) and (3), the department, or a building inspector certified by the department, shall inspect the common area of residential buildings other than hotels, tourist rooming houses, and bed and breakfast establishments and may inspect a unit within such buildings at the request of the owner or occupant of the unit to be inspected.

(8) PENALTIES. (a) If the department of safety and professional services or the department of health services determines after an inspection of a building under this section or s. 254.74 (1g) that the owner of the building has violated sub. (2) or (3), the respective department shall issue an order requiring the person to correct the violation within 5 days or within such shorter period as the respective department determines is necessary to protect public health and safety. If the person does not correct the violation within the time required, he or she shall forfeit $50 for each day of violation occurring after the date on which the respective department finds that the violation was not corrected.

(b) If a person is charged with more than one violation of sub. (2) or (3) arising out of an inspection of a building owned by that person, those violations shall be counted as a single violation for the purpose of determining the amount of a forfeiture under par. (a).

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(c) Whoever violates sub. (4) is subject to the following penalties:

1. For a first offense, the person may be fined not more than $10,000 or imprisoned for not more than 9 months, or both.

2. For a 2nd or subsequent offense, the person is guilty of a Class I felony.

History: 2007 a. 20 s. 9121 (6) (a); 2007 a. 205; 2011 a. 32.

Cross−reference: See also ss. SPS 321.095, 362.1200, and 366.0911 (2), Wis. adm. code.

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 chs. SPS 307 and 308, Wis. adm. code.

When an inspector determines that there is a violation of safety orders and a condition of extreme and imminent danger to a worker's life exists, the inspector 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) DEFINITIONS. In this section:

(a) "Department of transportation cylinder" means a container that holds liquefied petroleum gas and that meets the specifications established by the federal department of transportation.

(b) "Liquefied petroleum gas" means any material which is composed predominantly of, or any mixtures of, any of the following hydrocarbons including their isomers:

1. Propane.

2. Propylene.

3. Butane.

4. Butylene.

(c) "Propane gas system" means an assembly consisting of one or more containers that has a total water capacity of at least 100 gallons and a means of conveying propane gas from the container or containers to a point of connection with devices used to consume the propane gas. A "propane gas system" includes all piping and other components associated with the assembly that are used to control the quantity, flow, pressure, and physical state of the propane gas.

(d) "Retail supplier" means a person engaged in the business of filling containers that have a water capacity of at least 4 pounds with liquefied petroleum gas that is intended to be used directly from the containers as fuel. "Retail supplier" does not include a person who fills such containers with liquefied petroleum gas for the person's own use.

(2) RULES. The department shall promulgate rules to 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.

(3) FILLING, EVACUATING, AND USE OF CONTAINERS. (a) Except as provided in par. (b), no person, other than the owner of a liquefied petroleum gas container or a person authorized by the owner, may fill, refill, evacuate, or use in any other manner the container for any purpose.

(b) A retail supplier may evacuate a liquefied petroleum gas container not under its ownership in order to transfer the remaining liquefied petroleum gas that is in that container into a container that is under its ownership.

(3g) LICENSE REQUIRED. (a) No retail supplier may distribute liquefied petroleum gas without holding a license issued by the department. The department, subject to s. 101.02 (20) and (21), shall issue a license to be a retail supplier upon receiving the fee established under s. 101.19 (1g) (L) or (1m) and upon obtaining proof of financial responsibility as required under sub. (3r) (c). The term of the license shall be set by the department, not to exceed 2 years.

(b) The department shall publish an annual list of all retail suppliers holding valid licenses under par. (a).

(3r) FINANCIAL RESPONSIBILITY. (a) Except as provided in par. (b), a retail supplier shall maintain proof of financial responsibility in the amount of $1,000,000 per occurrence with an annual aggregate of $2,000,000 for compensating 3rd parties for bodily injury and property damages for incidents associated with the release of liquefied petroleum gas.

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(b) A retail supplier who only fills department of transportation cylinders or who only fills containers for engine and recreational vehicle fueling systems shall maintain proof of financial responsibility in the amount of $500,000 per occurrence with an annual aggregate of $1,000,000 for compensating 3rd parties for bodily injury and property damages for incidents associated with the release of liquefied petroleum gas.

(c) A retail supplier may obtain any of the following to prove financial responsibility as required under par. (a) or (b):

1. A surety bond that is issued by a surety company that is listed as an acceptable surety for federal bonds on the date that the surety bond is obtained in the most recently published U.S. department of the treasury's circular 570.

2. An irrevocable letter of credit that is issued by a financial institution that is authorized to do business in this state or that is federally chartered. The letter of credit shall be for an initial period of at least one year.

3. Commercial general liability insurance as an endorsement to an existing policy or as a separate policy from an insurer, or a risk retention group, that is licensed to transact the business of insurance in this state or that is eligible to provide insurance as a surplus lines insurer in one or more states.

(d) A retail supplier who fails to maintain proof of financial responsibility as required under par. (a) or (b), may not distribute liquefied petroleum gas at retail until such proof is obtained.

(e) Each retail supplier shall file proof of financial responsibility as required under this subsection with the department.

(f) A 3rd party that issues a surety bond, a letter of credit, or general liability insurance to a retail supplier for purposes of this subsection shall provide written notice to the retail supplier and to the department at least 60 days before canceling, revoking, suspending, or failing to renew the bond, letter, or insurance.

(g) A retail supplier that cancels or fails to renew a surety bond, a letter of credit, or general liability insurance shall notify the department at least 60 days before cancelling or failing to renew the bond, letter, or insurance. Upon receipt of the notice, the department shall revoke the retail supplier's license issued under sub. (3g).

(h) A financial institution that issues an irrevocable letter of credit to a retail supplier for purposes of this subsection shall renew the letter automatically unless notice is given as required under par. (f).

(4) REQUIREMENTS TO PROVIDE INFORMATION. (a) The person actually performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department, showing that the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

(b) 1. A person who owns, leases, or uses a propane gas system and who is a customer of a retail supplier shall notify the retail supplier of propane gas for the propane gas system of any interruption in the operation of the propane gas system due to the replacement, modification, repair, or servicing of the propane gas system by any person other than the retail supplier. The customer shall provide the notice at least 7 days in advance of the interruption in the operation of the propane gas system, except as provided in subd. 2. The retail supplier, or the person replacing, modifying, repairing, or servicing the propane gas system, shall perform a check for leaks or other defects in the propane gas system before placing the propane gas system back into operation in the manner required by rule.

2. If the interruption of a propane gas system subject to subd. 1. is due to emergency repair or servicing, the customer shall provide the notice to the retail supplier as soon as possible and no later than 24 hours after the repair or servicing is completed.

(c) Each retail supplier filling a container that is part of a propane gas system shall provide written notice to each customer subject to par. (b) of the customer's duty under par. (b) before the retail supplier's first delivery of propane gas to that customer and shall provide subsequent notices on an annual basis. The notice shall include all of the following information concerning the duty to notify under par. (b):

1. The name, address, and telephone number of the retail supplier.

2. The purpose of giving the notification to the retail supplier.

3. A description of the type of propane gas system that is subject to the notification requirement.

4. A description of the types of activities that constitute a replacement, modification, repair, or servicing of a propane gas system.

5. A copy of the provisions under s. 101.16 (4) (b).

(5) PENALTIES. (ac) Except as provided in par. (am), any person who violates sub. (3) or (4) or any rule promulgated under sub. (2) shall forfeit not less than $10 nor more than $1,000.

(am) Any person who intentionally violates sub. (3) or (4) or any rule promulgated under sub. (2) shall be fined not less than $25 nor more than $2,000, or shall be imprisoned not less than 30 days nor more than 6 months.

(b) Except as provided in par. (c), any retail supplier who violates sub. (3g) or (3r) shall forfeit not less than $500 and not more than $1,000 for the first offense and not less than $2,000 but not more than $5,000 for each subsequent offense.

(c) Any retail supplier who violates sub. (3g) or (3r) shall forfeit not less than $200 and not more than $400 for the first offense and not less than $800 but not more than $2,000 for each subsequent offense if the retail supplier is one of the following:

1. A retail supplier who only fills department of transportation cylinders.

2. A retail supplier who only fills containers for engine and recreational vehicle fueling systems.

(cg) Paragraphs (b) and (c) do not apply to intentional violations of subs. (3g) or (3r).

(cm) Except as provided in par. (cn), any retail supplier who intentionally violates sub. (3g) or (3r) shall be imprisoned not less than 30 days nor more than 6 months or shall be fined not less than $500 nor more than $1,000 for the first offense and not less than $2,000 nor more than $5,000 for each subsequent offense.

(cn) Any retail supplier who only fills department of transportation cylinders or containers for engine and recreational vehicles and who intentionally violates sub. (3g) or (3r) shall be imprisoned not less than 30 days nor more than 6 months or shall be fined not less than $200 nor more than $400 for the first offense and not less than $800 nor more than $2,000 for each subsequent offense.

(cr) 1. Each day of violation of sub. (3) constitutes a separate offense.

2. Each day of violation of sub. (3g) constitutes a separate offense.

3. Each day of violation of sub. (3r) constitutes a separate offense.

4. Each day of violation of sub. (4) constitutes a separate offense.

(d) If a retail supplier is found in violation of sub. (3g) or (3r), the court shall require that the retail supplier cease distributing liquefied petroleum gas at retail until the retail supplier is issued the license required under sub. (3g).

(5m) CIVIL LIABILITY. (a) Any retail supplier who is licensed under sub. (3g) and who suffers damages caused by the filling of a container that is not a department of transportation cylinder by another retail supplier who is not so licensed may bring an action against the unlicensed retail supplier to do any of the following:

1. Enjoin the unlicensed retail supplier from distributing liquefied petroleum gas at retail until the retail supplier receives the required license.

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2. Receive monetary damages equal to 3 times the amount of any monetary loss sustained or $2,000, whichever is greater, multiplied by each day that the unlicensed supplier is not licensed under sub. (3g).

(b) Notwithstanding s. 814.04 (1), a retail supplier who prevails in an action under par. (a) shall be awarded reasonable attorney fees.

(c) An action under this subsection shall be commenced within 180 days after the cause of action accrues or be barred.

(6) EXEMPTION. This section does 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; 2007 a. 203; 2009 a. 180; 2011 a. 209; 2011 a. 260 s. 81.

Cross−reference: See also ss. SPS 305.73 and 340.40, 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. SPS 318, 333, 334, 341, 343, and 345, 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 ch. SPS 371, 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. SPS 305.70, 305.71, and 305.72, 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. (1b) 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.

(1g) 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, escalators, dumbwaiters, and amusement or thrill rides but not of amusement attractions.

(bm) The inspection by the department of lifts, as defined in s. 167.33 (1) (f).

(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.

(f) Administration of the manufactured dwelling program, the one− and two−family dwelling programs, the manufactured home and mobile home program, and the multifamily dwelling program.

(g) The inspection and investigation of accidents.

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

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

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

(k) Administering subch. VII, except that the department may not charge a fee for an emergency elevator mechanic's license under s. 101.985 (2) (c).

(L) Issuing licenses to retail suppliers of liquefied petroleum gas under s. 101.16 (3g), except as provided in sub. (1m).

(m) Registering construction contractors under s. 101.147.

(1m) The department shall collect an annual fee of $20 for issuing a license under s. 101.16 (3g) to a retail supplier who only fills department of transportation cylinders.

(1r) Notwithstanding subs. (1g) and (1m), the department shall waive any fee imposed on an individual who is eligible for the veterans fee waiver program under s. 45.44 for 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), 101.147, 101.15 (2) (e), 101.16 (3g), 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 (1m), (1v), and (2), 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.07 (12), 145.15, 145.16, 145.165, 145.17, 145.175, 145.18, or 167.10 (6m).

Note: Section 101.177 was repealed. Corrective legislation is pending.

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

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; 2005 a. 45, 456; 2007 a. 203; 2009 a. 28; 2011 a. 32, 199, 209.

Cross−reference: See also chs. SPS 302 and 361, 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.

101.31 Construction career academy grant program. (1) The department shall award grants to eligible organizations that operate a construction career academy that provides high school pupils with training in construction−related careers.

(2) An organization is eligible for a grant under this section if it proposes to operate a construction career academy that meets the following minimum criteria:

(a) It has established a partnership between a school board operating a high school, or a local business or sponsoring organization, and a technical college district board or baccalaureate degree granting institution in which the partners have committed to participate in the operation of the construction career academy for a minimum of 3 years.

(b) It provides high school pupils with the opportunity to receive up to 3 years of training in construction−related careers.

(c) It incorporates industry concepts into core academic areas.

(d) It incorporates into its curriculum work experience in construction−related industries.

(e) It coordinates classroom credits with a technical college district or with a baccalaureate degree granting institution.

(f) It uses a learning community curriculum approved by the department in consultation with the department of public instruction.

(g) It awards a certificate of recognition to each pupil who successfully completes the construction career academy's plan of study.

(3) The recipient of a grant under this section shall provide matching funds equal to 50 percent of the grant amount awarded to the recipient.

(4) The recipient of a grant under this section may use the grant funds only for the following purposes:

(a) To purchase materials and equipment, fund field trips, and make improvements to facilities, or for other specific needs relating to the construction career academy.

(b) For developing a core curriculum, for professional development, or for other administrative needs of the recipient.

(5) (a) The department may award a grant for the purposes described under sub. (4) (a) in an amount that equals not more than $900 for each pupil enrolled in the construction career academy at the time that the award is granted.

(b) The department may award a grant for the purposes described under sub. (4) (b) in an amount not exceeding $50,000.

(6) The department shall promulgate rules to administer this section.

History: 2007 a. 20.

101.45 Diesel truck idling reduction grants. (1) DEFINITIONS. In this section:

(a) "Common motor carrier" has the meaning given in s. 194.01 (1).

(b) "Contract motor carrier" has the meaning given in s. 194.01 (2).

(c) "Idling reduction unit" means a device that is installed on a diesel truck to reduce the long−duration idling of the truck by providing heat, air conditioning, or electricity to the truck while the truck is stationary and the main drive engine of the truck is not operating.

(d) "Post−1998 diesel truck engine" means a heavy−duty highway diesel engine that complies with the air pollutant emission standards promulgated by the federal environmental protection agency under 42 USC 7521 for engine model year 1998 or a later engine model year.

(e) "Private motor carrier" has the meaning given in s. 194.01 (11).

(f) "Truck tractor" has the meaning given in s. 340.01 (73).

(2) AUTHORITY. Beginning on July 1, 2006, and ending on June 30, 2015, the department may award a grant to an eligible applicant for the purchase and field testing of one or more idling reduction units as provided in subs. (3) and (4).

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(3) ELIGIBLE APPLICANTS. An applicant is eligible for a grant under this section only if all of the following apply:

(a) The applicant is a common motor carrier, contract motor carrier, or private motor carrier that transports freight.

(b) The applicant is headquartered in this state.

(c) The applicant pays 50 percent of the eligible costs for each idling reduction unit covered by a grant under this section without the use of grants, loans, or other financial assistance from this state or from a local governmental unit in this state.

(d) The applicant agrees to collect information relating to the operation and performance of each idling reduction unit covered by a grant under this section, as required by the department, and to report that information to the department.

(4) GRANTS. (a) Except as provided in par. (b), the costs that an applicant has incurred or will incur to purchase and install an idling reduction unit on a truck tractor that is owned and operated by the applicant and that has a post−1998 diesel truck engine are eligible costs under this section if the use of the idling reduction unit will result, in the aggregate, in a decrease in the emissions of one or more air contaminants, as defined in s. 285.01 (1), from the truck tractor on which the idling reduction unit is installed or in a decrease in the use of energy by the truck tractor on which the idling reduction unit is installed.

(b) The following costs are not eligible costs:

1. The cost of shipping an idling reduction unit from the manufacturer to the facility where the idling reduction unit will be installed on the truck tractor.

2. The cost of operating an idling reduction unit.

3. The cost of maintaining an idling reduction unit.

(cm) Subject to par. (d), the department may make grants under this section from July 1, 2009 to June 30, 2015, of 50 percent of the eligible costs for an idling reduction unit installed on a truck tractor, unless the department has previously awarded a grant under this section for an idling reduction unit installed on the truck tractor.

(d) In any fiscal year, the department may not pay to any one applicant more than 20 percent of the amount appropriated under s. 20.165 (2) (sm) for the fiscal year.

(e) The department may pay a grant over more than one fiscal year, subject to the availability of funds and to par. (d).

(5) INFORMATION. The department shall collect information from recipients of grants under this section relating to the operation and performance of idling reduction units. The department shall summarize the information collected and make it available to common motor carriers, contract motor carriers, and private motor carriers in an accessible and cost−effective manner, such as on department's Internet site.

(5m) RULES. The department shall promulgate rules for the administration of the program under this section.

(6) SUNSET. Subsections (2) to (4) do not apply after December 31, 2016.

History: 2005 a. 25; 2007 a. 20; 2009 a. 28; 2011 a. 32 ss. 3335 to 3338; Stats. 2011 s. 101.45.

Cross−reference: See also ch. SPS 431, Wis. adm. code.

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.

101.573 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. 20.165 (2) (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 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. 20.165 (2) (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; 2011 a. 32.

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

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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.

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.

(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.

Cross−reference: See also ch. SPS 314, Wis. adm. code.

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

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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. 995.20.

