

## CHAPTER 106

## APPRENTICE, EMPLOYMENT AND EQUAL RIGHTS PROGRAMS

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**Cross Reference:** See the definitions in s. 103.001.

## SUBCHAPTER I

## APPRENTICE PROGRAMS

**Cross Reference:** See also chs. DWD 295 and 296, Wis. adm. code.

**106.001 Definitions.** In this subchapter:

(1) "Apprentice" means any person who enters into an indenture with an employer or organization.

(2) "Indenture" means any contract or agreement of service, express or implied, whereby an apprentice is to receive from or through the apprentice's employer, in consideration for the apprentice's services in whole or in part, instruction in any trade, craft or business.

(3) "Organization" means an organization of employees, association of employers or other similar responsible agency in this state.

**History:** 1999 a. 83.

**106.01 Apprenticeship indentures.** (2) Every indenture shall be in writing and shall be executed in triplicate. One of the triplicate originals shall be delivered to the apprentice, one shall be retained by the employer and one shall be filed with the department at Madison.

(3) Except as provided in ss. 106.02, 106.025 and 106.03, any minor 16 years of age or over or any adult may, by the execution of an indenture, bind himself or herself as provided in this section for a term of service of not less than one year.

(4) Every indenture shall be signed by the apprentice and the employer. If the apprentice has not reached 18 years of age, the indenture shall be signed also by one of the apprentice's parents. If both parents are dead or legally incapable of giving consent, the indenture shall be signed by the guardian of the minor or, if there is no guardian, by a deputy of the department.

(5) Every indenture shall contain:

(a) The names of the parties.

(b) The date of birth of the apprentice.

(c) A statement of the trade, craft or business that the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(d) An agreement stating the number of hours to be spent in work, and the number of hours to be spent in instruction. During the first 2 years of an apprenticeship, the apprentice's period of instruction shall be not less than 4 hours per week or the equivalent. If the apprenticeship is for a longer period than 2 years, the

total hours of instruction shall be not less than 400 hours. The total number of hours of instruction and work shall not exceed 55 per week, except that nothing in this paragraph shall be construed to forbid overtime work as provided in sub. (7).

(e) An agreement as to the processes, methods or plans to be taught, and the approximate time to be spent at each process, method or plan.

(f) A statement of the compensation to be paid the apprentice.

(g) An agreement that a certificate shall be given the apprentice at the conclusion of the apprentice's indenture, stating the terms of indenture.

(5i) (a) The proper persons described in sub. (4) may enter into an indenture with any employer or organization.

(am) 1. Upon entering into an indenture, an organization shall, with the written consent of the other parties to the indenture, and the written acceptance of the indenture by the proposed employer, assign the indenture to the proposed employer, and the proposed employer and the apprentice named in the indenture shall be bound by the terms of the indenture.

2. The consent and acceptance described in subd. 1. shall be executed in triplicate. One of the triplicate original consents and acceptances shall be delivered to the department, one to the employer and one to the apprentice, and in each case shall be attached to the proper indenture. The approval of the department is required in each transaction. An organization that enters into an indenture under par. (a) shall have the exclusive right to assign the indenture, and the apprentice shall not be permitted to enter into any other indenture. The period transpiring before assignment to an employer shall not be credited toward the period of apprenticeship.

(b) Any employer that has entered into an indenture may, with the approval of the department and the written consent of the other parties to the indenture, assign the indenture to any organization in this state. The period of time in which the organization is the assignee shall not be credited as time served by the apprentice. After the assignment, the organization shall, with the approval of the department and the written consent of the apprentice, reassign the indenture to an employer, but the apprentice shall not be bound by the assignment unless the assignee employer accepts, by signed instruments, the terms of the indenture and agrees to perform the unperformed obligations of the indenture. The consent and acceptance shall be executed in triplicate. One of the triplicate original consents and acceptances shall be delivered to the department, one to the assignee employer and one to the apprentice, and in each case shall be attached to the proper indenture. Upon accep-

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tance of the indenture, the assignee employer shall for all purposes be considered a party to the indenture.

(c) Any employer that has entered into an indenture may, with the written consent, executed in triplicate, of the other parties to the indenture and the approval of the department, assign the indenture to another employer whose written acceptance shall be executed upon the instrument of consent. One of the triplicate original consents and acceptances shall be delivered to the apprentice, one to the assignee employer and one to the department, and shall in each case be attached to the indenture in each party's possession. After assignment, the assignee employer shall perform the unperformed obligations of the indenture. The department shall continue to have jurisdiction over an indenture assigned under this paragraph and the parties bound after the assignment.

(5j) The department may on its own motion, or on the complaint of any person, after due notice and a hearing, make findings and issue orders declaring any indenture at an end if it is proved at the hearing that any apprentice, employer or organization that is a party to the indenture is unable to continue with the obligations under the indenture or has breached the indenture. Upon the termination of the indenture, the released apprentice shall be free to enter into a new indenture under any terms and conditions approved by the department that are not inconsistent with this section.

(5k) The department shall, upon request, furnish a copy of any instrument required to be filed with it under this section to any party whose name appears on the requested instrument.