(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; 2005 a. 155.

Cross−reference: See also ch. SPS 335, 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 location 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. SPS 335, 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.

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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 writing 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. SPS 335, 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. SPS 335, 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. SPS 335, Wis. adm. code.

101.587 Information requirements; employer or agricultural employer to department. The department or the department of health 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); 2007 a. 20 s. 9121 (6) (a).
Cross−reference: See also ch. SPS 335, 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. SPS 335, 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. SPS 335, Wis. adm. code.

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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. SPS 335, 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 disclosure 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. SPS 335, 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. SPS 335, Wis. adm. code.

101.596 Building inspector review board. (1) DEFINITIONS. In this section:

(a) "Board" means the building inspector review board.

(b) "Building inspector" means any of the following:

1. A person who is certified under rules promulgated by the department to make inspections of public buildings and places of employment.

2. A person who is certified under rules promulgated by the department to make inspections under subch. II.

(c) "Permittee" means a person who is issued a building permit for a public building or a place of employment or a person who is issued a building permit under subch. II.

(2) RESPONSIBILITIES. (a) The review board shall review complaints received from permittees concerning possible incompetent, negligent, or unethical conduct by building inspectors.

(b) After reviewing a complaint received under par. (a), the review board may revoke the certification of a building inspector if the board determines that the building inspector has engaged in incompetent, negligent, or unethical conduct.

(c) The review board may modify or reverse decisions made by building inspectors if the board finds that the decision by the building inspector was made in error.

(3) PROCEDURES; CONFIDENTIALITY. (a) If a permittee makes a complaint to the review board concerning a building inspector, the permittee may do one of the following:

1. Request that the complaint remain anonymous, subject to par. (b).

2. Allow the complaint to be presented to the building inspector and not remain anonymous.

(b) If the permittee chooses to request that the permittee's complaint remain anonymous, the board may not review the complaint or modify or revoke the permit unless the board receives 2 additional anonymous complaints regarding the inspector. If 2 or more additional complaints are made, the review board shall proceed with its review, and none of the complaints may continue to be anonymous.

(c) If the permittee allows his complaint to be presented to the inspector without requesting anonymity, the review board shall proceed with the review.

History: 2005 a. 457.

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 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. SPS 335, 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 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); 2007 a. 20 s. 9121 (6) (a).
Cross−reference: See also ch. SPS 335, 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. SPS 335, 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. SPS 320, 321, 322, 323, 324, and 325, 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.

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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.

(1m) Section 101.647 applies to a dwelling the initial construction of which was commenced before, on, or after the effective date of this subsection.

(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; 2009 a. 158.

Cross−reference: See also chs. SPS 320, 321, 322, 323, 324, and 325, 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 certification council; duties. The contractor certification council shall do all of the following:

(1) 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 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.

(2) Recommend to the department for approval under s. 101.654 (1m) (b) 1. courses that meet continuing education requirements.

(3) Advise the department on the development of course examinations for those persons who are required to pass an examination under s. 101.654 (1m) (b).

History: 1993 a. 126; 2005 a. 200.

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 made to a bed and breakfast establishment that alters the dimensions of the structure.

(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). The rules shall specify that the department may suspend or revoke the certification of an inspector under this subsection for knowingly authorizing the issuance of a building permit to a contractor who is not in compliance with s. 101.654. 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.

(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; 2005 a. 25, 200; 2007 a. 67; 2011 a. 78.

Cross−reference: See also chs. SPS 316, 320, 321, 322, 323, 324, 325, 381, 382, 383, 384, 385, 386, and 387, 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 certification 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

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; 2005 a. 200.

101.642 Certain rules prohibited. The department may not promulgate or enforce a rule that requires that any one−family or 2−family dwelling that uses electricity for space heating be superinsulated.

History: 2007 a. 67.

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. SPS 328, 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), 97−1414.

101.647 Carbon monoxide detectors. (1) DEFINITIONS. In this section:

(a) "Carbon monoxide detector" has the meaning given in s. 101.149 (1) (am).

(am) Notwithstanding s. 101.61 (1), "dwelling" does not include a tourist rooming house, as defined in s. 254.61 (6).

(b) "Fuel−burning appliance" means a device that is installed in a dwelling, that burns fossil fuel or carbon−based fuel, and that produces carbon monoxide as a combustion by−product.

(2) INSTALLATION AND SAFETY CERTIFICATION. The owner of a dwelling shall install any carbon monoxide detector required under this section according to the directions and specifications of the manufacturer of the carbon monoxide detector. A carbon monoxide detector required under this section shall bear an Underwriters Laboratories, Inc., listing mark and may be a device that is combined with a smoke detector.

(3) REQUIREMENTS. (a) The owner of a dwelling shall install a functional carbon monoxide detector in the basement of the dwelling and on each floor level except the attic, garage, or storage area of each dwelling unit. A carbon monoxide detector wired to the dwelling's electrical wiring system shall have a backup battery power supply. Except as provided under par. (b), the occupant of the dwelling unit shall maintain any carbon monoxide detector in that unit. This paragraph does not apply to the owner of a dwelling that has no attached garage, no fireplace, and no fuel−burning appliance.

(am) 1. If the building permit for the initial construction of a dwelling was issued on or after February 1, 2011, and the electrical service for the dwelling is provided by a public utility, as defined in s. 196.01 (5), the owner of the dwelling shall install each carbon monoxide detector required under par. (a) so that it is powered by the dwelling's electrical wiring system, except as provided under subd. 2.

2. The requirement that each carbon monoxide detector be installed in the manner provided under subd. 1. does not apply to a dwelling if the dwelling, when initially constructed, had no attached garage, no fireplace, and no fuel−burning appliance.

(b) If any occupant who is not the owner of a dwelling, or any person authorized by state law or by city, village, town, or county ordinance or resolution to exercise powers or duties involving inspection of real or personal property, gives written notice to the owner that the carbon monoxide detector is not functional, the owner shall provide, within 5 days after receipt of that notice, any maintenance necessary to make that carbon monoxide detector functional.

(4) INSPECTION. The department or person authorized by state law or by city, village, town, or county ordinance or resolution to exercise powers or duties involving inspection of real or personal property may inspect new 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.

(5) LIABILITY EXEMPTION. The owner of a dwelling is not liable for damages resulting from any of the following:

(a) A false alarm from a carbon monoxide detector if the carbon monoxide detector was reasonably maintained by the owner of the dwelling.

(b) The failure of a carbon monoxide detector to operate properly if that failure was the result of tampering with, or removal or destruction of, the carbon monoxide detector by a person other than the owner of the dwelling or the result of a faulty detector that was reasonably maintained by the owner of the dwelling.

(6) TAMPERING PROHIBITED. No person may tamper with, remove, destroy, disconnect, or remove batteries from an installed carbon monoxide detector, except in the course of inspection, maintenance, or replacement of the detector.

History: 2009 a. 158.

Cross−reference: See also ch. SPS 328, Wis. adm. code.

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 issued by the department or other evidence satisfactory to the department showing that the person is in compliance with s. 101.654.

(1r) Shall require an owner who applies for a building permit to sign 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.

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(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; 2005 a. 200; 2009 a. 276.

Cross−reference: See also s. SPS 320.06, 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, 00−2633.

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.

Cross−reference: See also s. SPS 321.125 and ch. SPS 360, Wis. adm. code.

101.654 Contractor certification; education. (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), completes the continuing education requirements described under sub. (1m), and furnishes to the issuer of the permit proof of completion of those continuing education requirements.

(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.

(c) 1. In this paragraph, "license" has the meaning given in s. 101.02 (21) (a).

2. The continuing education requirements under par. (a) and the rules promulgated by the department under sub. (1m) do not apply to any person who holds a current license issued by the department at the time that the person obtains a building permit if the work the person does under the permit is work for which the person is licensed.

(1m) (a) The department shall promulgate rules establishing continuing education requirements for persons seeking to obtain a building permit under sub. (1) (a).

(b) The rules promulgated under this subsection shall require all of the following:

1. Completion every 2 years of at least 12 hours of continuing education relevant to the professional area of expertise of the person seeking to obtain a building permit, approved by the department.

2. Attendance at one or more professional meetings or educational seminars designed for both building contractors and building inspectors.

3. For a person who does not hold a certificate of financial responsibility on April 11, 2006, successful completion of an examination developed by the department on the continuing education courses required under this subsection.

(c) The rules promulgated under this subsection may not require a person who holds a certificate of financial responsibility on April 11, 2006, to take an examination on the continuing education courses required under this subsection.

(cm) The rules promulgated under this subsection may not require a person to take continuing education courses, or to take an examination on continuing education courses, that are not relevant to that person's professional area of expertise.

(d) Subject to the continuing education requirements under pars. (b) and (c), the rules promulgated under par. (a) may specify different continuing education course requirements for persons who hold a certificate of financial responsibility on April 11, 2006, and for persons who do not hold a certificate of financial responsibility on April 11, 2006.

(e) The continuing education approved by the department under par. (b) 1. shall include courses offered by private organizations with whom the department contracts under s. 101.657. The department may approve courses that are offered by other states.

(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.

(5) The department may revoke or suspend a certificate of financial responsibility if any of the following apply:

(a) The holder fails to comply with the continuing education requirements specified under subs. (1) and (1m).

(b) The holder engages in the construction of a dwelling without a permit required under this chapter.

(c) The holder is convicted of a crime related to the construction of a dwelling.

(d) The holder has been adjudged bankrupt on 2 or more occasions.

History: 1993 a. 126; 1995 a. 392; 1997 a. 39; 2005 a. 200; 2007 a. 14; 2009 a. 276.

Cross−reference: See also ss. SPS 305.31 and 305.315, Wis. adm. code.

A particular municipal licensure requirement may be preempted if that requirement logically conflicts with, defeats the purpose of, or violates the spirit of state contractor financial responsibility and continuing education requirements. Ordinances requiring local licensure are preempted if they impose on persons seeking a building permit for one− or 2−family dwellings greater financial responsibility, education, or examination requirements than required by state law. OAG 6−10.

101.657 Education contracts for builders and consumers. (1) The department shall contract with a private organization to provide education regarding construction standards

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and inspection requirements under this subchapter and under rules promulgated under this subchapter to builders of dwellings in this state.

(2) The department shall contract with a private organization to provide education regarding business practices to builders of dwellings in this state.

(3) The department shall contract with a private organization to provide education regarding the dwelling building process to consumers in this state. The education curriculum shall include selecting a contractor, the construction process, and consumer protection.

(4) Each contract under sub. (1), (2), and (3) shall be a separate contract. The department is limited for these contracts to contracting only with organizations that are described in section 501 (c) (6) of the Internal Revenue Code and are exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(5) From the appropriation under s. 20.165 (2) (j), beginning with fiscal year 2005−06, the department shall allocate $100,000 annually for the contract required under sub. (2) and at least $600,000 annually for the contract required under sub. (3).

History: 2005 a. 25 ss. 1830e to 1830m; 2011 a. 32.

101.66 Compliance and penalties. (1) Except as provided in sub. (1m), every builder, designer, and owner shall use building materials, methods, and equipment which are in conformance with the one− and 2−family dwelling code.

(1m) (a) No person may use in a one− or 2−family dwelling load−bearing dimension lumber that has not been tested and approved for conformance as required by the department unless the lumber is approved for use under par. (c) and one of the following applies:

1. The lumber has been milled at the request of the person owning the lumber for use in the construction of the dwelling, and the dwelling will be inhabited by the person owning the lumber.

2. The person milling the lumber sells the lumber directly to a person who will inhabit the dwelling or to a person acting on his or her behalf and for whom a building permit has been issued for the dwelling.

(b) The lumber shall be milled so that it meets or exceeds the requirements of the one− and 2−family dwelling code. The person milling the lumber shall provide to the person receiving the lumber a written certification that the lumber meets or exceeds these requirements. The department shall design and provide forms for this purpose.

(bn) A person may not provide a written certification under par. (b) unless the person has been issued a certificate of accomplishment evidencing certification or recertification under the lumber grading training program under s. 36.25 (48) and the person has received the certificate within the 5 years before providing the written certification. The person shall attach to the written certification a copy of his or her certificate of accomplishment.

(c) Upon receipt of a copy of the certification required under par. (b) an inspector who is certified under sub. (2) may either authorize the use of the lumber, reject the use of the lumber, or authorize its use subject to more restrictive construction requirements, including requirements as to size, spacing, length of spans, and design.

(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; 2007 a. 208; 2009 a. 180.

Cross−reference: See also s. SPS 305.63, Wis. adm. code.

SUBCHAPTER III

MODULAR HOME CODE

101.70 Purpose. The purpose of this subchapter is to establish statewide standards and inspection procedures for the manufacture and installation of modular homes and to promote interstate uniformity in standards for modular homes by authorizing the department to enter into reciprocal agreements with other states that have equivalent standards.

History: 1975 c. 405; 2007 a. 11.

Cross−reference: See also s. SPS 305.327 and chs. SPS 320, 321, 322, 323, 324, and 325, 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 modular home on−site and the process of affixing a modular home 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) "Modular home" 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) "Modular home" 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; 2007 a. 11.

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 modular home the initial manufacture of which was commenced on or after May 23, 1978.

History: 1989 a. 109; 2007 a. 11.

101.72 Dwelling code council. The dwelling code council shall review the standards and rules for modular homes for dwellings and recommend a statewide modular home 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; 2007 a. 11.

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 modular homes 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.

(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 modular homes 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 modular homes 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 modular homes 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 modular homes for dwellings and to certify compliance with this subchapter.

(7) Issue or recognize an insignia of compliance for dwellings which conform to the modular home 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 modular home 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; 2007 a. 11, 67.

Cross−reference: See also ch. SPS 316, 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 modular homes.

(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 modular homes for dwellings.

(7) Enter into reciprocal agreements with other states regarding the design, construction, inspection and labeling of modular homes where the laws or rules of other states meet the intent of the modular home code and the rules promulgated under this subchapter.

History: 1975 c. 405; 2007 a. 11.

101.743 Certain rules prohibited. The department may not promulgate or enforce a rule that requires any manufactured building that uses electricity for space heating to be superinsulated.

History: 2007 a. 67.

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 bear an Underwriters Laboratories, Inc., listing mark or similar mark from an independent product safety certification organization.

(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 modular home 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; 2007 a. 11; 2011 a. 146.

101.75 Inspections, insignia and alterations. (1) INSPECTIONS AND COMPLIANCE. Manufacturers of modular homes 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 modular homes 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 modular homes 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 modular home 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; 2007 a. 11.

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 modular homes for dwellings by passage of ordinances, provided such ordinances are in strict conformance with this subchapter and the on−site inspection is performed by persons certified by the department. Except as provided by s. 101.761, a county ordinance shall apply in any city, village or town which has not enacted such ordinance.

(b) Under s. 66.0301, jointly exercise the jurisdiction granted under par. (a).

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(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; 2007 a. 11.
Cross−reference: See also s. SPS 320.06, 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 modular home or by the municipality. A request by a person or a municipality with respect to a particular modular home does not give the department or a county authority with respect to any other modular home. 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 modular homes 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; 2007 a. 11.

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

ELECTRICAL WIRING AND ELECTRICIANS

101.80 Definitions. In this subchapter:

(1g) "Electric cooperative" has the meaning given in s. 196.025 (5) (ag).

(1j) "Electricity provider" means a public utility, an electric cooperative, or a wholesale merchant plant operator.

(1m) "Electrical wiring" means all equipment, wiring, material, fittings, devices, appliances, fixtures, and apparatus used for the production, modification, regulation, control, distribution, utilization, or safeguarding of electrical energy for mechanical, chemical, cosmetic, heating, lighting, or similar purposes, as specified under the state electrical wiring code. "Electrical wiring" does not include the equipment, wiring, material, fittings, devices, appliances, fixtures, and apparatus used by a public utility, an electric cooperative, or a wholesale merchant operator for the purpose of generating, transmitting, distributing, or controlling heat, light, power, or natural gas to its customers or members.

(1r) "Municipality" means a city, town, village, or county.

(3) "Public utility" has the meaning given in s. 196.01 (5).

(4) "State electrical wiring code" means the rules promulgated under s. 101.82 (1) for electrical wiring.

(5) "Wholesale merchant plant operator" means the operator of a wholesale merchant plant, as defined in s. 196.491 (1) (w).

History: 1979 c. 309; 1983 a. 189; 1995 a. 27; 2007 a. 63.

101.82 Departmental duties. The department shall:

(1) Promulgate by rule a state electrical wiring code that establishes standards for installing, repairing, and maintaining electrical wiring. Where feasible, the rules shall reflect nationally recognized standards.

(1m) Promulgate rules that establish criteria and procedures for the registration of beginning electricians and for the examination and licensing of different types of electricians, including journeymen electricians and master electricians.

(1r) Promulgate rules that establish requirements for the supervision of beginning electricians.

(1v) Promulgate rules that establish criteria and procedures for the licensing of electrical contractors.

(2) Promulgate rules that establish criteria and procedures for the certification of electrical inspectors for the purpose of inspecting electrical wiring.

(2m) Promulgate rules that establish standards and a process for the inspection of electrical wiring, including the inspection of electrical wiring for which a municipality does not provide inspection under s. 101.86 (1).

(3r) Promulgate rules that establish criteria and a process for the suspension or revocation of registrations issued to beginning electricians, licenses issued to electricians and electrical contractors, and certifications issued to electrical inspectors.

(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; 2007 a. 63.
Cross−reference: See also ch. SPS 316, 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.

(3) Promulgate rules to differentiate the scope of installation, repair, or maintenance of electrical wiring that may be performed by electrical contractors and by different types of electricians, including beginning electricians, journeymen electricians, and master electricians.

History: 1979 c. 309; 2007 a. 63.

101.86 Municipal authority. (1) Municipalities may:

(a) Enact an electrical code or otherwise exercise jurisdiction over electrical wiring and inspection of electrical wiring by enactment of ordinances. An ordinance enacted under this paragraph may not be less restrictive than 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).

(d) By ordinance, provide remedies and penalties for violation of the jurisdiction exercised under par. (a) or (b).

(3) (a) The cost of inspection services provided by any county that has enacted an ordinance under sub. (1), if not defrayed by fees, shall be charged to or taxed against the property within those cities, villages, and towns in the county that have not enacted an ordinance under sub. (1).

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(b) No part of the cost of inspection services, if not defrayed by fees, may be charged to or taxed against the property within any city, village, or town that has enacted an ordinance under sub. (1).

History: 1979 c. 309; 1999 a. 150 s. 672; 2007 a. 63.

101.861 Municipal licensing authority. Any ordinance enacted by a municipality that relates to licensure or certification of electrical contractors or electricians pursuant to the municipality's authority under s. 101.865, 2005 stats., or s. 101.87, 2005 stats., and that is in existence on March 19, 2008, shall remain in effect until April 1, 2013, but may not be amended or repealed during this time period. Beginning on April 1, 2013, such an ordinance is no longer in effect, and municipalities may no longer impose any registration, licensing, or certification requirements on electrical contractors, electricians, or electrical inspectors.

History: 2007 a. 63.

101.862 License, registration, or certification required. (1) No person may engage in the business of installing, repairing, or maintaining electrical wiring unless the person is licensed as an electrical contractor by the department.

(2) No person may install, repair, or maintain electrical wiring unless the person is licensed as an electrician by the department or unless the person is registered as a beginning electrician by the department.

(3) No person who is not a master electrician may install, repair, or maintain electrical wiring unless a master electrician is at all times responsible for the person's work.

(4) Subsections (1) to (3) do not apply to any of the following:

(a) A residential property owner who installs, repairs, or maintains electrical wiring on premises that the property owner owns and occupies as a residence, unless a license or registration issued by the department is required by local ordinance.

(b) A person engaged in maintaining or repairing electrical wiring within a facility or on premises owned or leased by the person or by an entity for which the person is an agent.

(c) A person engaged in installing, repairing, or maintaining electrical wiring, apparatus, or equipment for elevators and escalators.

(d) A person engaged in installing, repairing, or maintaining equipment or systems that operate at 100 volts or less.

(e) A person engaged in installing, repairing, or maintaining an electronic system designed to monitor a premises for the presence of an emergency, to issue an alarm for an emergency, or to detect and summon aid for an emergency.

(f) A person engaged in installing, repairing, or maintaining electrical wiring of transmission facilities, as defined in s. 196.01 (12).

(g) A person engaged in installing, repairing, or maintaining manufactured equipment or a manufactured system that is designed to provide a function that is not primarily electrical in nature if the installation, repair, or maintenance does not involve the modification or installation of conductors beyond the disconnecting point or beyond the last junction, pull, or device box, whichever is nearer to the point where the person is performing the installation, repair, or maintenance.

(h) A person engaged in installing electrical wiring for components of a manufactured home, as defined in s. 101.91 (2), or a manufactured building, as defined in s. 101.71 (6), while the manufactured home or the manufactured building is at or in the facility at which it is being manufactured.

(i) A person employed by an electricity provider, or a subcontractor of an electricity provider, who installs, repairs, or maintains electrical wiring for equipment that is installed in the normal course of providing utility services by the electricity provider.

(j) A person engaged in installing, repairing, or maintaining electrical wiring that provides lighting or signals for public thoroughfares and for public airports.

(k) A person engaged in installing, repairing, or maintaining electric lines on the utility side of substations and other distribution facilities owned or operated by customers or members of electricity providers.

(L) A person employed by an electricity provider, or a subcontractor of an electricity provider, who installs, repairs, or maintains primary voltage electric facilities that are owned by the electricity provider's customers or members and that operate at greater than 600 volts.

(m) A person employed by an electricity provider, or a subcontractor of an electricity provider, who restores service during an emergency.

Note: This section is created eff. 4−1−13 by 2007 Wis. Act 63.

History: 2007 a. 63.

101.87 Requirements for journeymen electricians. (1) The rules governing the licensing of journeymen electricians under s. 101.82 (1m) shall require that an applicant for licensure as a journeyman electrician who is not a residential journeyman electrician have at least one of the following qualifications:

(a) Completion of an apprenticeship program in installing, repairing, and maintaining electrical wiring that has a duration of at least 4 years and that is approved by the U.S. department of labor and by the department of workforce development.

(b) Experience in installing, repairing, and maintaining electrical wiring for at least 60 months and passage of an examination required by the department.

(5) The rules promulgated under s. 101.82 (1m) shall require that an applicant for licensure as a residential journeyman electrician have at least one of the following qualifications:

(a) Completion of an apprenticeship program in installing, repairing, and maintaining residential electrical wiring that has a duration of at least 3 years and that is approved by the U.S. department of labor and by the department of workforce development.

(b) Experience in installing, repairing, and maintaining electrical wiring for at least 36 months, and passage of an examination required by the department.

History: 1983 a. 164; 1989 a. 348; 1993 a. 112; 2007 a. 63.

Cross−reference: See also ss. SPS 305.40, 305.41, 305.42, 305.43, 305.44, and 305.45, Wis. adm. code.

101.88 Compliance and penalties. (1) Every person installing, repairing, or maintaining electrical wiring shall use materials, methods, and equipment that are in conformance with the rules promulgated by the department under this subchapter.

(2) All inspections of electrical wiring shall be made by persons certified by the department.

(3) Any person who 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; 2007 a. 63.

Cross−reference: See also s. SPS 305.62, 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.

(1i) "Installation standards" means specifications for the proper installation of manufactured homes at their place of occupancy to ensure proper siting, the joining of all sections of the manufactured home, connection to existing utility services and the installation of stabilization, support, or anchoring systems.

(1j) "Installer" means a person who is in the business of installing new manufactured homes.

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(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.

(1t) "Licensed installer" means an installer licensed under s. 101.96 (2) (b).

(1v) "Licensed manufacturer" means a manufactured home manufacturer licensed under s. 101.95.

(2) "Manufactured home" means any of the following:

(am) A structure that is designed to be used as a dwelling with or without a permanent foundation and that is certified by the federal department of housing and urban development as complying 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 community" 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 community" 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 community 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 community operator, provides water or sewer service to a manufactured home community occupant or performs a service related to providing water or sewer service to a manufactured home community occupant.

(7) "Manufactured home community occupant" means a person who rents or owns a manufactured home in a manufactured home community.

(8) "Manufactured home community operator" means a person engaged in the business of owning or managing a manufactured home community.

(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; 2005 a. 45.

101.92 Departmental powers and duties. The department:

(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.

(6) May enter into reciprocal agreements with other states regarding the inspection, installation, 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. 101.951 and 101.952.

History: 1973 c. 116; 1979 c. 221; 1983 a. 27 ss. 1375pr, 1375q, 2200 (25); 1995 a. 27, 362; 1999 a. 9, 53; 2005 a. 45.

Cross−reference: See also s. SPS 305.32, Wis. adm. code.

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 make the manufactured home a fixture to land in

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which the owner of the manufactured home has an ownership or leasehold interest subject to ch. 706.

History: 1999 a. 9, 53; 2001 a. 16; 2005 a. 45.

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 jurisdiction and a statement, in the form prescribed by 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 (4m) separately from the fee under s. 101.9208 (1) or (4).

(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; 2005 a. 45, 253.

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 establish, by rule under s. 101.19, a fee of not less than $2 for conducting a file search of manufactured home title records.

History: 1999 a. 9, 53, 185; 2005 a. 45.

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 nondistinctive 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

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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. The following fees shall be determined by the department by rule under s. 101.19:

(1) For filing an application for the first certificate of title, to be paid by the owner of the manufactured home.

(2m) Upon filing an application under sub. (1) or (4), a manufactured housing rehabilitation and recycling fee, to be paid by the person filing the application.

(3) For the original notation and subsequent release of each security interest noted upon a certificate of title, a single fee to be paid by the owner of the manufactured home.

(4) For a certificate of title after a transfer, to be paid by the owner of the manufactured home.

(4m) Upon filing an application under sub. (1) or (4), a supplemental title fee to be paid by the owner of the manufactured home, except that this fee shall be waived with respect to an application under sub. (4) for transfer of a decedent's interest in a manufactured home to his or her surviving spouse or domestic partner under ch. 770. The fee required under this subsection shall be paid in addition to any other fee specified in this section.

(5) For each assignment of a security interest noted upon a certificate of title, to be paid by the assignee.

(6) For a replacement certificate of title, to be paid by the owner of the manufactured home.

(7) For processing applications for certificates of title that have a special handling request for fast service, which fee shall approximate the cost to the department for providing this special handling service to persons so requesting.

(8) For the reinstatement of a certificate of title previously suspended or revoked.

History: 1999 a. 9, 53, 185; 2001 a. 16; 2005 a. 45; 2009 a. 28.

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 other 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 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.

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(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 property subject to administration in the state, including the manufactured homes transferred under this paragraph, does not exceed $50,000.

(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; 2005 a. 216.

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 documents 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.

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(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 department shall establish, by rule under s. 101.19, a fee of not less than $2 for each notification.

History: 1999 a. 9, 53, 185; 2001 a. 10; 2005 a. 45.

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 memoranda, 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 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

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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 nondistinctive 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 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 nondistinctive 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

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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.

101.933 Manufactured housing code council duties. The manufactured housing code council shall review this subchapter and rules promulgated under this subchapter and recommend a statewide manufactured housing code for promulgation by the department. The council shall consider and make recommendations to the department pertaining to rules and any other matter related to this subchapter, including recommendations with regard to licensure and professional discipline of manufacturers of manufactured homes, manufactured home dealers, manufactured home salespersons, and installers, and with regard to consumer protection applicable to consumers of manufactured homes. In making recommendations, the council shall consider the likely costs of any proposed rules to consumers in relation to the benefits that are likely to result therefrom.

History: 2005 a. 45.

101.934 Manufactured housing rehabilitation and recycling. (2) GRANT PROGRAM. (a) The department may make grants under this section to provide financial assistance to persons engaged in the disposal of abandoned manufactured homes and to municipalities, for the purpose of supporting environmentally sound disposal practices.

(b) The department may make grants under this section to provide financial assistance to individuals who reside in manufactured homes that are in need of critical repairs. An individual is eligible for a grant under this paragraph only if the individual is otherwise unable to finance the critical repairs.

(3) ADMINISTRATION. The department shall contract with one or more entities that are exempt from taxation under section 501 (a) of the Internal Revenue Code and that employ individuals with technical expertise concerning manufactured housing for the administration of the grant program under this section. The department shall promulgate rules to establish the grant program under this section. To the extent feasible, the department shall coordinate the program under this section with the state housing strategy plan under s. 16.302.

History: 2005 a. 45; 2011 a. 32 ss. 3380m to 3381f; Stats. 2011 s. 101.934.

Cross−reference: See also ch. SPS 456, Wis. adm. code.

101.935 Manufactured home community regulation. (1) The department shall license and regulate manufactured home communities. The department may investigate manufactured home communities 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 communities. 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 community.

(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 under s. 101.19, the permit fee and renewal fee for a permit issued under this subsection. The department may establish a fee that defrays the cost of administering s. 101.937. An additional penalty fee, as established by the department by rule under s. 101.19, 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 community 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 services in the administration of s. 254.47, applies to an agent for the department of safety and professional services in the administration of this section.

(2m) (a) The department shall inspect a manufactured home community in the following situations:

1. Upon completion of the construction of a manufactured home community.

2. Whenever a manufactured home community is modified, as defined by the department by rule.

3. Whenever the department receives a complaint about a manufactured home community.

(b) The department may, with notice, inspect a manufactured home community 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; 2005 a. 45; 2007 a. 11; 2007 a. 20 s. 9121 (6) (a); 2011 a. 32.

Cross−reference: See also ch. SPS 326, Wis. adm. code.

101.937 Water and sewer service to manufactured home communities. (1) RULES. The department shall promulgate rules that establish standards for providing water or sewer service by a manufactured home community operator or manufactured home community contractor to a manufactured home community 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 community operator may make a reasonable recovery of capital costs for permanent improvements related to the provision of water or sewer service to manufactured home community occupants through ongoing rates for water or sewer service.

(3) ENFORCEMENT. (a) On its own motion or upon a complaint filed by a manufactured home community occupant, the department may issue an order or commence a civil action against a manufactured home community operator or manufactured home community 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

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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; 2005 a. 45.

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 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.

(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; 2005 a. 45; 2007 a. 20 s. 9121 (6) (a).

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, including fees for the licensing of manufacturers.

History: 1973 c. 116; 1983 a. 27 ss. 1375t, 2200 (25); 1999 a. 53; 2005 a. 45.

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. (bm).

(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.

(bm) Fees for licensing of persons under this section shall be established by the department by rule under s. 101.19.

(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 safety and professional services 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 safety and professional services 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 safety and professional services, 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 safety and professional services shall be heard and decided upon by the department of administration. The division of hearings and appeals shall conduct the hearing. This

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paragraph does not apply to licenses that are suspended or revoked under s. 101.02 (21).

(c) The department of safety and professional services 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.

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. (bm). 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.

(bm) Fees for licensing of manufactured home salespersons shall be established by the department by rule under s. 101.19.

(3) Every licensee shall carry his or her license when engaged in his or her business and display the same upon request.

(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; 2005 a. 45; 2011 a. 146.

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 solicitation 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 safety and professional services 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 manufactured home owner 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; 2011 a. 32.

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.

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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.

101.957 Nonjudicial resolution of manufactured housing industry disputes. The department, by rule, shall establish an alternative dispute resolution program for the timely resolution of any dispute that concerns a defect in a manufactured home, or in the installation of a manufactured home, reported to the department within one year of the date on which the manufactured home was installed and that occurs between parties, each of which is a manufacturer of manufactured homes, manufactured home salesperson, manufactured home dealer, or installer. The rules may require the parties to submit to an alternative dispute resolution program before bringing an action in another forum. This section does not affect the rights of any consumer to commence an action or the rights of any person to commence an action against a consumer.

History: 2005 a. 45.

101.96 Manufactured home installation regulated. (1) INSTALLATION STANDARDS. (a) *Promulgation of standards.* The department shall, by rule, establish installation standards for the safe installation of manufactured homes in this state. In promulgating rules under this paragraph, the department shall consider the recommendations of the manufactured housing code council under s. 101.933.

(b) *Enforcement of standards.* The department shall, by rule, establish a method for ensuring compliance with the rules promulgated under par. (a). The department shall require inspections of manufactured home installations by 3rd−party inspectors licensed by the department. The department shall, by rule, establish criteria for the licensure of 3rd−party inspectors that include a requirement that an individual may not serve as a 3rd−party inspector if the individual is, is employed by, or is an independent contractor of any of the following:

1. A manufactured home manufacturer who was directly involved in the sale of the particular manufactured home.

2. A manufactured home salesperson who was directly involved in the sale of the particular manufactured home.

3. An installer who was directly involved in the sale of the particular manufactured home.

(2) MANUFACTURED HOME INSTALLERS. (a) *License required; exceptions; liability.* Except as otherwise provided in this paragraph, beginning on January 1, 2007, no person may act as an installer in this state unless the person is a licensed installer or employs one or more licensed installers to generally supervise each of the person's installations of manufactured homes in this state. This requirement does not apply to an individual who installs a manufactured home on his or her own property for his or her personal use or to an individual who installs a manufactured home under the general supervision of a licensed installer. A licensed installer is liable for all acts and omissions related to the installation of each individual who performs an installation under the licensed installer's general supervision.

(b) *License eligibility.* The department may issue an installer's license only to an individual to whom all of the following apply:

1. The individual is at least 18 years old.

2. The individual files with the department a license application on a form prescribed by the department.

3. The individual completes, to the satisfaction of the department, an examination approved by the department that tests the skills necessary to properly install manufactured homes and knowledge of the laws applicable to manufactured home installation.

4. The individual has not been found responsible in any judicial or administrative forum for any violation of this section during the 2 years before the date on which the individual's license application is submitted.

5. The individual has not been found responsible in any judicial or administrative forum during the 2 years before the date on which the individual's license application is submitted for any failure to perform an installation of a manufactured home as required under contract or for defrauding any person with regard to the provision of installation services.

6. The individual meets the standards of financial responsibility established by rule of the department.

(br) *Examination waiver.* The department shall, by rule, establish a procedure under which it may waive the examination requirement under par. (b) 3. for individuals that demonstrate sufficient experience installing manufactured homes including active participation in the installation of at least 10 manufactured homes. This paragraph does not apply after June 1, 2007.

(c) *License term and fee.* The department, by rule shall establish the term of installers' licenses and the conditions under which the department may revoke or suspend installers' licenses. The department shall establish an initial installer's license fee and license renewal fee by rule under s. 101.19.