(6) An employer shall pay for the time an apprentice is receiving related instruction for no fewer hours than specified in sub. (5) (d) at the same rate per hour as for services. This subsection does not prohibit an agreement between the parties requiring the apprentice to take additional instruction on the apprentice's own time in excess of the number of hours required by statute. Attendance at school shall be certified by the teacher in charge.

(7) An apprentice may be allowed to work overtime. All time in excess of the hours of labor as limited to the particular craft, industry, or business and as to the particular employer, shall be considered overtime. For overtime the apprentice's rate of pay shall be increased by the same percentage as the journeyman's rate for overtime is increased in the same industry or establishment.

(8) If either party to an indenture fails to perform any of the stipulations of the indenture, the nonperforming party shall forfeit not less than one dollar nor more than \$100, which is to be collected on complaint of the department, and paid into the state treasury. Any indenture may be annulled by the department upon application of either party and good cause shown.

(9) The department may investigate, fix reasonable classifications, issue rules and general or special orders and, hold hearings, make findings and render orders upon its findings as shall be necessary to carry out the intent and purposes of this section. The investigations, classifications, hearings, findings and orders shall be made as provided in s. 103.005. Except as provided in sub. (8), the penalties specified in s. 103.005 (12) apply to violations of this section. Orders issued under this subsection are subject to review under ch. 227.

(10) It shall be the duty of all school officers and public school teachers to cooperate with the department and employers of apprentices to furnish, in a public school or any school supported in whole or in part by public moneys, any instruction that may be required to be given apprentices.

**History:** 1971 c. 228 s. 43; 1977 c. 29 s. 1651; 1977 c. 273; 1993 a. 492; 1995 a. 27; 1999 a. 83; 2001 a. 16; 2003 a. 33.

The department was a necessary party to an action by a city employee for an allegedly discriminatory annulment of his apprentice indenture. *Tillman v. City of Milwaukee*, 715 F.2d 354 (1983).

**106.02 Carpenters' apprentices.** Every person, regardless of age, commencing a carpentry apprenticeship, shall enter into an indenture under and be subject to s. 106.01, except that the apprentice is 18 years or more of age the apprentice's signature

only shall be necessary to bind the apprentice. A carpentry apprenticeship shall be for a period of 4 years, except that the department may upon the application of the apprentice or the employer, or both, extend that term for up to one additional year.

**History:** 1971 c. 213 s. 5; 1993 a. 492; 1999 a. 83.

**106.025 Plumber apprenticeships.** (1) The department may prescribe the conditions under which a person may serve a plumbing apprenticeship, as to preliminary and technical college attendance requirements, and the credit for school attendance in serving the apprenticeship.

(2) Every person commencing a plumbing apprenticeship shall enter into an indenture under s. 106.01. The term of a plumbing apprentice is 5 years, but the department may upon application of the apprentice, the apprentice's employer or both extend the term for up to one additional year.

(3) After the expiration of an apprenticeship term, no apprentice may engage in the business of plumbing either as an apprentice or as a journeyman plumber unless the apprentice secures a journeyman plumber's license. In case of failure to pass the examination for the license, he or she may continue to serve as an apprentice but not beyond the time for reexamination for a journeyman plumber's license, as prescribed by the rules of the department.

(4) In order that the apprentice may qualify at the end of apprenticeship as a skilled mechanic in the art of installing plumbing work, the department may prescribe the level of supervision of an apprentice and the character of plumbing work that the apprentice may do during the 3rd year of the apprenticeship term. An apprentice in the 4th or 5th year of the apprenticeship term may install plumbing under the direction or supervision of a master or journeyman plumber without either the master or journeyman being physically present, provided that the master plumber in charge shall be responsible for the work.

**History:** 1971 c. 40; 1971 c. 154 s. 79 (2); 1979 c. 221; 1981 c. 60; 1993 a. 399; 1995 a. 286 ss. 1, 2; Stats. 1995 s. 106.025; 1999 a. 83.

**106.03 Real estate apprenticeships excluded.** This chapter shall not apply to apprenticeships under ch. 452.

**106.04 Employment of apprentices on state public works projects.** (1) **DEFINITIONS.** In this section:

(d) "Project" means a project of public works that is subject to s. 103.49 or 103.50 in which work is performed by employees employed in trades that are apprenticeable under this subchapter.

(3) **WAIVER.** If the department grants an exception or modification to any requirement in any contract for the performance of work on a project relating to the employment and training of apprentices, the department shall post that information on its Internet site, together with a detailed explanation of why the exception or modification was granted.

**History:** 2009 a. 28.

**SUBCHAPTER II****EMPLOYMENT PROGRAMS**

**106.09 Public employment offices.** (1) The department shall establish and conduct free employment agencies, license and supervise the work of private employment offices, do all in its power to bring together employers seeking employees and working people seeking employment, make known the opportunities for self-employment in this state, aid in procuring employment for the blind adults of the state, aid in inducing minors to undertake promising skilled employments, provide industrial or agricultural training for vagrants and other persons unsuited for ordinary employments, and encourage wage earners to insure themselves against distress from unemployment. It shall investigate the extent and causes of unemployment in this state and the remedies therefor in this and other countries, and it shall devise and adopt the most efficient means within its power to avoid unemployment,

to provide employment, and to prevent distress from involuntary idleness.