History: 2005 a. 45.

Cross−reference: See also s. SPS 305.327 and ch. SPS 320, Wis. adm. code.

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.

(1p) Any person who violates s. 101.96 or any rule promulgated under that section may be required to forfeit not less than $25 nor more than $500 for each violation. Each day of continued violation constitutes a separate violation.

(1t) Upon request of the department, the attorney general may commence an action in a court of competent jurisdiction to enjoin any installer from installing a manufactured home in violation of s. 101.96 (2).

(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; 2005 a. 45.

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 modular home, 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; 2007 a. 11.

Cross−reference: See also chs. SPS 360, 361, 362, 363, 364, and 365, Wis. adm. code.

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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. 20.165 (2) (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; 2011 a. 32.

101.974 Department powers. The department may:

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

(2) Promulgate the rules under this subchapter after consultation with the multifamily dwelling code council.

(3) Provide for or engage in the testing, approval and certification of materials, methods and equipment of construction.

(4) Promulgate rules prescribing procedures for approving new building materials, methods and equipment.

(5) Study the administration of the rules promulgated under this subchapter and other laws related to the construction of multifamily dwelling units to determine their impact on the cost of building construction and their effectiveness in ensuring the health, safety and welfare of the occupants.

History: 1991 a. 269.

Cross−reference: See also chs. SPS 360, 361, 362, 363, 364, and 365, 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. (1) Except as provided in sub. (2), 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).

(2) (a) No person may use in a multifamily dwelling load−bearing dimension lumber that has not been tested and approved for conformance as required by the department unless the lumber is approved for use as provided under par. (c) and if one of the following applies:

1. The lumber has been milled at the request of the person owning the lumber for use in the construction of the multifamily dwelling, a dwelling unit of which will be inhabited by that person.

2. The person milling the lumber sells the lumber directly to a person who will inhabit the dwelling unit in the multifamily dwelling, or to a person acting on his or her behalf and for whom a building permit has been issued for the multifamily dwelling.

(b) The lumber shall be milled so that it meets or exceeds the requirements of the standards prescribed in s. 101.973. The person milling the lumber shall provide to the person receiving the lumber a written certification that the lumber meets or exceeds these requirements. The department shall design and provide forms for this purpose.

(bn) A person may not provide a written certification under par. (b) unless the person has been issued a certificate of accomplishment evidencing certification or recertification under the lumber grading training program under s. 36.25 (48) and the person has received the certificate within the 5 years before providing the written certification. The person shall attach to the written certification a copy of his or her certificate of accomplishment.

(c) Upon receipt of a copy of the certification required under par. (b), an inspector who inspects multifamily dwellings for compliance with this subchapter may either authorize the use of the lumber, reject the use of the lumber, or authorize its use subject to more restrictive construction requirements, including requirements as to size, spacing, length of spans, and design.

History: 1991 a. 269; 2007 a. 208; 2009 a. 180.

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.

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SUBCHAPTER VII

ELEVATORS, ESCALATORS, AND OTHER CONVEYANCES

101.981 Definitions; modification by rule. (1) Except as provided in sub. (2), in this subchapter:

(a) "Amusement or thrill ride" has the meaning given s. 101.19 (1b) (b).

(b) "Belt manlift" means a power−driven, looped belt equipped with steps or platforms and a hand hold for the transportation of people from one floor of a building or structure to another.

(c) "Conveyance" means an elevator, an escalator, a dumbwaiter, a belt manlift, a moving walkway, a platform lift, and a stairway chair lift, and any other similar device, such as an automated people mover, used to elevate or move people or things, as provided in the rules of the department. "Conveyance" does not include a personnel hoist; a material hoist; a grain elevator; a lift as defined in s. 167.33 (1) (f); an amusement or thrill ride; or a vertical platform lift, inclined platform lift, or a stairway chair lift that serves an individual residential dwelling unit.

(d) "Dumbwaiter" means a hoisting and lowering mechanism that satisfies all of the following conditions:

1. Is equipped with a compartment that moves in guides in a substantially vertical direction and has a floor area of not more than 9 square feet.

2. Has a maximum lifting and lowering capacity of not more than 500 pounds.

3. Is used exclusively for carrying materials

(e) "Elevator" means a hoisting or lowering machine, other than a dumbwaiter, equipped with a compartment or platform that moves in guides and serves 2 or more floors or landings of a building or structure.

(f) "Escalator" means a power−driven, moving stairway used for raising and lowering people.

(g) "Material hoist" means a hoist, other than a personnel hoist, that is used to raise or lower materials during construction, alteration, or demolition of a building or structure.

(h) "Personnel hoist" means a hoist that is installed inside or outside a building or structure during the construction, alteration, or demolition of the building or structure and that is used to raise and lower workers, other personnel, and materials which the hoist is designed to carry.

(2) The department shall promulgate rules establishing additional definitions to the extent the department deems necessary for the proper administration and enforcement of this subchapter. The department, by rule, may modify definitions established under sub. (1). To the extent practicable, the department shall ensure that any definitions or modifications promulgated under this subsection are consistent with national, industry−wide safety standards governing matters regulated by this subchapter.

History: 2005 a. 456; 2011 a. 32, 199, 209.

101.982 Conveyance safety code. The department shall promulgate rules establishing standards for the safe installation and operation of conveyances. In promulgating rules under this section the department shall consider the recommendations of the conveyance safety code council under s. 101.986. The rules shall be consistent, to the extent practicable, with national, industry−wide safety standards applicable to conveyances. The rules shall require any testing of conveyances or related equipment required under the rules to be performed by an elevator mechanic licensed under s. 101.985 (2). The rules shall require any person who installs a new conveyance to give the owner of the building in which the conveyance is installed, before the conveyance is placed in operation, a written certification indicating that the installation complies with the rules promulgated under this section. The rules shall include an enforcement procedure and a procedure pursuant to which the department may grant a variance from the rules if the variance would not jeopardize public safety.

History: 2005 a. 456.

101.983 Conveyance permits required. (1) CONSTRUCTION, INSTALLATION, AND ALTERATION. (a) *Permit required.* No person may construct, install, or alter a conveyance in this state unless an elevator contractor licensed by the department under s. 101.985 (1) has received a permit for the construction, installation, or alteration from the department.

(b) *Application.* A person applying for a permit under par. (a) shall include, along with the application, copies of specifications and accurately scaled and fully dimensioned plans showing the location of the construction, installation, or alteration in relation to the plans and elevation of the building; the location of the applicable machinery room, if any, and the equipment to be constructed, installed, or altered; and all structural supporting members relevant to the construction, installation, or alteration, including foundations. The specifications and plans shall be sufficiently complete to illustrate all details of design and construction, installation, or alteration. The application shall specify all materials to be used and all loads to be supported or conveyed. The department may authorize a person to include the application and other information required under this paragraph with any submission required under s. 101.12 (1) to avoid duplicative filing of information.

(c) *Revocation.* The department may revoke a permit issued under this subsection if the department finds any of the following:

1. That information submitted under par. (b) by the person obtaining the permit contains false statements or misrepresentations of material fact.

2. That the permit was issued in error.

3. That the work performed under the permit is not consistent with information submitted under par. (b) by the person obtaining the permit or is in violation of this subchapter or rules promulgated under this subchapter.

(d) *Expiration.* A permit issued under this subsection expires under any of the following circumstances:

1. If the work authorized under the permit is not commenced within 6 months after the date on which the permit is issued, or within a shorter period of time as specified by the department at the time the permit is issued.

2. If the work authorized under the permit is suspended or abandoned for 60 consecutive days at any time following the commencement of the work, or for a shorter period of time as specified by the department at the time the permit is issued.

(2) OPERATION. (a) *Permit required.* No person may allow a conveyance to be operated on property owned by the person unless the person has received a permit for the operation from the department. The department may not issue a permit required under this paragraph until all inspections required under par. (c) are completed.

(b) *Application.* For a newly installed conveyance, the elevator contractor that contracted to perform the installation shall apply for the initial permit required under par. (a) on behalf of the owner of the building in which the conveyance is located. Applications for renewal of the permit shall be made by the owner.

(c) *Inspections.* The department may not issue or renew a permit under this subsection unless the department has received an inspection report for the conveyance issued by an elevator inspector licensed under s. 101.985 (3) indicating that the conveyance complies with this subchapter and any applicable rules promulgated under this subchapter. This inspection by the department does not exempt the owner from the requirement to ensure that the department receives an inspection report from a licensed elevator inspector. Upon performing this inspection, the department shall give the owner notice of relevant conveyance safety requirements

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and shall instruct the owner as to the procedure for obtaining periodic inspections and renewing the permit under which the lift or equipment is operated.

(d) *Term and posting requirements.* A permit issued under this subsection has a term of one year. The owner of the building or residence in which a conveyance is located shall display the permit under par. (a) applicable to the conveyance on or in the conveyance or, if applicable, in the machinery room.

History: 2005 a. 456; 2011 a. 32.

101.984 Licenses and supervision required. (1) ELEVATOR CONTRACTOR. No person may engage in the business of constructing, installing, altering, servicing, replacing, or maintaining conveyances in this state unless the person is licensed as an elevator contractor under s. 101.985 (1).

(2) ELEVATOR MECHANIC. (a) *Generally.* Except as provided in par. (c), no individual may erect, construct, alter, replace, maintain, repair, remove, or dismantle any conveyance in this state unless the individual is licensed as an elevator mechanic under s. 101.985 (2) or is under the direct supervision of a person licensed as an elevator contractor under s. 101.985 (1).

(b) *Electrical construction.* Except as provided in par. (c), no individual may wire any conveyance in this state from the mainline feeder terminals on the controller unless the individual is licensed as an elevator mechanic under s. 101.985 (2) or is under the direct supervision of a person licensed as an elevator contractor under s. 101.985 (1).

(c) *Exceptions.* 1. Paragraph (a) does not apply to an individual who removes or dismantles a conveyance that is destroyed as a result of a complete demolition of a building or where the hoistway or wellway is demolished back to the basic support structure such that the hoistway or wellway is inaccessible.

2. Paragraphs (a) and (b) do not apply to any of the following:

a. An individual who is enrolled in and performing tasks that are within the scope of an elevator mechanic's apprenticeship program that is approved by the U.S. department of labor or by the department of workforce development.

b. An individual performing tasks under the direct supervision of and as a helper to an individual licensed as an elevator mechanic under s. 101.985 (2).

c. An individual who performs work described under par. (a) or (b) during the 5−day period preceding the date on which the individual is issued an emergency elevator mechanic's license under s. 101.985 (2) (c).

(3) ELEVATOR INSPECTOR. No individual may perform an elevator inspection in this state unless the individual is licensed as an elevator inspector under s. 101.985 (3) and holds a certification as an elevator inspector issued by a person approved by the American Society of Mechanical Engineers.

History: 2005 a. 456.

101.985 Licensing qualifications and procedure. (1) ELEVATOR CONTRACTOR. Except as otherwise provided in this subsection, the department shall issue an elevator contractor's license to each person who demonstrates to the satisfaction of the department that the person is adequately qualified and able to engage in business as an elevator contractor. The department may summarily issue an elevator contractor's license to a person who is licensed as an elevator contractor under the laws of another state, if, in the opinion of the department, that state's regulation of elevator contractors is substantially the same as this state's. Every person who applies for a license under this subsection shall provide the department with a certificate of insurance issued by one or more insurers authorized to do business in this state, indicating that the person is insured in the amount of at least $1,000,000 per occurrence because of bodily injury to or death of others, is insured in the amount of at least $500,000 per occurrence because of damage to the property of others, and is insured to the extent required under ch. 102. A person who is issued a license under this subsection shall notify the department in writing of any material change in these insurance coverages at least 10 days before the change takes effect.

(2) ELEVATOR MECHANICS' LICENSES. (a) *Issuance.* The department shall issue an elevator mechanic's license to each individual who meets the requirements in either par. (ab) or (ad).

(ab) *Requirements; apprenticeship and journeyman level.* An individual is eligible for an elevator mechanic's license if he or she satisfactorily completes an elevator mechanic's apprenticeship program that is approved by the U.S. department of labor or by the department of workforce development or if he or she satisfies all of the following requirements:

2. During the 3 years preceding the date of application, he or she was continuously employed in a position requiring the individual to perform work that is at a journeyman level and that is relevant to the erection, construction, alteration, replacement, maintenance, repair, or servicing of conveyances, as verified by the individual's employers.

3. He or she satisfactorily completes a written examination administered by the department covering the provisions of this subchapter, and rules promulgated under this subchapter, that are relevant to the license applied for or satisfactorily completes an elevator mechanic's examination approved by the department and administered by a nationally recognized training program established by the elevator industry.

(ad) *Requirements; training program.* 1. An individual is eligible for an elevator mechanic's license if he or she satisfies all of the following requirements:

a. He or she verifies to the department that he or she has been certified as having successfully completed a 4−year program established by the National Elevator Industry Educational Program or an equivalent nationally recognized 4−year training program that is approved by the department.

b. He or she meets one of the requirements specified in subd. 2.

2. In order to meet the requirement under subd. 1. b. for an elevator mechanic's license, an individual applying for a license shall satisfy one of the following requirements:

a. He or she verifies to the department that, during the 5 years immediately preceding the date of the license application, he or she was employed for at least 1,000 hours in each of the 5 years performing work described under s. 101.984 (2) (a) or (b).

b. He or she verifies to the department that he or she has continuous experience in the elevator industry for at least 5 years immediately preceding the date of the license application in a capacity, other than in the capacity of preforming work described under s. 101.984 (2) (a) or (b), that has allowed him or her to remain familiar with elevator equipment, technology, and industry practices. This experience may include performing management activities for a company that engages in the sale, installation, repair, or maintenance of conveyances, being involved in elevator industry labor relations, or supervising elevator mechanics.

c. He or she verifies to the department that he or she, during any 5 years preceding the date of the license application, was employed for at least 1,000 hours in each of those 5 years performing work that is relevant to the erection, construction, alteration, replacement, maintenance, repair, or servicing of conveyances and that this work included work described under s. 101.984 (2) (a) or (b). If the 5 years were not the 5 years immediately preceding the date of application, the applicant shall verify that this is due to the applicant's work being disrupted by high unemployment in the elevator industry, military service, illness, disability, or another factor beyond the applicant's control in order to meet the requirement under this subd. 2. c.

(am) *Requirements for individuals with prior experience.* The department shall promulgate rules that establish requirements for issuing an elevator mechanic's license to an individual who has performed work described under s. 101.984 (2) (a) or (b) within the scope of his or her employment before June 1, 2007, but who does not satisfy the requirements under par. (ab) or (ad) to be

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issued a license. The rules may contain a deadline before which an individual must apply for a license issued under this paragraph.

(b) *Licensing out−of−state mechanics.* The requirements under pars. (ab) and (ad) do not apply to an individual who is licensed as an elevator mechanic under the laws of another state, if, in the opinion of the department, that state's regulation of elevator mechanics is substantially the same as this state's. The department may summarily issue an elevator mechanic's license to such an individual.

(c) *Emergency licensing.* If the governor declares that a state of emergency exists in this state under s. 323.10 and the department determines that the number of individuals in the state who hold an elevator mechanic's license issued by the department under this section on the date of the declaration is insufficient to cope with the emergency, the department shall summarily issue an emergency elevator mechanic's license to any individual who is certified by an elevator contractor licensed under this subchapter as adequately qualified and able to perform the work of an elevator mechanic without direct and immediate supervision, who the department determines is so qualified and able, and who applies for an emergency elevator mechanic's license on a form prescribed by the department. An individual certified by a contractor under this paragraph may perform work as an elevator mechanic for up to a total of 5 days preceding the date the individual is issued the license. An emergency elevator mechanic's license has a term of 30 days and may be renewed by the department in the case of a continuing emergency. The department shall specify on an emergency elevator mechanic's license the geographic area in which the licensee may provide services under the license. The requirements under pars. (ab) and (ad) do not apply to an individual who applies for an emergency elevator mechanic's license.

(d) *Temporary licensing.* If there are no elevator mechanics licensed under this subchapter available to provide services contracted for by an elevator contractor licensed under this subchapter, the elevator contractor may notify the department and request the issuance of a temporary elevator mechanic's license to any individual who is certified by the elevator contractor as adequately qualified and able to perform the work of an elevator mechanic without direct and immediate supervision and who applies for a temporary elevator mechanic's license on a form prescribed by the department. A temporary elevator mechanic's license has a term of 30 days and may be renewed by the department in the case of a continuing shortage of licensed elevator mechanics. The department shall specify on a temporary elevator mechanic's license the elevator contractor in whose employ the licensee must remain to provide services under the temporary elevator mechanic's license. The requirements under pars. (ab) and (ad) do not apply to an individual who applies for a temporary elevator mechanic's license.

(3) ELEVATOR INSPECTOR. The department shall issue an elevator inspector license to each individual who demonstrates to the satisfaction of the department that the individual is adequately qualified and able to provide elevator inspection services. The department shall promulgate rules that establish the qualifications required for issuance of an elevator inspector license.

(4) CRIMINAL BACKGROUND CHECK. Upon receipt of an application for a license under sub. (1), (2) (ab) or (ad), or (3), the department, with the assistance of the department of justice, shall conduct a background investigation of the applicant to determine if the information provided by the applicant under sub. (7) (a) 10. is true and if the applicant has any arrests or convictions tending to indicate that the applicant is not adequately qualified and able to provide services authorized under the license applied for.