(2) Any county, city, town or village may enter into an agreement with the department for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and it shall be lawful for any county, city, town or village to appropriate and expend the necessary money and to permit the use of public property for the joint establishment and maintenance of such offices as may be agreed upon, or in counties containing 250,000 inhabitants or more in any city, town or village therein to purchase a site and construct necessary buildings. Provided, that in any county, city, village or town therein, wherein there is a citizens' committee on unemployment, such committee may rent, lease, purchase or construct necessary buildings for the joint establishment and maintenance of such free employment office, subject to the approval of such plans by the department. The department may establish such free employment offices as it deems necessary to carry out the purposes of ch. 108. All expenses of such offices, or all expenses not defrayed by the county, city, town or village in which an office is located, shall be paid from the appropriations to the department provided in s. 20.445 (1) (ga) and (n).

(3) The department may rent, furnish and equip, except as provided in sub. (2), such offices as may be needed in cities for the conduct of its affairs. All payments arising under this section shall be charged against the proper appropriation for the department.

(5) The department is authorized and directed to cooperate with the U.S. employment service in the administration of its functions.

(7) The department may, by rule, fix and collect fees for provision of employment services authorized but not funded by the U.S. employment service.

**History:** 1971 c. 185 ss. 1, 7; 1971 c. 228 ss. 25, 42; Stats. 1971 s. 101.23; 1973 c. 90 s. 559; 1979 c. 34 s. 2102 (25) (a); 1981 c. 36 s. 45; 1983 a. 27; 1985 a. 29 ss. 1650, 3202 (29); 1995 a. 27 s. 3692; Stats. 1995 s. 106.09; 2003 a. 33.

**Cross Reference:** See also ch. DWD 310, Wis. adm. code.

**106.10 Veterans job training.** The department shall cooperate with the U.S. department of veterans affairs in the performance of functions prescribed in P.L. 79–679, 60 Stat. 934 and any acts amendatory thereof or supplementary thereto. The secretary may with the approval of the governor take all necessary steps in the making of leases or other contracts with the federal government in the adoption and execution of plans, methods and agreements to effectuate P.L. 79–679.

**History:** 1971 c. 185 s. 1; 1971 c. 228; Stats. 1971 s. 101.25; 1977 c. 29, 272; 1989 a. 56; 1995 a. 27 s. 3693; Stats. 1995 s. 106.10.

**106.11 Workforce investment programs.** The department shall cooperate with the federal government in carrying out the purposes of the federal Workforce Investment Act of 1998, 29 USC 2801 to 2945. In administering the programs authorized by that act the department shall, in cooperation with other state agencies and with local workforce development boards established under 29 USC 2832, establish a statewide workforce investment system to meet the employment, training, and educational needs of persons in this state. If a local workforce development board anticipates that there may be a business closing or mass layoff under s. 109.07 in the area served by that board, the board may prepare a list of resources available in that area that provide career planning, job search, job skills training, and other support services for affected employees, as defined in s. 109.07 (1) (a), including contact information for those resources, for distribution to those employees under s. 109.07 (1m) (a).

**History:** 1985 a. 29 ss. 43, 45 to 48, 50, 51, 1651 to 1653, 3202 (22); 1993 a. 399, 446; 1995 a. 27 ss. 3694 to 3697, 9145 (1); Stats. 1995 s. 106.11; 1997 a. 27, 39, 112; 1999 a. 9; 2009 a. 87.

**106.12 Employment and education program administration.** The department shall plan, coordinate, administer, and implement the youth apprenticeship program under s. 106.13 (1) and such other employment and education programs as the gover-

nor may by executive order assign to the department. Notwithstanding any limitations placed on the use of state employment and education funds under this section or s. 106.13 or under an executive order assigning an employment and education program to the department, the department may issue a general or special order waiving any of those limitations on finding that the waiver will promote the coordination of employment and education services.

**History:** 1993 a. 16; 1995 a. 27 s. 3701; 1995 Stats. s. 106.12; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25.

**106.13 Youth apprenticeship program. (1)** The department shall provide a youth apprenticeship program that includes the grant programs under subs. (3m) and (4).

**NOTE:** 2003 Senate Bill 44, enacted as 2003 Wis. Act 33, changed the term “board” to “department” in ten places in this section. Nine of the changes were vetoed but the change in sub. (1) was not vetoed.

(2) The council on workforce investment established under 29 USC 2821, the technical college system board, and the department of public instruction shall assist the department in providing the youth apprenticeship program under sub. (1).

(2m) The department shall approve occupations and maintain a list of approved occupations for the youth apprenticeship program. From the appropriation under s. 20.445 (1) (a), the department shall develop curricula for youth apprenticeship programs for occupations approved under this subsection.

(3) The youth apprenticeship program under sub. (1) shall not affect any apprenticeship program that is governed by ss. 106.01 to 106.03, except that an apprenticeship program that is governed by ch. 106 may grant credit toward the completion of an apprenticeship for the successful completion of a youth apprenticeship under sub. (1).

(3m) (a) In this subsection, “local partnership” means one or more school districts, or any combination of one or more school districts, other public agencies, as defined in sub. (4) (a) 2., nonprofit organizations, as defined in sub. (4) (a) 1r., individuals or other persons, who have agreed to be responsible for implementing and coordinating a local youth apprenticeship program.