(5) ISSUANCE, TERM, RENEWAL, AND CONTINUING EDUCATION. (a) *Issuance and term.* Except as provided under s. 101.02 (20) (b) and (21) (b), the department shall issue a license to any applicant who satisfies the applicable requirements of subs. (1) to (3) and any rules promulgated under subs. (1) to (3) and who pays any applicable fee required by rule of the department under s. 101.19 (1g) (k). Except as provided under sub. (2) (c) and (d), the term of each license is 2 years.

(b) *Renewal and continuing education.* 1. Except as otherwise provided in this subdivision, an applicant for renewal of a license under sub. (1), (2) (ab), (ad), or (b), or (3) shall provide to the department a certificate indicating that, during the one−year period before the date on which the applicant's license expires, the applicant has satisfactorily met the education requirements established by rule under subd. 2. If the applicant is not an individual, the certificate shall indicate that the education requirements were satisfactorily met by an individual who, as of the date of the application, is an agent of the applicant.

2. The department shall promulgate rules that establish the education requirements for purposes of subd. 1. The rules shall include all of the following:

a. Standards for certification of specific programs.

b. The number of hours of education required on an annual basis.

c. Criteria for receiving a waiver from the department of the education requirements.

(6) REVOCATION AND SUSPENSION. The department may revoke or suspend a license issued under subs. (1) to (3) if the department finds any of the following:

(a) That the licensee made a false statement of material fact in an application submitted to the department.

(b) That the license was obtained by fraud, misrepresentation, or bribery.

(c) That the licensee failed to notify the department and the owner or lessee of a conveyance that the conveyance failed to meet any of the requirements of this subchapter or of the rules promulgated under this subchapter.

(d) That the licensee violated this subchapter or any rule promulgated under this subchapter.

(7) APPLICATION. (a) Each application for a license under subs. (1), (2) (ab) or (ad), or (3) shall be made on a form prescribed by the department, and each application shall contain at least the following information:

1. If the applicant is an individual, the applicant's name and residential address.

2. If the applicant is a sole proprietorship, the applicant's name and residential and business addresses.

3. If the applicant is a partnership, the name and business address of the partnership and the names and residential addresses of each partner.

4. If the applicant is a corporation, the name and principal business address of the corporation and the name and address of the corporation's registered agent for service of process.

5. If the applicant is a limited liability company, the name and principal business address of the limited liability company and the name and address of the limited liability company's registered agent for service of process.

6. The number of years the applicant has performed work or engaged in the business to be authorized under the license.

7. If the application is for an elevator contractor's license, the approximate number of individuals, if any, the applicant will employ upon licensure.

8. If the application is for an elevator contractor's license, a certification that all work described in s. 101.984 (2) (a) and (b) that the person will contract to perform under the license will be performed by elevator mechanics licensed under sub. (2).

9. Satisfactory evidence that the applicant is or, upon licensure, will be insured to the extent required under sub. (1) or (3).

10. A description of each of the applicant's criminal arrests and convictions, if any.

(b) Each application for a license under sub. (2) (am) shall be made on a form prescribed by the department, and each applica-

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tion shall contain the relevant information necessary to issue the license, as determined by the department.

History: 2005 a. 456; 2007 a. 20, 96; 2009 a. 42; 2011 a. 146, 209.

101.986 Conveyance safety code council duties. The conveyance safety code council shall review this subchapter and rules promulgated under this subchapter and recommend a statewide conveyance safety code for promulgation by the department. The council shall consider and make recommendations to the department pertaining to rules for the enforcement of this subchapter, the granting of variances, administrative appeal procedures, fees, and any other matter under this subchapter.

History: 2005 a. 456.

101.988 Enforcement and penalties. (1) INVESTIGATIONS. (a) *Initiated by department.* The department may perform investigations to aid in the enforcement of this subchapter and rules promulgated under this subchapter.

(b) *Initiated by public.* Any person may file a written notice with the department, requesting the department to investigate an alleged violation of this subchapter or rules promulgated under this subchapter or a dangerous condition involving a conveyance. The notice shall set forth the specific grounds for the request and shall be signed by the person filing the notice. Upon request of the person filing the notice, the department shall keep the person's name confidential and shall withhold the name from public inspection under s. 19.35 (1), except that the department may disclose the name to a law enforcement officer for official purposes. If the department determines that there are reasonable grounds to believe that the alleged violation or dangerous condition exists, the department shall investigate to determine if the alleged violation or dangerous condition exists. If the department determines that there are no such reasonable grounds, the department shall notify the person filing the notice.

(2) ORDERS OF THE DEPARTMENT. The department may issue orders to enforce this subchapter and rules promulgated under this subchapter.

(3) PENALTIES. Any person who violates this subchapter or rules promulgated under this subchapter may be fined not more than $1,500 or imprisoned for not more than 30 days or both, except that, notwithstanding s. 939.61 (1), the owner of a private residence in which a conveyance is located may not be fined or required to pay a forfeiture to this state as a result of any violation involving that conveyance.

History: 2005 a. 456.

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Chapter SPS 330

FIRE DEPARTMENT SAFETY AND HEALTH STANDARDS

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SPS 330.002 Scope.
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Subchapter XIII — Miscellaneous Activities
SPS 330.20 Hazardous materials.
SPS 330.21 Confined spaces.
SPS 330.22 Diving operations.
SPS 330.23 Miscellaneous hazardous situations.

Note: Chapter ILHR 30 as it existed on August 31, 1995, was repealed and a new chapter ILHR 30 was created effective September 1, 1995. Chapter ILHR 30 was renumbered Chapter Comm 30 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, February, 1999, No. 518. **Chapter Comm 30 was renumbered chapter SPS 330 under s. 13.92 (4) (b) 1., Stats., Register December 2011 No. 672.**

Subchapter I — Purpose and Scope

SPS 330.001 Purpose. Pursuant to s. 101.055 (3) (a), Stats., the purpose of this chapter is to establish minimum safety and health standards for public sector fire department employees.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: r. and recr. Register December 2001 No. 552, eff. 1−1−02.

SPS 330.002 Scope. In addition to the requirements in ch. SPS 332, this chapter contains minimum requirements for an occupational safety and health program for public sector fire department employees involved in fire department operations.

Note: Chapter SPS 332 contains additional safety and health requirements for all public employees.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: r. and recr. Register December 2001 No. 552, eff. 1−1−02; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 330.003 Application. (1) COVERED. This chapter applies to all fire departments having public employees, whether existing prior to the effective date of this chapter or subsequently established.

(2) NOT COVERED. This chapter does not apply to private sector employer fire companies and fire departments either of which are organized as non−stock, non−profit corporations under ch. 181, Stats., or under ch. 213, Stats., without the input of a municipality.

Note: Private sector employer fire companies and fire departments are regulated under 29 CFR 1910, especially section CFR 1910.156, of the federal Occupational Safety and Health Administration (OSHA) regulations.

Note: Most of the requirements of this chapter are based upon the National Fire Protection Association Standard NFPA No. 1500 − Standard on Fire Department Occupational Safety and Health Program. The requirements of subch. XI are based upon 29 CFR section 1910.156 (b) (2) of the OSHA regulations.

(3) CONFLICTS. If requirements of the statutes, this chapter or other Wisconsin administrative code chapters specify varying requirements, the requirement more protective of employee safety and health shall apply.

History: CR 01−044: cr. Register December 2001 No. 552, eff. 1−1−02.

Subchapter II — Definitions

SPS 330.01 Definitions. In this chapter:

(1) "Aerial device" means any extendable or articulating device that is designed to position fire fighters and handle fire fighting equipment.

(2) "Approved" means acceptable to the department.

(3) "Authority having jurisdiction" means the department.

(4) "Basic life support" means emergency medical treatment at a level authorized to be performed by emergency medical personnel, as defined in s. 941.37 (1) (c), Stats.

Note: Section 941.37 (1) (c), Stats., defines "emergency medical personnel" to be: "...an emergency medical technician licensed under s. 256.15, first responder certified under s. 256.15 (8), peace officer or fire fighter, or other person operating or staffing an ambulance or an authorized emergency vehicle."

(5) "Department" means the department of safety and professional services.

(6) "Emergency operation" means the provision of fire fighting, law enforcement, medical or other emergency service.

(6h) "Employee" or "public employee", as defined in s. 101.055 (2) (b), Stats., means any employee of the state, of any state agency or of any political subdivision of the state.

(6m) "Employer" or "public employer", as defined in s. 101.055 (2) (d), Stats., means the state, any state agency or any political subdivision of the state.

(7) "Fire apparatus" means a vehicle used for emergency operations.

(8) "Fire chief" means the highest ranking officer in charge of a fire department.

(9) "Fire department" means any public organization engaged in fire fighting.

(10) "Fire fighter" means any person performing the powers and duties of a fire department, whether or not that person is engaged in emergency operations. "Fire fighter" includes full−time and part−time employees and paid and unpaid volunteers.

(11) "Fire fighter organization" means an organization that represents the collective and individual rights and interests of fire fighters, such as a collective bargaining group or a fire fighters association. "Fire fighter organization" includes any organization that fire fighters authorize to represent their interests in negotiations with fire department managers.

(12) "Fire fighting" means any activity related to controlling and extinguishing an unwanted fire or a fire set for training fire fighters, including any activity that exposes a fire fighter to the danger of heat, flame, smoke or any other product of combustion, explosion or structural collapse, but does not include any activities pertaining to fighting wildland fires.

(13) "Fire vehicle" means any vehicle operated by a fire department, including fire apparatus.

(14) "Hazardous atmosphere" means any atmosphere that is oxygen deficient or that contains a toxic or disease producing contaminant, whether or not it is immediately dangerous to life or health.

(15) "Imminent hazard" means an act or condition that presents a danger to persons or property that is so urgent and severe that it requires immediate corrective or preventive action.

(16) "Incident command system" means an organized system of roles, responsibilities and suggested operating guidelines used to manage and direct emergency operations.

(17) "Member" means a person involved in performing the duties and responsibilities of a fire department, under the auspices of the organization. For the purposes of this chapter, a fire department member:

(a) May be a full−time or part−time employee, or a paid or unpaid volunteer;

(b) May occupy any position or rank within the fire department; and

(c) May or may not engage in emergency operations.

(18) "New", as it relates to s. SPS 330.08, means a person hired, appointed or promoted to a position within an individual fire department after April 1, 1991.

(19) "Occupational illness" means an illness or disease caused or aggravated by serving as a fire fighter.

(20) "Occupational injury" means an injury sustained during the performance of the duties, responsibilities and functions of a fire fighter.

(21) "Officer in command" means a fire fighter assigned to direct emergency operations or manage the activities of a group of fire fighters.

(23) "Service test" means the regular, periodic inspection and testing of apparatus and equipment, according to an established schedule and procedure, to ensure that it is in safe and functional operating condition.

(24) "Special hazard" means a substance, device, event, circumstance or condition that presents an unusual and severe danger to fire fighters or an abnormally high level of fire danger. Special hazards include water rescue, confined space entry, high−angle rescue, and operations requiring specialized training.

(25) "Suggested operating guideline" means an organizational directive that establishes a standard course of action.

(26) "Structural fire fighting" means fire fighting that involves buildings, enclosed structures, enclosed vehicles or enclosed vessels.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: cr. (6h) and (6m), r. (22), Register December 2001 No. 552, eff. 1−1−02; **correction in (5), (18) made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672.**

Subchapter III — Administration and Enforcement

SPS 330.011 Inspections. (1) RIGHT OF ENTRY TO INVESTIGATE OR INSPECT. The authorized representatives of the department, upon presentation of the appropriate credentials to an employer, may:

(a) Enter without delay and at reasonable times any building, place of employment or workplace of a public employer, or an environment where work is performed by an employee of the employer; and

(b) Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any employer or employee.

(2) PARTICIPATION IN INSPECTIONS. Pursuant to s. 101.055 (5), Stats., a representative of the employer, an employee, or an employee representative shall be provided an opportunity to accompany a department inspector on any inspection made under this chapter.

(3) REQUESTS FOR INSPECTIONS. (a) Any person who believes 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.

(b) If an employee or employee representative requesting an inspection so designates, that person's name may not be disclosed to the employer or any other person, including any state agency except the department.

(c) When determined necessary by the department, a request for inspection shall be made on a form provided by the department.

Note: The complaint registration form (SBD−192) is available at the Department's web site https://dsps.wi.gov through links to Safety and Buildings Division forms. See s. 101.055, Stats., for information regarding the complaint process.

(4) ORDERS. Pursuant to s. 101.055 (6), Stats., the department shall issue orders for violation of this chapter.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

SPS 330.012 Posting department order. Upon issuance of an order of noncompliance, the employer shall post a copy of the order in accordance with s. 101.055 (6) (a) 1., Stats.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: r. and recr. Register December 2001 No. 552, eff. 1−1−02.

SPS 330.013 Variances. Pursuant to s. 101.055 (4), Stats., the department shall consider and may grant a temporary variance, an experimental variance or a permanent variance as specified in s. SPS 303.04 for a safety and health issue affecting public employees.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 330.014 Notices. Every employer shall post a notice which summarizes the employee's protections and rights as granted under s. 101.055, Stats.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

SPS 330.015 Penalties. Penalties for violations of this chapter may be assessed as specified in s. 101.02, Stats.

Note: Section 101.02 (13) (a), Stats., indicates penalties will be assessed against any employer, employee, owner or other person who fails or refuses to perform any duty lawfully enjoined, within the time prescribed by the department, for which no penalty has been specifically provided, or who fails, neglects or refuses to comply with any lawful order made by the department, or any judgment or decree made by any court in connection with ss. 101.01 to 101.25, Stats. For each such violation, failure or refusal, such employee, owner or other person must forfeit and pay into the state treasury a sum not less than $10 nor more than $100 for each violation.

Note: Section 101.02 (12), Stats., indicates that every day during which any person, persons, corporation or any officer, agent or employee thereof, fails to observe and comply with an order of the department will constitute a separate and distinct violation of such order.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

Subchapter IV — Adopted Standards

SPS 330.02 Incorporation of standards by reference. (1) NFPA STANDARDS. The following standards of the National Fire Protection Association, One Batterymarch Park,

P.O. Box 9101, Quincy, Massachusetts, 02269−9101 are hereby incorporated by reference into this chapter:

(a) NFPA 1001−1997, Standard for Fire Fighter Professional Qualifications.

(b) NFPA 1002−1998, Standard for Fire Apparatus Driver/Operator Professional Qualifications.

(c) NFPA 1021−1997 Standard for Fire Officer Professional Qualifications.

(d) NFPA 1403−1997, Standard on Live Fire Training Evolutions in Structures.

(e) NFPA 1901−1999, Standard for Automotive Fire Apparatus.

(f) NFPA 1911−1997, Standard for Service Tests of Pump Systems on Fire Department Apparatus.

(g) NFPA 1914−1997, Standard for Testing Fire Department Aerial Devices.

(h) NFPA 1971−2000, Standard on Protective Ensemble for Structural Fire Fighting.

(i) NFPA 1981−1997, Standard on Open−Circuit Self−Contained Breathing Apparatus for the Fire Service.

(j) NFPA 1982−1998, Standard on Personal Alert Safety Systems (PASS).

(k) NFPA 1983−2001, Standard on Fire Service Life Safety Rope and System Components.

(2) CGA STANDARDS. The following standard of the Compressed Gas Association, 1235 Jefferson Davis Highway, Arlington, Virginia 22202 is hereby incorporated by reference into this chapter:

(a) CGA Standard G−7.1, 1997, Commodity Specification for Air.

Note: Copies of the standards are on file in the offices of the department and the legislative reference bureau. Copies may be purchased through the organizations listed.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: r. and recr. Register December 2001 No. 552, eff. 1−1−02.

Subchapter V — Organization

SPS 330.03 Fire department safety position. (1) ASSIGNMENT. (a) Each fire department shall have a safety position.

(b) The safety position shall assist the fire chief in his or her responsibility for the safety and health of the fire fighter.

(c) The safety position shall report directly to the fire chief.

Note: The safety position may be filled by a single individual or by several individuals as determined by need and at the discretion of the fire chief. When several individuals are assigned to the position, at least one should be a member of the occupational safety and health committee. The intent of the rule is to staff the safety position with existing personnel, which may be filled by a fire department member who performs other duties in addition to those set forth in this section.

(2) QUALIFICATIONS. The safety position shall:

(a) Be a fire department member;

(b) Have a knowledge of state and local laws regulating fire fighter safety and health;

(c) Have a knowledge of the potential safety and health hazards involved in fire fighting; and

(d) Have a knowledge of the principles and techniques of managing a safety and health program.

(3) AUTHORITY. The safety position shall:

(a) Have the responsibility to identify and recommend corrections of violations of safety and health standards;

(b) Have the authority to recommend immediate correction of situations that create an imminent hazard to personnel; and

(c) Have the authority to alter, suspend or terminate activities at the emergency scene when he or she judges those activities to be unsafe or an imminent hazard.

(4) FUNCTIONS. The safety position shall:

(a) Be a member of the safety and health committee, and maintain a liaison with staff officers, fire fighters, equipment manufacturers, regulatory agencies, safety specialists and the fire department physician;

(b) Develop and revise rules and regulations and suggested operating guidelines pertaining to safety and health, and report to the fire chief on the adequacy and effectiveness of the rules and regulations. The fire chief shall define the role of the safety position in the enforcement of the rules and regulations;

(c) Identify and mitigate safety hazards at incidents, and be involved in post−incident critiques; and

(d) Ensure that training in safety procedures is provided to all fire fighters. Training shall address corrective actions recommended by accident investigations.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: am. (1) (b), Register December 2001 No. 552, eff. 1−1−02.

SPS 330.05 Occupational safety and health committee. (1) Every fire department shall establish an occupational safety and health committee which shall advise the chief of the fire department on issues related to the program. The committee shall include representatives of fire department management and fire fighters or representatives of fire fighter organizations or other persons. Any representatives of a fire service organization shall be selected by the fire fighter organization. The chief of the fire department shall appoint the other members of the committee.

(2) The committee appointed under sub. (1) shall:

(a) Conduct research, develop recommendations and study and review matters pertaining to the program; and

(b) Hold regularly scheduled meetings at least biannually and may hold special meetings as it determines necessary. The committee shall make a written record of its meetings available to all fire fighters in the fire department.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

SPS 330.06 Records. Every fire department shall:

(1) Establish a data collection system and maintain permanent records of all reported accidents, injuries, illnesses and deaths that are or may be job related. The system shall include individual records of any occupational exposure to known or suspected toxic products or contagious diseases.

(2) Maintain a training record for each fire fighter indicating dates, subjects covered and certifications achieved.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

Subchapter VI — Training and Education

SPS 330.07 Training and education. (1) Every fire department shall:

(a) Establish and maintain a training and education program for fire fighters to prevent occupational accidents, deaths, injuries and illnesses.

(b) Provide training and education that does all of the following:

1. Prepares a fire fighter to safely perform his or her duties.

2. Prepares a fire fighter for any change in a procedure or technology or for any new hazard identified in his or her work environment.

3. Prepares a new fire fighter whose duties include emergency operations to perform emergency operations. The training under this subdivision shall include training in the incident command system under s. SPS 330.14 (1) (b).

4. Gives a fire fighter whose duties include structural fire fighting training consistent with established fire ground operating procedures. The training under this subdivision shall be at least monthly, shall be based on each fire department's suggested operating guidelines which are maintained in written form and which address all emergency scene operations, and shall be supervised by qualified instructors.

Note: A qualified instructor can be anyone who is knowledgeable in the topic, and not necessarily an instructor from the Wisconsin technical college system.

5. Prepares a fire fighter for special hazards to which he or she may be exposed during fires and other emergencies. The procedures for actions to address special hazards shall be in writing.

(2) (a) All training and education under sub. (1) shall be provided by individuals who are qualified to teach the subject they are teaching.

(b) The training shall be overseen by the fire chief or a designee who has completed at least the 12−hour National Fire Academy Field Course for Instructional Techniques for Company Officers or equivalent.

(3) A fire department shall provide the training required under sub. (1) (b) 1. and 2. biannually or more often, if necessary.

(4) Any training of fire fighters which includes live fire fighting exercises shall be conducted in compliance with NFPA 1403.

(5) A training program for any fire fighter engaged in fire ground operations shall include procedures to effect his or her safe exit from a dangerous area if equipment fails or fire conditions change suddenly.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; **correction in (1) (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 330.08 Employment standards. (1) (a) Any new fire fighter engaged in structural fire fighting shall meet the minimum requirements specified by:

1. The Wisconsin technical college system board;

2. An approved state apprenticeship program;

3. An in−house training program approved by the Wisconsin technical college system board; or

4. NFPA 1001.

(b) All new fire fighters shall be permitted the opportunity to obtain the training specified in this subsection within 24 months of the date of his or her appointment to the fire department.

(c) No new fire fighter may be permitted to participate in structural fire fighting activities which require the individual to enter or be in close proximity to the building, enclosed structure, vehicle or vessel until that individual has completed the training specified in this subsection.

(2) (a) Every new pumper operator or new aerial operator shall meet the minimum requirements specified by:

1. The Wisconsin technical college system board;

2. An approved state apprenticeship program;

3. An in−house training program approved by the Wisconsin technical college system board; or

4. NFPA 1002.

(b) New pumper operators and new aerial operators shall obtain the training specified in this subsection within 12 months of the date of appointment.

(3) A new fire officer, after appointment, shall be provided with the opportunity to take the basic officer training program within 12 months of appointment. The training program shall meet the minimum requirements specified by:

(a) The Wisconsin technical college system board;

(b) An approved state apprenticeship program;

(c) An in−house training program approved by the Wisconsin technical college system board; or

(d) NFPA 1021.

(4) Any member of a fire department on March 31, 1991, shall have his or her level of ability and training specified in writing by the fire chief or shall have a current fire fighter certification from the Wisconsin technical college system board. The level of ability and training specified by the fire chief may not be transferred to any other fire department.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

Subchapter VII — Vehicles and Equipment

SPS 330.09 Vehicles. (1) Every fire department shall:

(a) Give substantial consideration to the health and safety of fire fighters in relation to the specification, design, construction, acquisition, operation, maintenance, inspection and repair of all vehicles and equipment.

(b) Provide helmet and eye protection to any person riding in any part of a fire vehicle that is not enclosed and require that the person wear the protection while riding in that part.

(c) 1. Except as provided in subd. 2., when specifying and ordering any fire apparatus after April 1, 1991, require a sufficient number of seats in an enclosed area for the maximum number of persons who may ride on the apparatus at any time, as specified by NFPA 1901.

2. Fire apparatus manufactured prior to April 1, 1991, may be sold, traded or given to another fire department for use after April 1, 1991, provided the fire apparatus is maintained in accordance to the standards in effect at the time of its manufacture.

(d) Inspect every fire vehicle at least weekly and within 24 hours after any use or repair to identify and correct unsafe conditions and establish a preventive maintenance program. All maintenance, inspections and repairs of fire vehicles shall follow the instructions of the manufacturer.

(e) Take any fire vehicle found to be unsafe out of service until it is repaired and inspect that vehicle before placing it back in service.

(f) Test fire pumps on apparatus as specified in NFPA 1911.

(g) Inspect and service test all aerial devices as specified in NFPA 1914.

(2) A driver of a fire vehicle shall have a valid driver's license for the operation of the vehicle. The driver is directly responsible for the safe and prudent operation of the vehicle in all conditions. Any officer directly supervising the driver is responsible for the actions of the driver.

(3) The driver of a fire vehicle may not move the vehicle until every person on the vehicle is seated and secured with a seat belt or safety harness in an approved riding position, except as allowed under sub. (4).

(4) (a) Except as provided in pars. (b) to (d), any person riding on a fire apparatus shall be seated and secured to the vehicle by a seat belt or safety harness at any time the vehicle is in motion. No person may ride on the tail steps or other exposed part of a fire apparatus. No person may stand while riding a fire apparatus.

(b) Emergency medical specialists performing emergency medical duties are exempt from the requirements of par. (a).

(c) Hose loading operations may be performed on moving fire apparatus only when all of the following conditions are met:

1. Hose loading procedures shall be specified in a written standard operating procedure that includes the conditions set forth in this paragraph. All members involved in the hose loading shall be trained in these procedures.

2. There shall be a member, other than those members loading hose, assigned as a safety observer. The safety observer shall have an unobstructed view of the hose loading operation and be in visual and voice contact with the apparatus operator.

3. Nonfire department vehicular traffic shall be excluded from the area or shall be under the control of authorized traffic control persons.

4. The fire apparatus shall be driven only in a forward direction at a speed of 5 mph or less.

5. Members shall not stand on the tailstep, sidesteps, running boards, or any other location on the apparatus while the apparatus is in motion.

6. Members may be in the hose bed, but shall not stand while the apparatus is in motion.

7. Before each hose loading operation, the situation shall be evaluated to ensure compliance with the standard operating procedure. If the standard operating procedure cannot be met, or if there is any question as to the safety of the operation for the specific situation, the hose shall not be loaded on moving fire apparatus.

(d) Tiller training, where both the instructor and the trainee are at the tiller position, may be performed on tractor−drawn aerial apparatus only if all of the following conditions are met:

1. Tiller training procedures shall be specified in a written standard operating procedure that includes the conditions set forth in this paragraph. All members involved in tiller training shall be trained in these procedures.

2. The aerial apparatus shall be equipped with seating positions for both the tiller instructor and the tiller trainee. Both seating positions shall be equipped with seat belts for each individual. The tiller instructor may take a position alongside the tiller trainee.

3. The tiller instructor's seat may be detachable. If the instructor's seat is detachable, the detachable seat assembly shall be structurally sufficient to support and secure the instructor. The detachable seat assembly shall be attached and positioned in a safe manner immediately adjacent to the regular tiller seat. The detachable seat assembly shall be equipped with a seat belt or vehicle safety harness. The detachable seat assembly shall be attached and used only for training purposes.

4. Both the tiller instructor and the tiller trainee shall be seated and belted.

5. The instructor and trainee shall wear and use both helmet and eye protection if not seated in an enclosed area.

6. If the aerial apparatus is needed for an emergency response during a tiller training session, the training session shall be terminated, and all members shall be seated and belted in the approved riding positions. There shall be only one person at the tiller position. During the emergency response, the apparatus shall be operated by qualified operators.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

SPS 330.10 Portable equipment. Every fire department shall:

(1) Visually inspect at least weekly and within 24 hours after any use all equipment carried on fire apparatus or designated for training.

(2) Maintain inventory records for equipment carried on each fire vehicle and for equipment designated for training.

(3) Test all equipment carried on fire apparatus or designated for training at least annually according to the instructions and applicable standards of the manufacturer.

(4) Remove from service and repair or replace any fire fighting equipment which is defective or unserviceable as specified in the applicable National Fire Protection Association standard.

(5) Inspect and service test all ground ladders.

(6) Inspect and service test all fire hose.

(7) Inspect and test all fire extinguishers.

Note: Under ch. SPS 314, fire extinguishers are to be maintained as specified in NFPA 10, Standard for Portable Fire Extinguishers.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

Subchapter VIII — Protective Clothing and Protective Equipment

SPS 330.11 Protective clothing and equipment. (1) Every fire department shall:

(a) Provide each fire fighter with the required fire fighting protective clothing and the required fire fighting protective equipment to provide protection from hazards related to his or her job duties, at no cost to the fire fighter.

(b) Require fire fighters to use protective clothing and protective equipment provided under par. (a) whenever they are exposed to hazards or potential hazards.

(c) Fully train every fire fighter in the care, use, inspection, maintenance and limitations of the protective clothing and protective equipment assigned to them or available for their use.

(d) Use and maintain protective clothing and protective equipment according to the instructions of the manufacturer.

(e) Establish a maintenance and inspection program for protective clothing and protective equipment, assigning specific responsibilities for inspection and maintenance.

(2) Every fire department shall provide any fire fighter engaged in or exposed to the hazards of structural fire fighting with a protective ensemble that meets the applicable standards specified in NFPA 1971.

(3) (a) All new protective clothing and protective equipment provided under this subchapter shall meet the standards specified in s. SPS 330.02 as referenced in ss. SPS 330.11 to 330.13.

(b) Existing protective clothing and protective equipment shall meet the National Fire Protection Association standard that was current when the protective clothing or protective equipment was purchased or obtained by the fire department.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: r. and recr. (2), am. (3) (a), Register December 2001 No. 552, eff. 1−1−02; **correction in (3) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 330.12 Self−contained breathing apparatus. (1) Every fire department shall:

(a) Provide self−contained breathing apparatus and require fire fighters to use the apparatus in any area where the atmosphere is hazardous, is suspected of being hazardous or may become hazardous.

(b) Provide all fire fighters working below ground level or inside any confined space with self−contained breathing apparatus and require them to use that self−contained breathing apparatus unless the safety of the atmosphere can be established by testing and continuous monitoring.

(c) Adopt and maintain a respiratory protection program that satisfies the requirements of s. 29 CFR 1910.134 as adopted by reference in ch. SPS 332.

(d) Assure that all sources of compressed gaseous breathing air, such as compressors, used for filling self−contained breathing apparatus are tested to assure their compliance with sub. (4).

(e) Hydrostatically test each self−contained breathing apparatus tank within the time limits specified by the manufacturer of the apparatus and by any federal, state or local agency with jurisdiction over the possession and use of the apparatus.

(f) Inspect, use and maintain all self−contained breathing apparatus as recommended by the manufacturer.

(2) (a) The facepiece seal capability of each member qualified to use self−contained breathing apparatus shall be verified by qualitative fit testing on an annual basis and any time that new types of self−contained breathing apparatus are issued.

(b) Each new member shall be tested before being permitted to use self−contained breathing apparatus in a hazardous atmosphere.

(c) Only members with a properly fitting facepiece shall be permitted to function in a hazardous atmosphere with self−contained breathing apparatus.

(d) A fire fighter may not wear a beard or facial hair that comes in contact with a facepiece seal if the fire fighter's duties require him or her to use a self−contained breathing apparatus. If a fire fighter wears eyeglasses, the fire fighter shall use frames that do not pass through the seal area of the facepiece.

(3) (a) A self−contained breathing apparatus of the open−circuit design shall be positive pressure. Any self−contained breath-

ing apparatus placed into service after April 1, 1991, shall meet NFPA 1981 and shall be of the positive pressure type only.

(b) Paragraph (a) does not prohibit the use of a self−contained breathing apparatus if the apparatus can be switched from a demand to a positive−pressure mode.

(c) The apparatus shall be in the positive−pressure mode when fire department members are working in a hazardous atmosphere.

(d) A closed−circuit type self−contained breathing apparatus shall be approved by the National Institute of Occupation Safety and Health and shall operate in the positive pressure mode only. The supply air tank shall have a minimum service duration of 30 minutes.

Note: The intent of this subsection is to prohibit the use of on demand type breathing apparatus whenever self−contained breathing apparatus is required to be worn.

(4) Compressed gaseous breathing air in a self−contained breathing apparatus cylinder shall meet the requirements of CGA standard G−7.1, with a minimum air quality of Grade D and a water vapor level of less than 25 ppm.

(6) Fire fighters using self−contained breathing apparatus shall operate in teams of 2 or more members who are:

(a) In communication with each other through visual, audible, physical, safety guide rope, electronic or other means to coordinate their activities; and

(b) In close enough proximity to each other to be able to provide assistance in case of an emergency.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: am. (1) (c), r. (5) and (7), Register December 2001 No. 552, eff. 1−1−02; **correction in (1) (c) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 330.13 Personal alert safety system; life safety ropes, harnesses and hardware; eye, face and hearing protection. (1) PERSONAL ALERT SAFETY SYSTEMS. Every fire department shall:

(a) Provide every fire fighter using self−contained breathing apparatus involved in rescue, fire fighting or other hazardous duties with a personal alert safety system and require the fire fighter to use the system.

(b) Test every personal alert safety system at least weekly and prior to each use.

(c) Maintain each personal alert safety system according to the instructions of the manufacturer of that system.

(d) Use personal alert safety system devices which meet the standards specified in NFPA 1982.

(2) LIFE SAFETY ROPES, HARNESSES AND HARDWARE. Every fire department shall:

(a) Use life safety ropes, harnesses and hardware which meet the standards specified in NFPA 1983.

(b) Use Class I life safety harnesses for fire fighter attachment to aerial devices.

(c) Use Class II and Class III life safety harnesses for fall arrest and rappelling operations.

(d) Use unused life safety rope to support the weight of any person during rescue, fire fighting and other emergency operations.

(e) Use for training evolutions, life safety rope which is designated training rope if the rope is inspected before and after each use according to the manufacturer's instructions.

(f) Destroy any training rope subjected to impact loading or showing signs of weakness or wear and maintain a written record of the use of each rope.

(3) EYE, FACE AND HEARING PROTECTION. Every fire department shall:

(a) Provide face and eye protection for any fire fighter engaged in fire suppression and other operations involving hazards to the eyes and face whenever the fire fighter's face is not protected by the full facepiece of a self−contained breathing apparatus. Eye and face protection shall comply with s. 29 CFR 1910.133 as adopted by reference in ch. SPS 332.

(b) Provide hearing protection for any fire fighter operating or riding in fire apparatus when subject to noise in excess of 90 dBA.

(c) Provide hearing protection for any fire fighter exposed to noise in excess of 90 dBA from power tools or equipment unless the use of the protective equipment would create an additional hazard to the fire fighter. Hearing protection shall comply with s. 29 CFR 1910.95 as adopted by reference in ch. SPS 332.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: am. (3) (a) and (c), Register December 2001 No. 552, eff. 1−1−02; **correction in (3) (a), (c) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Subchapter IX — Emergency Operations

SPS 330.14 Emergency operations. (1) INCIDENT MANAGEMENT. Every fire department shall:

(a) Conduct emergency operations and other hazardous situations, including training exercises, in a manner to recognize hazards and to prevent accidents and injuries.

(b) Establish an incident command system which has written guidelines applying to all fire fighters involved in emergency operations and which identifies fire fighter roles and responsibilities relating to the safety of operations.

Note: Suggested Operating Guidelines have been developed and published by the Wisconsin technical college system board. Copies of the Suggested Operating Guidelines are available at all technical college district campuses.