(b) From the appropriation under s. 20.445 (1) (e), the department shall award grants to applying local partnerships for the implementation and coordination of local youth apprenticeship programs. A local partnership shall include in its grant application the identity of each public agency, nonprofit organization, individual, and other person who is a participant in the local partnership, a plan to accomplish the implementation and coordination activities specified in subs. 1. to 6., and the identity of a fiscal agent who shall be responsible for receiving, managing, and accounting for the grant moneys received under this paragraph. Subject to par. (c), a local partnership that is awarded a grant under this paragraph may use the grant moneys awarded for any of the following implementation and coordination activities:

1. Recruiting employers to provide on–the–job training and supervision for youth apprentices and providing technical assistance to those employers.

2. Recruiting students to participate in the local youth apprenticeship program and monitoring the progress of youth apprentices participating in the program.

3. Coordinating youth apprenticeship training activities within participating school districts and among participating school districts, postsecondary institutions and employers.

4. Coordinating academic, vocational and occupational learning, school–based and work–based learning and secondary and postsecondary education for participants in the local youth apprenticeship program.

5. Assisting employers in identifying and training workplace mentors and matching youth apprentices and mentors.

6. Any other implementation or coordination activity that the department may direct or permit the local partnership to perform.

(c) A local partnership that is awarded a grant under par. (b) may not use any of the grant moneys awarded to provide funding

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to a business that is operated for profit or to a nonprofit organization that represents business interests.

(d) The amount of a grant awarded under par. (b) may not exceed \$900 per youth apprentice. A local partnership that is awarded a grant under par. (b) shall provide matching funds equal to 50% of the grant amount awarded.

(e) The following outcomes are expected of a local youth apprenticeship program that is funded under par. (b):

1. At least 80% of the youth apprentices who participate in the program for 2 years must receive a high school diploma on completion of the youth apprenticeship.

2. At least 60% of the youth apprentices who participate in the program for 2 years must be offered employment by the employer that provided the on–the–job training for the youth apprentice on completion of the youth apprenticeship.

**(4)** (a) In this subsection:

1d. “Eligible employer” means an employer that is eligible to receive a grant under this subsection according to the criteria established by the department under par. (d).

1r. “Nonprofit organization” means a nonstock corporation under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

2. “Public agency” means a county, city, village, town, school district or technical college district or an agency of this state or of a county, city, village, town, school district or technical college district.

(b) From the appropriation under s. 20.445 (1) (em), the department may award a grant to a public agency or a nonprofit organization, or to an eligible employer that is responsible for the on–the–job training and supervision of a youth apprentice. A public agency or nonprofit organization that receives a grant under this subsection shall use the funds awarded under the grant to award training grants to eligible employers that provide on–the–job training and supervision for youth apprentices. Subject to par. (c), a training grant provided under this subsection may be awarded to an eligible employer for each youth apprentice who receives at least 180 hours of paid on–the–job training from the eligible employer during a school year, as defined in s. 115.001 (13). The amount of a training grant may not exceed \$500 per youth apprentice per school year. A training grant may not be awarded for any specific youth apprentice for more than 2 school years.

(c) Notwithstanding par. (b), the department may award a training grant under this subsection to an eligible employer that provides less than 180 hours of paid on–the–job training for a youth apprentice during a school year, as defined in s. 115.001 (13), if the department determines that it would be beneficial for the youth apprentice to receive on–the–job training from more than one eligible employer.

(d) The department shall establish eligibility criteria for a grant under this subsection. That criteria shall specify that eligibility for a grant shall be limited to small employers, as determined by the department, and to employers providing on–the–job training in employment areas determined by the department. Notwithstanding sub. (5), those criteria need not be promulgated as rules.

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

**History:** 1991 a. 39; 1993 a. 16, 339, 399, 437, 491; 1995 a. 27 ss. 3703 to 3712, 9130 (4), 9145 (1); Stats. 1995 s. 106.13; 1997 a. 3, 27, 79; 1999 a. 9 ss. 2016 to 2024, 2068; 2001 a. 16; 2003 a. 33; 2005 a. 25.

**106.14 Job centers.** The department shall provide a job center network throughout the state through which job seekers may receive comprehensive career planning, job placement, and job training information.

**History:** 1993 a. 16; 1995 a. 27 ss. 3713, 3770m and 3770p; Stats. 1995 s. 106.14; 1997 a. 27; 1999 a. 9; 2001 a. 16.

**106.15 Assistance for dislocated workers. (1) DEFINITIONS.** In this section:

(a) “Council” means the council on workforce investment established under 29 USC 2821.

(b) “Dislocated worker” has the meaning given in 29 USC 2801 (9).

(c) “Dislocated worker committee” means the committee or other subunit of the council that assists the governor in providing employment and training activities to dislocated workers under 29 USC 2862 to 2864.

(d) “Local plan” means a local plan required under 29 USC 2833 as a condition for a grant.

**(3) GRANTS.** From the appropriations under s. 20.445 (1) (bc), (jm), and (m), the department shall make grants to persons providing employment and training activities to dislocated workers including all of the following:

(a) Job search assistance, including participation in job clubs.

(b) Training in job skills.

(c) Support services, including but not limited to transportation assistance, relocation assistance, financial counseling, personal counseling and programs conducted in cooperation with employers or labor organizations.

**(4) GRANT APPROVAL.** The department may award a grant under this section only if both of the following occur:

(a) The dislocated workers committee approves the local plan or application for funding and refers its decision to the secretary.

(b) After receiving a referral under par. (a), the secretary approves the local plan or application for funding.

**(5) LOCAL PLAN OR APPLICATION REVIEW.** In reviewing local plans and applications for funding under this section, the dislocated workers committee and the secretary shall consider all of the following:

(a) The severity of the need for the program in the community to be served when compared with the severity of need in other communities.

(b) The appropriateness of the skill development or training to be provided, including whether the demand for that skill exceeds the supply.

(c) Whether the program provides for labor organizations to participate in program planning.

(d) Whether the program provides for coordination with other employment and training programs offered in the community in which the program will be offered.

**(6) RULE MAKING.** The department shall promulgate rules to administer this section. The rules shall address eligible applicants and program providers, application requirements, criteria and procedures for awarding grants, reporting and auditing procedures and administrative operations.

**(7) FUNDING.** From the amounts appropriated under s. 20.445 (1) (m), all moneys received under 29 USC 2862 to 2864 shall be expended to fund grants and operations under this section.

**History:** 1985 a. 153; 1987 a. 27; 1989 a. 31, 44; 1995 a. 27 ss. 3714, 3715; Stats. 1995 s. 106.15; 1999 a. 9; 2003 a. 33.

**NOTE:** This section was created by 1985 Act 153. Section 2 of Act 153 is entitled “Legislative purpose and intent.”

**Cross Reference:** See also chs. DWD 816 and 820, Wis. adm. code.

**106.16 Notification of position openings. (1)** In this section:

(a) “Company” means any business operated for profit.

(b) “State agency” has the meaning given in s. 20.001 (1).

**(2)** Any company that receives a loan or grant from a state agency or an authority under ch. 231 or 234 shall notify the department and the local workforce development board established under 29 USC 2832, of any position in the company that is related to the project for which the grant or loan is received to be filled in

this state within one year after receipt of the loan or grant. The company shall provide this notice at least 2 weeks prior to advertising the position.

(3) A state agency or an authority under ch. 231 or 234 shall notify the department of commerce if it makes a loan or grant to a company.

(4) (a) The department shall, upon complaint by any person or on its own motion, investigate any allegation that a company has violated sub. (2) if the complaint is filed with the department no more than 300 days after the alleged violation occurred.

(b) If after investigation under par. (a) the department finds probable cause to believe that a company has violated sub. (2), the department shall notify the company of the department's finding of probable cause, of the actions specified under par. (d) that the department proposes to take and of the company's right to request a hearing regarding the alleged violation of sub. (2).

(c) A company that receives a notice under par. (b) may, within 30 days after the date of the notice, request a contested case hearing under s. 227.42. If the department does not receive a request for a contested case hearing under s. 227.42 within 30 days after the date of the notice under par. (b), the department shall issue a final decision that the company has violated sub. (2) and take the actions specified under par. (d).

(d) If the department receives a request under par. (c) for a hearing, the department shall hold a hearing as provided under s. 227.44. If, after hearing, the department finds that a company has violated sub. (2), the department shall issue a final decision under s. 227.47 that the company has violated sub. (2) and shall order the company to take any remedial action that the department considers appropriate based on the severity of the noncompliance with sub. (2).

**History:** 1985 a. 285, 332; 1987 a. 27, 399; 1991 a. 39; 1995 a. 27 ss. 3716 and 9116 (5); Stats. 1995 s. 106.16; 1999 a. 9.

**106.17 Local labor market information. (1)** The department shall collect information concerning local labor markets and periodically prepare reports dealing with labor forces at a local level in this state for general circulation.

(2) The collection and distribution of local labor market information under sub. (1) shall be funded only from the appropriations under s. 20.445 (1) (m) and (n).

**History:** 1987 a. 27; 1995 a. 27 s. 3717; Stats. 1995 s. 106.17; 2003 a. 33.

**106.18 Youth programs in 1st class cities.** From the appropriation account under s. 20.445 (1) (fm), the department shall implement and operate youth summer jobs programs in 1st class cities.

**History:** 2007 a. 20.

**106.19 Trade adjustment assistance overpayment waiver. (1)** On or before October 8, 1989, the department shall establish a policy for waiving recovery of overpayments made under the federal adjustment assistance for workers program under 19 USC 2272 to 2318.

(2) The waiver policy shall require the department to grant a waiver if all of the following apply:

(a) The overpayment was not the fault of the person who received it.

(b) Requiring repayment would be contrary to equity and good conscience.

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

(a) Notify all of the following persons of the waiver policy and the person's right to request a waiver:

1. A person from whom the department attempts to recover an overpayment made under 19 USC 2272 to 2318.

2. A person from whom the department is in the process of recovering an overpayment made under 19 USC 2272 to 2318.

(b) Comply with the guidelines issued by the U.S. secretary of labor under 19 USC 2315 in connection with the waiver policy.

(c) Establish the waiver policy by rule, using the procedure under s. 227.24.

**History:** 1989 a. 31; 1995 a. 27 s. 3719; Stats. 1995 s. 106.19.

**Cross Reference:** See also ch. DWD 135, Wis. adm. code.

**106.20 Pilot Wisconsin job opportunity business subsidy program. (1) DEFINITIONS.** In this section:

(a) "Business" means any person engaged in a business enterprise for profit in this state.