(c) Train fire fighters involved in emergency operations in the incident command system established under par. (b) and assign safety responsibilities to supervisory personnel at each level of operations.

(d) Require the officer in command of an emergency operation to be responsible for the overall safety of all fire fighters and activities occurring at the scene of the operation.

(e) Require the officer in command of an emergency operation to establish an organization with sufficient supervisory personnel to control the position and function of all fire fighters operating at the scene of that emergency operation to ensure that safety requirements are satisfied.

(f) Use a standard system to identify and account for the assignment of each fire fighter at the scene of an emergency operation.

(g) At an emergency operation where special hazards exist, require the officer in command to assign qualified personnel with specific responsibility to identify and evaluate hazards and to provide direction with respect to fire fighter safety during the operation.

(2) INCIDENT SAFETY REQUIREMENTS. (a) Every fire department shall:

1. Provide sufficient personnel to safely conduct emergency scene operations and limit such operations to those that can be safely performed by the personnel available at the scene.

2. If inexperienced fire fighters are working at an emergency operation, provide direct supervision by more experienced officers or members.

(b) If any fire fighter is operating at an emergency operation and his or her assignment places him or her in potential contact with motor vehicle traffic, that fire fighter shall wear:

1. The helmet specified under s. SPS 330.11 (2) or alternate protective headgear providing equivalent protection; and

2. A garment with fluorescent retroreflective material.

(3) RESCUE OF MEMBERS. (a) A fire fighter using self−contained breathing apparatus and operating in an interior structural fire shall operate in a team of 2 or more fire fighters. Except in the case of a structural fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, a back−up team of at least 2 members wearing self−contained breathing apparatus shall be available at the scene for rescue if the need arises. One back−up team member with a charged line shall be committed to a safe non−affected area in or near the structure. The other back−up team member shall remain

within voice contact and may be assigned to additional roles so long as this individual is able to perform assistance or rescue activities without jeopardizing the safety or health of any fire fighter working at the scene. In all structural fires in which fire fighters use self−contained breathing apparatus, at least one additional member shall be assigned to remain outside the structural fire and monitor the operations.

Note: It is not the intent of this rule to prevent any number of persons from responding to a fire call, setting up equipment and initiating exterior suppression at the fire scene. Also, it is not the intent of this rule to prohibit an individual fire fighter from taking an action to preserve the life or safety of another person.

(b) At emergency operations, the officer in command shall evaluate the risk to fire fighters and, if necessary, request that at least basic life−support personnel and patient transportation be available.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: am. (2) (b) 1. and (3) (a), Register December 2001 No. 552, eff. 1−1−02; **correction in (2) (b) 1., Stats., Register December 2011 No. 672.**

Subchapter X — Facility Safety

SPS 330.145 Facility safety. Fire department buildings and facilities shall comply with chs. SPS 332 and 361 to 366.

History: CR 01−044: cr. Register December 2001 No. 552, eff. 1−1−02; CR 01−139: am. Register June 2002 No. 558, eff. 7−1−02; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Subchapter XI — Medical

SPS 330.15 Physical and medical capabilities. (1) The employer shall assure that fire fighters who are expected to do structural fire fighting are physically capable of performing duties which may be assigned to them during emergency operations.

(2) The fire chief may not permit a fire fighter with known heart disease, epilepsy, or emphysema to participate in fire department emergency operations unless a physician's certificate of the fire fighter's fitness to participate in such operations is provided.

Note: The intent of this subchapter is not to require an annual physical for each fire fighter.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95; CR 01−044: am. Register December 2001 No. 552, eff. 1−1−02.

Subchapter XII — Member Assistance Referral Program

SPS 330.16 Member assistance referral program. (1) Every fire department shall establish and adopt a written policy statement for a fire fighters assistance referral program that identifies and assists fire fighters with alcohol or substance abuse, stress and personal problems adversely affecting their job performance. The assistance program shall refer fire fighters to health care services as appropriate for the recovery of their health and job performance abilities.

(2) Through the program established under sub. (1), every fire department shall provide health promotion activities that identify a fire fighter's physical and mental health risk factors and provide education and counseling to fire fighters for the purpose of preventing health problems and enhancing overall well−being.

(3) The use of municipal or county programs shall meet the requirements of this section.

History: Cr. Register, August, 1995, No. 476, eff. 9−1−95.

Subchapter XIII — Miscellaneous Activities

SPS 330.20 Hazardous materials. Fire departments engaged in emergency operations relating to hazardous materials shall comply with s. 29 CFR 1910.120 as adopted by reference in ch. SPS 332.

History: CR 01−044: cr. Register December 2001 No. 552, eff. 1−1−02; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 330.21 Confined spaces. Fire departments engaged in emergency operations relating to confined spaces shall comply with s. 29 CFR 1910.146 as adopted by reference in ch. SPS 332.

History: CR 01−044: cr. Register December 2001 No. 552, eff. 1−1−02; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 330.22 Diving operations. Fire departments engaged in emergency operations relating to diving operations shall comply with 29 CFR 1910 subpart T as adopted by reference in ch. SPS 332.

History: CR 01−044: cr. Register December 2001 No. 552, eff. 1−1−02; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 330.23 Miscellaneous hazardous situations. Fire departments engaged in miscellaneous emergency operations and hazardous situations such as, but not limited to, structural collapse rescue, elevator rescue, trench rescue and terrorism responses shall comply with s. SPS 330.14, and with s. 29 CFR 1910.132 and any other applicable standard in 29 CFR 1910 and 29 CFR 1926, as adopted by reference in ch. SPS 332.

Note: Requirements for fire departments providing emergency medical services are administered and enforced by the Department of Health Services under chs. DHS 110 to 113.

History: CR 01−044: cr. Register December 2001 No. 552, eff. 1−1−02; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Chapter SPS 332

PUBLIC EMPLOYEE SAFETY AND HEALTH

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SPS 332.37 Motor vehicles [29 CFR 1926.601].
SPS 332.38 Specific excavation requirements [29 CFR 1926.651].
SPS 332.39 Exposure to traffic.
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Subchapter V — Incorporation of Standards by Reference
SPS 332.50 Incorporation of standards by reference.

Note: Chapters Ind 1, 6, 11, 12, 35, 200, 220, 221, 225, 226, 1000 to 2000 and ILHR 32 as they existed on March 31, 1991 were repealed and a new chapter ILHR 32 was created effective April 1, 1991. Chapter ILHR 31 as it existed on August 31, 1995 was repealed and sections ILHR 32.61 to 32.70 were created effective September 1, 1995.

Note: Chapter ILHR 32 as it existed on February 28, 1999, was repealed and recreated as chapter Comm 32, Register, February, 1999, No. 518. **Chapter Comm 32 was renumbered chapter SPS 332 under s. 13.92 (4) (b) 1., Stats., Register December 2011 No. 672.**

Subchapter I — Scope, Application and Definitions

SPS 332.001 Purpose. This chapter establishes minimum occupational safety and health standards for public employees.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.002 Scope. The provisions of this chapter apply to all places of employment and public buildings of a public employer.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.003 Application. (1) RETROACTIVITY. The provisions of this chapter shall apply to all places of employment and public buildings of a public employer whether existing prior to the effective date of this chapter or subsequently established or built, unless otherwise specified in this chapter.

(2) CONFLICTS. If requirements of the Statutes, this chapter or other Wisconsin Administrative Code chapters specify varying requirements, the most restrictive requirement for the protection of employee safety and health shall govern.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; CR 04−009: am. (2) Register August 2004 No. 584, eff. 9−1−04.

SPS 332.01 Definitions. In this chapter:

(1) "Agency", as defined in s. 101.055 (2) (a), Stats., 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.

(2) "Approved" means acceptable to the department.

(3) "Department" means the department of safety and professional services, unless otherwise specified.

(4) "Place of employment" means any place as defined in s. 101.01 (11), Stats., and includes farms of a public employer where research or education takes place.

(5) "Public employee" or "employee", as defined in s. 101.055 (2) (b), Stats., means any employee of the state, of any state agency or of any political subdivision of the state.

(6) "Public employee representative" or "employee representative", as defined in s. 101.055 (2) (c), Stats., 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.

(7) "Public employer" or "employer", as defined in s. 101.055 (2) (d), Stats., means the state, any state agency or any political subdivision of the state.

(8) "Secretary" means the secretary of the department of safety and professional services or appointed representative, unless otherwise specified. For the purpose of this chapter, the term secretary shall be substituted for the following titles referenced in the adopted standards of s. SPS 332.50:

(a) Secretary of labor;

(b) Assistant secretary of labor for occupational safety and health, U.S. department of labor;

(c) Director of the office of standards development, occupational safety and health administration, U.S. department of labor;

(d) Area director, occupational safety and health administration; and

(e) Director of the national institute for occupational safety and health, U.S. department of health and human services.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; correction in (4) was made under s. 13.93 (2m) (b) 7., Stats., Register June 2002 No. 558; **correction in (3), (8) (intro.) made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672.**

Subchapter II — Administration and Enforcement

SPS 332.05 Inspections. (1) RIGHT OF ENTRY TO INVESTIGATE OR INSPECT. The authorized representatives of the department, upon presentation of the appropriate credentials to an employer, may:

(a) Enter without delay and at reasonable times any building, place of employment or workplace of a public employer, or an environment where work is performed by an employee of an employer; and

(b) Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a rea-

sonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any employer or employee.

(2) PARTICIPATION IN INSPECTIONS. Pursuant to s. 101.055 (5), Stats., a representative of the employer, an employee, or an employee representative shall be provided an opportunity to accompany a department inspector on any inspection made under this chapter.

(3) REQUESTS FOR INSPECTIONS. (a) Any person who believes 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.

(b) If an employee or employee representative requesting an inspection so designates, that person's name may not be disclosed to the employer or any other person, including any state agency except the department.

(c) When determined necessary by the department, a request for inspection shall be made on a form provided by the department.

Note: The complaint registration form (SBD−192) is available at the Department's web site http://dsps.wi.gov through links to Safety and Buildings Division forms.

(4) ORDERS. The department shall issue orders for violation of this chapter in accordance with s. 101.055 (6), Stats.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.06 Posting department order. Upon issuance of an order of noncompliance, the employer shall post a copy of the order in accordance with s. 101.055 (6) (a) 1., Stats.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.07 Variances. Pursuant to s. 101.055 (4), Stats., the department shall consider and may grant a temporary variance, an experimental variance or a permanent variance in accordance with s. SPS 303.04 for a safety and health issue affecting public employees.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 332.08 Notices. Every employer shall post a notice that summarizes the employee's protections and rights as granted under s. 101.055, Stats.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.09 Penalties. Penalties for violations of this chapter may be assessed in accordance with s. 101.02, Stats.

Note: Section 101.02 (12), Stats., reads: "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."

Note: Section 101.02 (13) (a), Stats., reads: "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."

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.10 Injury and illness report. Pursuant to s. 101.055 (7) (a), Stats., and beginning January 1, 2004, each employer shall report work−related injuries and illnesses to the department for the previous year by March 1 of each year. The report shall be made on form SBD−10710 or equivalent.

Note: Form SBD−10710 is available at no charge from, and the report can be returned to, the Safety and Buildings Division, P.O. Box 7302, Madison, WI 53707−7302, telephone 608/266−2780 or TTY 608/264−8777.

History: CR 01−062: cr. Register June 2002 No. 558, eff. 7−1−02.

SPS 332.11 Safety and health program. (1) BASIC REQUIREMENT. Each employer shall develop and implement a safety and health program that describes the procedures, methods, processes and practices used to manage workplace safety and health. The program shall include, but not be limited to, elements for hazard identification and assessment, hazard prevention and control, and information and training.

(2) CONTACT PERSON. The employer shall designate an employee who the department can contact regarding the safety and health program.

History: CR 04−009: cr. Register August 2004 No. 584, eff. 9−1−04.

Subchapter III — General Requirements

SPS 332.15 OSHA Safety and health standards. Except as provided in s. SPS 332.16 and subch. IV, all places of employment and public buildings of a public employer shall comply with the federal Occupational Safety and Health Administration (OSHA) requirements adopted under s. SPS 332.50.

Note: There may be some substances that do not have an exposure limit specified in the OSHA standards. For those substances, the department will accept exposure limits that comply with the recommendations of the American Conference of Governmental Industrial Hygienists for threshold limit values and biological exposure indices.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 332.16 Wisconsin administrative code chapters. Except as provided in s. SPS 332.003 (2), the following chapters of the Wisconsin administrative code shall apply in place of the standards specified in s. SPS 332.15 for those safety and health issues which fall within the scope of the respective chapters.

(1) Chapter SPS 307, Explosives and Fireworks.

(2) Chapter SPS 308, Mines, Pits and Quarries.

(3) Chapter Comm 9, Manufacture of Fireworks.

Note: Ch. Comm 9 was repealed eff. 3−1−08 and a new Comm 9, now SPS 309, subsequently created eff. 7−1−11, relating to anchoring or securing of movable soccer goals.

(4) Chapter SPS 310, Flammable and Combustible Liquids.

(5) Chapter SPS 340, Gas Systems.

(8) Chapter SPS 314, Fire Prevention.

(10) Chapter SPS 316, Electrical.

(11) Chapter SPS 318, Elevator.

(12) Chapter SPS 330, Fire Department Safety and Health.

(13) Chapter SPS 333, Passenger Ropeways.

(14) Chapter SPS 334, Amusement Rides and Attractions.

(15) Chapter SPS 335, Infectious Agents.

(16) Chapter SPS 341, Boiler and Pressure Vessels.

(17) Chapter SPS 343, Anhydrous Ammonia.

(18) Chapter SPS 345, Mechanical Refrigeration.

(19) Chapters SPS 361 to 366, Wisconsin Commercial Building Code.

(20) Chapters SPS 381 to 387, Plumbing.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; correction in (15) and (16) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2000, No. 534; CR 01−062: am. (intro.) CR 01−139: r. (9) and (21), am. (19) Register June 2002 No. 558, eff. 7−1−02; **correction in (intro.), (1), (2), (4) to (20) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

Subchapter IV — Amendments to OSHA Standards

SPS 332.20 Amendments to OSHA standards. The substitutions, additions or omissions to the adopted OSHA standards as specified in this subchapter are rules of the department and not federal standards of OSHA.

Note: The referenced or corresponding OSHA section or subsection is located in the brackets following the SPS designation and preceding the text of the rule. Example: SPS 332.23 [29 CFR 1910.27].

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.205 Partial exemption from keeping records [29 CFR 1904.1 and 1904.2]. Sections 29 CFR 1904.1 and 1904.2 are not included as part of this chapter.

History: CR 01−062: cr. Register June 2002 No. 558, eff. 7−1−02.

SPS 332.21 General requirements [29 CFR 1910.22]. This department rule is in addition to 29 CFR 1910.22:

(1) No person may work on the surface of any structural member, floor, or other working platform which has become slippery from ice, snow, frost, paint or other cause, unless the surface is cleaned, sprinkled with sand or made nonslippery insofar as the nature of the work will permit.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.22 Portable ladders [29 CFR 1910.25 and 1910.26]. (1) APPLICATION. (a) The requirements of 29 CFR 1910.25 and 1910.26 also apply to portable fiberglass ladders.

(b) The requirements of this section apply to portable ladders constructed of wood, metal or fiberglass.

(2) USE OF LADDERS. These department rules are in addition to 29 CFR 1910.25 and 1910.26:

(a) The ladder base section shall be placed with a secure footing. Safety shoes shall be installed on all ladders.

Note: Non−slip bases are not intended as a substitute for care in safely placing, lashing or holding a ladder that is being used upon oily, metal, concrete or other slippery surfaces.

(b) No portable ladder may be used to gain access to a roof, floor or platform, unless the top of the ladder extends at least 3 feet above the point of support.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.23 Fixed ladders [29 CFR 1910.27]. This department rule is in addition to 29 CFR 1910.27 (e) (2):

(1) Fixed ladders of a substandard pitch shall be equipped with handrails on both sides. The handrails shall be installed 30 to 34 inches vertically above the rung or the nose of the tread.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.24 Ventilation [29 CFR 1910.94]. These department rules are in addition to 29 CFR 1910.94:

(1) APPROVAL OF PLANS. (a) Plans in quadruplicate and one set of specifications for exhaust ventilation equipment installed, remodeled or moved under this chapter shall be submitted to the department for approval before the affected work is commenced, and all work shall be executed according to the approved plans and specifications.

(b) A complete set of plans bearing the stamp of approval and a copy of the specifications shall be kept at the building site or shall be available at an alternate location for inspection by an authorized representative of the department.

Note: See chs. SPS 361 to 366 for complete plan submittal and ventilation requirements.

(2) EXHAUST VENTILATION AT SOURCE OF CONTAMINATION AND MAKE−UP AIR. (a) Except as provided in sub. (5) (d), local exhaust ventilation ductwork specifically designed for the removal of harmful dusts, fumes, vapors and gases shall be maintained at a negative pressure through occupied areas.

(b) A volume of tempered outside air shall be supplied to replace the air exhausted if the total volume of air exhausted exceeds one air change per hour. The quantity of make−up air shall equal at least 90% of the air exhausted.

(c) Tempered make−up air shall be installed to insure that the flow of exhaust air effectively picks up harmful dusts, fumes, vapors and gases.