(c) "Eligible job applicant" means an individual who the department determines meets the requirements of s. 101.35 (9), 1991 stats.

(cm) "Eligible unit of government" means a county described in s. 101.35 (2) (a), 1991 stats., or designated under s. 101.35 (2) (b), 1991 stats., or a unit of government designated under s. 101.35 (2) (d), 1991 stats.

(d) "Local service agency" means an organization designated under s. 101.35 (3), 1991 stats.

(e) "Minority business" has the meaning given in s. 560.036 (1) (e).

(f) "Small business" has the meaning given in s. 227.485 (2) (c).

(g) "Urban county" means a county located in a federal standard metropolitan statistical area.

(h) "Wisconsin job opportunity business subsidy program" means the program administered under this section.

(11) REPAYMENT. (a) If an eligible job applicant leaves the employ of a business that received funds to subsidize the wages of the eligible job applicant under s. 101.35 (5), 1991 stats., the business shall repay the following percentage of the funds:

1. If the eligible job applicant leaves while the position is subsidized, 70%.

2. If the eligible job applicant leaves less than 12 months after the subsidy ended, a percentage between 70% and 0%, decreasing proportionally to 0% 12 months after the subsidy has ended.

3. If the eligible job applicant leaves 12 months or more after the subsidy ended, 0%.

(b) A business need not repay funds under par. (a) if the business replaces the departing eligible job applicant with another eligible job applicant who remains employed with the business for at least 12 months after the subsidy paid to the departing eligible job applicant would have ended.

(c) The secretary may waive all or part of a repayment required under par. (a) if the secretary determines that waiving the repayment is in the best interests of the state.

(d) The local service agency shall use the amounts repaid under this subsection for additional wage subsidies.

(13) FINAL REPORT. On or before September 1, 1993, the department shall submit a final report concerning the Wisconsin job opportunity business subsidy program to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2). The report shall include all of the following information for the period covered by the report:

(a) The average wage paid to an eligible job applicant at the following times:

1. When hired.

2. Sixty days after the subsidy for the eligible job applicant ends.

3. Fourteen months after the subsidy for the eligible job applicant ends.

(b) The number of qualified businesses and eligible job applicants that participated in each eligible unit of government.

(c) The age, education level, family status, gender, race and work experience of each eligible job applicant.

(d) The number of eligible job applicants who met the criteria in s. 101.35 (10) (b), 1991 stats., and in s. 101.35 (10) (c), 1991 stats., as affected by 1993 Wisconsin Act 16.

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(e) Any other information the department considers relevant.

**History:** 1987 a. 399; 1989 a. 31, 336; 1991 a. 32, 39, 315; 1993 a. 16, 213, 243, 491; 1995 a. 27 s. 3720; Stats. 1995 s. 106.20.

**106.25 Public insurrection; death and disability benefits. (1) DEFINITIONS.** In this section:

(a) “Public insurrection” means a civil disturbance in which a group or groups of persons are simultaneously engaged in acts of violence against persons or property by the illegal use of weapons, by burning, pillaging or looting or by committing any other illegal acts, and which is of such a magnitude as to result in any of the following:

1. Extraordinary utilization of off-duty local law enforcement personnel.
2. Declaration of a public emergency by the governor.
3. The calling of the national guard or other troops.

(2) **DEATH AND DISABILITY BENEFITS.** If the department finds that the injury or death of a state or local government officer or employee arose out of the performance of duties in connection with a public insurrection, and finds that death or disability benefits are payable under ch. 102, a supplemental award equal to the amount of the benefits, other than medical expense, payable under ch. 102 shall be made to the persons and in the same manner provided by ch. 102, except that when benefits are payable under s. 102.49, a supplemental award equal to one-half the benefits payable under that section shall be made.

(3) **PAYMENTS.** All payments under this section shall be made from the general fund.

(4) **BENEFITS ADDITIONAL TO ALL OTHERS.** Death and disability benefits under this section are in addition to all other benefits provided by state law or by action of any municipality or public agency.

**History:** 1971 c. 40; 1975 c. 199; 1975 c. 404 s. 7; 1975 c. 405 s. 7; Stats. 1975 s. 101.47; 1977 c. 29 s. 1651; 1995 a. 27 s. 3726; Stats. 1995 s. 106.25; 1995 a. 225.

**106.26 Employment transit assistance program.**

(1) **FINDINGS AND PURPOSE.** The legislature finds that, for many workers and persons seeking employment in outlying suburban and sparsely populated and developed areas, conventional, fixed-route mass transit systems do not provide adequate transportation service. The purpose of the employment transit assistance program under this section is to correct this deficiency in access to employment locations and to stimulate the development of innovative transit service methods.

(2) **DEFINITIONS.** In this section:

(a) “Eligible applicant” means a local public body or a private organization.

(b) “Local public body” has the meaning given in s. 85.20 (1) (d).

(c) “Mass transit system” has the meaning given in s. 85.20 (1) (e).

(d) “Project” means a project designed to improve access to jobs, including part-time jobs and Wisconsin works employment positions, as defined in s. 49.141 (1) (r), located in outlying suburban and sparsely populated and developed areas that are not adequately served by a mass transit system and to develop innovative transit service methods.

(3) **ADMINISTRATION.** The department shall administer the employment transit assistance program and shall have all powers necessary and convenient to implement this section, including the following:

(a) To conduct a project.

(b) To make and execute contracts with eligible applicants.

(c) To make grants to eligible applicants to conduct projects or to match a federal grant awarded to an eligible applicant to conduct a project. Grants by the department are subject to all of the following requirements:

1. A grant may not exceed 80% of the total cost of a project.

2. A grant may only be made to an eligible applicant that provides access to nontemporary employment or to Wisconsin works employment positions, as defined in s. 49.141 (1) (r).

(d) To receive and review applications from eligible applicants for grants under this section and to prescribe the form, nature and extent of information that shall be included in applications.

(e) To establish criteria for evaluating applications for grants under this section.

**History:** 1989 a. 31; 1995 a. 27 s. 3526m; Stats. 1995 s. 106.26; 1997 a. 27; 2003 a. 33.

**106.30 Nursing workforce survey and grant. (1) DEFINITION.** In this section, “nurse” means a registered nurse licensed under s. 441.06 or permitted under s. 441.08, a licensed practical nurse licensed or permitted under s. 441.10, an advanced practice nurse prescriber certified under s. 441.16 (2), or a nurse-midwife licensed under s. 441.15.

(2) **SURVEY FORM.** Each odd-numbered year, the department of workforce development shall develop and submit to the department of regulation and licensing a survey form to gather data under s. 441.01 (7) (a) 1. to assist the department of workforce development in evaluating the supply of, demand for, and turnover among nurses in this state and in determining whether there are any regional shortages of nurses, shortages of nurses in any speciality areas, or impediments to entering the nursing profession in this state.

(3) **SURVEY RESULTS.** Beginning in 2011, by September 30 of each odd-numbered year, the department shall compile, process, and evaluate the survey results and submit a report of its findings to the speaker of the assembly and the president of the senate under s. 13.172 (3) and to the governor, the secretary of health services, and the nurse resource center described in sub. (5).

(4) **COSTS OF SURVEY.** The department may use no more than 12 percent of the amount received under s. 20.445 (1) (km) for costs incurred by the department under subs. (2) and (3).

(5) **NURSING WORKFORCE GRANTS.** (a) From the appropriation account under s. 20.445 (1) (km), the department of workforce development shall award grants equal to the amount appropriated under s. 20.445 (1) (km) minus the amount expended under sub. (4) to a nonprofit statewide nursing center that is comprised of and led by nurses and that has demonstrated coordination with constituent groups within the nursing community, including professional nursing organizations; organizations representing nurse educators, staff nurses, and nurse managers or executives; labor organizations representing nurses; the department of regulation and licensing; the department of health services; and legislators who are concerned with issues affecting the nursing profession.

(b) A statewide nursing center that receives a grant under par. (a) shall use the grant moneys to develop strategies to ensure that there is a nursing workforce that is adequate to meet the current and future health care needs of this state. The statewide nursing center may use those moneys to fund activities that are aimed at ensuring such a nursing workforce, including monitoring trends in the applicant pool for nursing education programs; evaluating the effectiveness of nursing education programs in increasing access to those programs and in enhancing career mobility for nurses, especially for populations that are underrepresented in the nursing profession; and facilitating partnerships between the nursing community and other health care providers, the department of regulation and licensing, the business community, the legislature, and educators to promote diversity within the nursing profession, enhance career mobility and leadership development for nurses, and achieve consensus regarding policies aimed at ensuring an adequate nursing workforce in this state.

**History:** 2009 a. 28.

## SUBCHAPTER III

## EQUAL RIGHTS PROGRAMS

**106.50 Open housing. (1)** INTENT. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, status as a victim of domestic abuse, sexual assault, or stalking, lawful source of income, age, or ancestry and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ss. 66.0125 and 66.1011. The legislature hereby extends the state law governing equal housing opportunities to cover single–family residences that are owner–occupied. The legislature finds that the sale and rental of single–family residences constitute a significant portion of the housing business in this state and should be regulated. This section shall be considered an exercise of the police powers of the state for the protection of the welfare, health, peace, dignity, and human rights of the people of this state.

**(1m) DEFINITIONS.** In this section:

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

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

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

(c) “Complainant” means a person who files a complaint alleging discrimination in housing.

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

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

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

(g) “Disability” means a physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment or being regarded as having such an impairment. “Disability” does not include the current illegal use of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), unless the individual is participating in a supervised drug rehabilitation program.

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

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

(j) “Family” includes one natural person.

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

1. A person is pregnant.

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

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

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

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

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

(L) “Housing” means any improved property, or any portion thereof, including a mobile home as defined in s. 101.91 (10), manufactured home, as defined in s. 101.91 (2), or condominium, that is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence. “Housing” includes any vacant land that is offered for sale or rent for the construction or location thereon of any building, structure or portion thereof that is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence.

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

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

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

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

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

(nm) “Member of a protected class” means a group of natural persons, or a natural person, who may be categorized because of sex, race, color, disability, sexual orientation, religion, national origin, marital status, family status, status as a victim of domestic abuse, sexual abuse, or stalking, lawful source of income, age, or ancestry.