(3) SEPARATION OF EXHAUST SYSTEMS. There shall be no connection between exhaust systems or ducts that convey different materials from separate operations, the combination of which may produce explosive, heat generating, corrosive, poisonous or otherwise dangerous mixtures.

(4) DISPOSAL OF EXHAUST MATERIAL. (a) All dusts, fumes, vapors and gases from local exhaust ventilation systems installed under this section shall be disposed of in a manner to eliminate the health hazards from occupied areas. Dust collecting systems shall separate the dust from the air before the air is discharged from the exhaust system.

(b) Except as provided in par. (c), all local exhaust ventilation systems shall discharge to the outside atmosphere.

Note: The state Department of Natural Resources and the federal Environmental Protection Agency have regulations relating to ambient air quality and emissions of air contaminants.

(c) Recirculation of contaminated air from local exhaust ventilation systems may be permitted where the exhaust system washes, scrubs or filters the air. Systems of this type shall perform in accordance with ANSI/AIHA Z9.7. Cleaning systems designed in accordance with other standards may be permitted if approved by the department.

(5) VENTILATION FOR KILNS. (a) *General.* 1. Except as provided in subd. 2., local exhaust ventilation shall be provided for all fuel−fired and electric kilns.

2. Local exhaust ventilation need not be provided where the kilns can be isolated in a separate room and the room is ventilated by means of a dedicated system at a minimum rate of 10 air changes per hour.

Note: Ventilation capacity for 10 air changes per hour can be calculated as follows:

$$\frac{\text{Room volume (cu. ft.) X 10}}{60} = \text{cfm needed}$$

Note: Reduced atmosphere firing produces high concentrations of carbon monoxide and caution should be exercised when entering the kiln room.

3. Exhaust ventilation systems for kilns shall be designed to remove harmful quantities of air contaminants generated during the firing process in order to comply with s. SPS 332.35.

Note: For examples of canopy hood exhaust systems, see the American Conference of Governmental Industrial Hygienists "Industrial Ventilation Manual".

(b) *Canopy hood ventilation.* 1. The height of a canopy hood above the top surface of a top−loading kiln shall be limited to that which is necessary for loading of the kiln. Canopy hoods over side− or front−loading kilns shall be located as close to the top edge of the kiln as possible, and side curtains shall not be required.

2. Canopy hoods over top−loading kilns shall be provided with noncombustible side curtains on 3 sides. If the kiln is located against a wall, only 2 side curtains shall be required. Side curtains shall extend down from the bottom edge of the canopy hood to the top edge of the kiln. Side curtains shall not be required for retractable hoods which can be positioned directly over the top of the kiln after loading.

(c) *Location of kilns.* 1. All fuel−fired kilns located inside of a building shall comply with chs. SPS 361 to 366.

2. Kilns may be located in boiler or furnace rooms if adequate combustion air is maintained for the boiler or furnace and the kiln under all operating conditions.

3. Fuel−fired kilns located outside of buildings shall be exempt from the ventilation requirements of this subsection. They shall be located to minimize the products of combustion from entering the building, but in no case shall the distance be less than 10 feet measured in any direction from a wall opening or air intake.

4. Kilns shall be installed in accordance with the manufacturer's specifications for distance to walls.

Note: Wall−to−kiln distance may vary from 12 to 18 inches, depending on the type of kiln.

5. Kilns shall be located to minimize the possibility of burns.

Note: The outside temperature of kilns may vary from approximately 250 to 450º F, depending on the type of kiln.

(d) *Downdraft ventilation.* Electric kilns with downdraft ventilation may have the ventilation ductwork maintained at a positive pressure through occupied areas provided the ductwork is sealed to prevent any leakage.

(6) VENTILATION FOR LABORATORY FUME HOODS. (a) *General.* 1. Except as provided in par. (b), laboratory fume hoods during use shall be operated with a minimum average 100 feet per minute face velocity at full open sash or sash stop position. When determining the minimum flow rate through the fume hood, the sash stop position may not be lower than 18 inches above the work surface.

Note: When operating the fume hood, the sash should be positioned to maximize the protection to the user.

2. Vertical sash fume hoods operated at sash stop positions shall have an alarm that gives a warning when the sash is raised above the sash stop position. Combination vertical/horizontal sash fume hoods shall have an alarm that gives a warning when the sash is vertically raised from the fully lowered position.

(b) *Alternate operation.* 1. Fume hoods operating at minimum average face velocities less than 100 feet per minute shall achieve a spillage rate less than 0.1 ppm at 4.0 liters per minute gas release for an "as used" condition in accordance with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) standard 110 − Method of Testing Laboratory Fume Hoods. The minimum allowable average face velocity for fume hoods achieving the ASHRAE 110 containment criteria shall be 40 feet per minute at full open sash.

2. Fume hoods operating at minimum average face velocities less than 100 feet per minute shall have a continuous flow meter with an alarm.

Note: For further information regarding fume hood operation, see ANSI/AIHA standard Z9.5 − Laboratory Ventilation.

(c) *Testing.* Operable fume hoods shall be tested annually for minimum average face velocity.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; am. (2) (a), (4) (c), (5) (a) and (c) 2., r. (2) (b) and Figure 32.24, renum. (2) (c) and (d) to be (2) (b) and (c) and am. (c), cr. (5) (d) and (6), Register, June, 2000, No. 534, eff. 7−1−00; CR 01−139: am. (5) (c) 1. Register June 2002 No. 558, eff. 7−1−02; **correction in (5) (a) 3., (c) 1. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**

SPS 332.25 Compressed gases [29 CFR 1910.101]. This department rule is in addition to 29 CFR 1910.101:

(1) All compressed gas cylinders shall be secured around the body of the cylinder to prevent falling.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.26 Spray finishing using flammable and combustible materials [29 CFR 1910.107]. This department rule is in addition to 29 CFR 1910.107:

(1) PLAN SUBMITTAL. Plans in quadruplicate and one set of specifications shall be submitted to the department for approval before installing any spray booth under this chapter.

Note: See chs. SPS 361 to 366 for complete plan submittal and ventilation requirements.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.28 Permit−required confined spaces [29 CFR 1910.146]. These department rules are in addition to 29 CFR 1910.146 for permit−required confined spaces:

(1) SAMPLING DEVICE. (a) The sampling device shall be calibrated relative to the oxygen content of the ambient air at the time of sampling. Calibration of the sampling device relative to the oxygen content shall be performed where the 20.9% natural content of oxygen in the air is most likely to occur.

Note: Oxygen calibration should not be performed near a confined space opening.

(b) A sampling device which has a zero set shall be zeroed in a clean atmosphere before each sampling. Calibration of a sampling device shall be conducted as often as recommended by the manufacturer, but at least once every 6 months.

(c) The sampling device or a non−sparking probe attached to the sampling device shall be used to sample the atmosphere of a confined space. When entry to a confined space is by means of a manhole, a probe shall be inserted through the pick−hole of the manhole cover, or the manhole cover shall be pried open on the downwind side to allow just enough room for insertion of the probe or device.

(2) AIR MONITORING. The atmosphere in a confined space within the authorized entrant's immediate area shall be continuously monitored for oxygen, hydrogen sulfide or carbon monoxide, combustible gas and any other hazardous substance which the employer has reason to believe may be present in the confined space.

(3) TRAINING. An employer shall provide training in basic first aid and adult cardiopulmonary resuscitation for all authorized entrants and attendants.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.29 Confined spaces. These are department rules for all confined spaces:

(1) ENTRY PROHIBITED. A confined space with an atmosphere which has a combustible gas content of 10% or more of the lower explosive limit shall not be entered even if a breathing apparatus or respirator is used.

(2) SMOKING AND OPEN FLAMES. Smoking and open flames shall not be allowed within 10 feet of a confined space.

(3) WORKING IN STREETS. Work at confined spaces which are located in streets shall be performed in accordance with the following:

(a) A vehicle's beacon and 4−way flashers shall be activated upon approach to an entrance of a confined space.

(b) A vehicle shall be parked to permit traffic to flow in an unobstructed manner and, where possible, to provide protection for the employees.

(c) A vehicle shall be parked so vehicle exhaust cannot accumulate in the confined space. If this is not possible, the vehicle's exhaust pipe shall be extended away from the confined space.

Note: See also s. SPS 332.39.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.30 Medical services and first aid [29 CFR 1910.151]. Substitute the following wording for 29 CFR 1910.151 (c):

(1) Whenever the eyes or body of any person may be exposed to materials that are corrosive or can cause irreversible eye or bodily injury, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

Note: The department will accept facilities that comply with ANSI standard Z358.1, Emergency Eyewash and Shower Equipment.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.31 Fire brigades [29 CFR 1910.156]. Section 29 CFR 1910.156 is not included as part of this chapter.

Note: See ch. SPS 330 for fire department safety and health requirements.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.32 Handling materials, general [29 CFR 1910.176]. These department rules are in addition to 29 CFR 1910.176:

(1) CONVEYORS. Conveyor systems passing through more than one room, or from one working level to another, shall be provided in each room, or working level, where exposed to contact, with means to disconnect the power.

(2) INCOMPATIBLE MATERIALS. Incompatible materials shall be segregated to prevent accidental contact with each other that may result in fire, explosion or toxic gas emission.

Note: Guidance in the storage of incompatible materials can be obtained in publications from the National Fire Protection Association, such as NFPA 49 and 491M.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.33 General requirements for all machines [29 CFR 1910.212]. These department rules are in addition to 29 CFR 1910.212:

(1) DISCONNECTION FROM SOURCE OF POWER. (a) Every machine shall be equipped with a loose pulley, clutch, switch or other adequate means within reaching distance of the normal operating positions of the operator for the purpose of disconnecting the machine from the source of power.

(b) Machines on which 2 or more persons work shall be equipped with one or more controls so located that more than one of these persons can quickly disconnect the machine from the source of power.

The Wisconsin Administrative Code on this web site is current through the last published Wisconsin Register. See also Are the Codes on this Website Official?

(2) COUNTERWEIGHTS, TENSION WEIGHTS AND SPRINGS. (a) Every counterweight, where exposed to contact, shall be enclosed or be equipped with a safety device attached independent of the counterweight support, that shall prevent the weight from falling to a point of less than 7 feet from the floor or working level.

(b) Every tension weight exposed to contact shall be enclosed or securely fastened to the tension bar.

(c) All springs shall be guarded or otherwise equipped to eliminate any hazard due to breakage of the spring or failure of the mounting.

(3) GUARDING OF HOT PIPES. All pipes carrying steam or other hot materials within 7 feet of the floor or working platform, that are exposed to contact, shall be covered with an insulating material, or guarded so that contact will not cause personal injury.

(4) PREVENTION OF AUTOMATIC RESTARTING. On applications where injury to the operator might result if motors were to restart after power failures, machines shall be prevented from automatically restarting upon restoration of power.

(5) MAINTENANCE. All equipment, machine tools, guards and power−driven machinery shall be operated and maintained in safe condition.

Note: For information regarding operation and maintenance of hoists, see ANSI/ASME standard B30.16 − Overhead Hoists (Underhung).

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; cr. (4) and (5), Register, June, 2000, No. 534, eff. 7−1−00.

SPS 332.34 Woodworking machinery requirements [29 CFR 1910.213]. These department rules are in addition to 29 CFR 1910.213 (h):

(1) LIMIT STOP. A stop shall be provided to prevent the forward travel of the blade beyond the front of the table.

(2) RETURN MEANS. Every radial arm saw shall be equipped with a means to return the saw automatically to the back of the table when released at any point of its travel; the means shall prevent the saw from rebounding and shall not depend on fiber rope or cord for this function.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.345 Commercial diving operations [29 CFR 1910.401]. Section 29 CFR 1910.401 (a) (2) (ii) is not included as part of this chapter.

History: CR 01−062: cr. Register June 2002 No. 558, eff. 7−1−02.

SPS 332.35 Air contaminants [29 CFR 1910.1000]. **(1)** SUBSTITUTION. In lieu of 29 CFR 1910.1000, July 1, 2003 edition, an employee's exposure to air contaminants shall be in accordance with the requirements of 29 CFR 1910.1000, July 1, 1992 edition.

Note: The requirements of 29 CFR 1910.1000, July 1, 1992 edition were first adopted by OSHA in 1989. Those requirements have been in effect under this chapter since April 1, 1991.

Note: Copies of 29 CFR 1910.1000, July 1, 1992 edition may be obtained from the Safety and Buildings Division, P.O. Box 7302, Madison, WI 53707, telephone 608/266−2780.

(2) ADDITION. In addition to the requirements of 29 CFR 1910.1000, the employer shall implement the monitoring or measuring of any substance listed in Table Z−1−A where exposure at or above the time weighted average, short term exposure limit or ceiling limit is reasonably likely to occur.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; CR 04−009: am. (1) Register August 2004 No. 584, eff. 9−1−04.

SPS 332.36 General safety and health provisions [29 CFR 1926.20]. This department rule is in addition to 29 CFR 1926.20:

(1) No person may work on the surface of any structural member, floor, or other working platform which has become slippery from ice, snow, frost, paint or other cause, unless the surface is cleaned, sprinkled with sand or made nonslippery insofar as the nature of the work will permit.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.37 Motor vehicles [29 CFR 1926.601]. Substitute the following wording for 29 CFR 1926.601 (b) (10):

(1) Trucks with dump bodies shall be equipped with positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done or when the vehicle is left unattended.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.38 Specific excavation requirements [29 CFR 1926.651]. These department rules are in addition to 29 CFR 1926.651:

(1) GUARDING. A standard railing as specified in 29 CFR 1926.502 (b) or other approved guard or barricade shall be provided at or near the edge of an excavation as soon as possible, except where the installation of the safeguard will interfere with the excavation or other work.

(2) NIGHT GUARDING. All excavations to which persons may be exposed at night shall be provided with yellow warning lights placed at unbarricaded points and along the exposed side where the excavation adjoins a public thoroughfare or sidewalk.

(3) SOLITARY EMPLOYMENT. No person may work in any trench, shaft, tunnel, caisson or appurtenance over 4 feet in depth without another person being present at the surface.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; CR 04−009: am. (1) Register August 2004 No. 584, eff. 9−1−04.

SPS 332.39 Exposure to traffic. **(1)** SAFETY VESTS. Employees who work on highways, roads, streets or their easements shall wear traffic safety vests or use clothing or equipment that provides equivalent protection.

Note: For information regarding safety vests and clothing, see ANSI/ISEA standard 107 − High−Visibility Safety Apparel.

(2) TRAFFIC CONTROL DEVICES. Pursuant to s. 349.065, Stats., traffic control devices to warn traffic and protect employees shall be placed and maintained in accordance with the uniform traffic control devices manual.

Note: The uniform traffic control devices manual may be obtained from the American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406−1022, telephone 800/231−3475. Electronic copies are available at the Federal Highway Administration website at http://mutcd.fhwa.dot.gov/.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

SPS 332.40 Riding on motor vehicles. Employees may ride on motor vehicles in other than factory installed passenger seats equipped with seatbelts only when the speed of the motor vehicle is less than 10 miles per hour.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99.

Subchapter V — Incorporation of Standards by Reference

SPS 332.50 Incorporation of standards by reference. **(1)** AUTHORITY. Section 101.055 (3) (a), Stats., permits the department to incorporate by reference the standards adopted in Table 332.50−1. Pursuant to s. 227.21 (2), Stats., the revisor of statutes and the attorney general have consented to the incorporation by reference of the standard adopted in Table 332.50−2.

(2) STANDARDS. The standards listed in the following tables are hereby incorporated by reference into this chapter.

Note: Copies of the adopted standards are on file in the offices of the department and the legislative reference bureau. Copies also may be purchased through the organizations listed.

Table 332.50−1

OSHA	Occupational Safety and Health Administration U. S. Government Printing Office 732 N. Capitol Street, NW Washington, DC 20401 Telephone: 866/512−1800 Online Bookstore: http://bookstore.gpo.gov
1.	Recording and Reporting Occupational Injuries and Illnesses, Title 29 CFR Part 1904, July 1, 2003.
2.	Occupational Safety and Health Standards, Title 29 CFR Part 1910, July 1, 2003.
3.	Occupational Safety and Health Standards for Shipyard Employment, Title 29 CFR Part 1915, July 1, 2003.
4.	Occupational Safety and Health Standards for Marine Terminals, Title 29 CFR Part 1917, July 1, 2003.
5.	Occupational Safety and Health Regulations for Construction, Title 29 CFR Part 1926, July 1, 2003.
6.	Occupational Safety and Health Standards for Agriculture, Title 29 CFR Part 1928, July 1, 2003.

Table 332.50−2

ANSI	American National Standards Institute Attn: Customer Service 11 West 42nd Street New York, NY 10036 Telephone: 212/642−4900
1.	Recirculation of Air from Industrial Process Exhaust Systems, ANSI/AIHA Z9.7−1998.

History: Cr. Register, February, 1999, No. 518, eff. 3−1−99; am. Table 32.50−1, r. and recr. 32.50−2, Register, June, 2000, No. 534, eff. 7−1−00; CR 01−062: cr. subd. 11. to 13. in Table 32.50−1 Register June 2002 No. 558, eff. 7−1−02 and cr. subd. 14. in Table 32.50−1 Register June 2002 No. 558, eff. 1−1−03; CR 04−009: am. (1) and r. and recr. Table 32.50−1 Register August 2004 No. 584, eff. 9−1−04; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.**