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

(q) “Relative” means a parent, grandparent, greatgrandparent, stepparent, step grandparent, brother, sister, child, stepchild, grandchild, step grandchild, greatgrandchild, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, half brother or half sister or any other person related by blood, marriage or adoption.

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

(s) “Respondent” means the person accused in a complaint or amended complaint of discrimination in housing and any other person identified in the course of an investigation as allegedly having discriminated in housing.

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

(u) “Status as a victim of domestic abuse, sexual assault, or stalking” means the status of a person who is seeking to rent or purchase housing or of a member or prospective member of the person’s household having been, or being believed by the lessor or seller of housing to be, a victim of domestic abuse, as defined in s. 813.12 (1) (am), sexual assault under s. 940.225, 948.02, or 948.025, or stalking under s. 940.32.

**(1s) DEPARTMENT TO ADMINISTER.** This section shall be administered by the department through its division of equal

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rights. The department may promulgate such rules as are necessary to carry out this section. No rule may prohibit the processing of any class action complaint or the ordering of any class-based remedy, or may provide that complaints may be consolidated for administrative convenience only.

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

(a) By refusing to sell, rent, finance or contract to construct housing or by refusing to negotiate or discuss the terms thereof.

(b) By refusing to permit inspection or exacting different or more stringent price, terms or conditions for the sale, lease, financing or rental of housing.

(c) By refusing to finance or sell an unimproved residential lot or to construct a home or residence upon such lot.

(d) By advertising in a manner that indicates discrimination by a preference or limitation.

(e) For a person in the business of insuring against hazards, by refusing to enter into, or by exacting different terms, conditions or privileges with respect to, a contract of insurance against hazards to a dwelling.

(f) By refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant.

(g) In providing the privileges, services or facilities that are available in connection with housing.

(h) By falsely representing that housing is unavailable for inspection, rental or sale.

(i) By denying access to, or membership or participation in, a multiple listing service or other real estate service.

(j) By coercing, intimidating, threatening or interfering with a person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, a right granted or protected under this section, or with a person who has aided or encouraged another person in the exercise or enjoyment of a right granted or protected under this section.

(k) In making available any of the following transactions, or in the terms or conditions of such transactions for a person whose business includes engaging in residential real estate-related transactions:

1. The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing or maintaining housing or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate.

2. Selling, brokering or appraising residential real property.

(L) By otherwise making unavailable or denying housing.

**(2m) REPRESENTATIONS DESIGNED TO INDUCE PANIC SALES.** No person may induce or attempt to induce a person to sell or rent housing by representations regarding the present or prospective entry into the neighborhood of a person of a particular economic status or a member of a protected class, or by representations to the effect that such present or prospective entry will or may result in any of the following:

(a) The lowering of real estate values in the area concerned.

(b) A deterioration in the character of the area concerned.

(c) An increase in criminal or antisocial behavior in the area concerned.

(d) A decline in the quality of the schools or other public facilities serving the area.

**(2r) DISCRIMINATION AGAINST PERSONS WITH DISABILITIES PROHIBITED.** (b) *Types of discrimination prohibited.* In addition to discrimination prohibited under subs. (2) and (2m), no person may do any of the following:

1. Segregate, separate, exclude or treat unequally in the sale or rental of, or otherwise make unavailable or deny, housing to a buyer or renter because of a disability of that buyer or renter, a disability of a person residing in or intending to reside in that housing

after it is sold, rented or made available or a disability of a person associated with that buyer or renter.

2. Segregate, separate, exclude or treat unequally a person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection with such housing, because of a disability of that person, a disability of a person residing in or intending to reside in that housing after it is sold, rented or made available or a disability of a person associated with that person.

3. Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing housing that is occupied, or is to be occupied, by such a person if the modifications may be necessary to afford the person full enjoyment of the housing, except that in the case of rental housing the landlord may, where it is reasonable to do so, condition permission for a modification on the tenant's agreement to restore the interior of the housing to the condition that existed before the modification, other than reasonable wear and tear. The landlord may not increase any customarily required security deposit. Where it is necessary to ensure that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of a restoration agreement a requirement that the tenant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. If escrowed funds are not used by the landlord for restorations, they shall be returned to the tenant.

4. Refuse to make reasonable accommodations in rules, policies, practices or services that are associated with the housing, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy housing, unless the accommodation would impose an undue hardship on the owner of the housing.

(bm) *Animals assisting persons with disabilities.* 1. If an individual's vision, hearing or mobility is impaired, it is discrimination for a person to refuse to rent or sell housing to the individual, cause the eviction of the individual from housing, require extra compensation from an individual as a condition of continued residence in housing or engage in the harassment of the individual because he or she keeps an animal that is specially trained to lead or assist the individual with impaired vision, hearing or mobility if all of the following apply:

a. Upon request, the individual shows to the lessor, seller or representative of the condominium association credentials issued by a school recognized by the department as accredited to train animals for individuals with impaired vision, hearing or mobility.

b. The individual accepts liability for sanitation with respect to, and damage to the premises caused by, the animal.

2. Subdivision 1. does not apply in the case of the rental of owner-occupied housing if the owner or a member of his or her immediate family occupying the housing possesses and, upon request, presents to the individual a certificate signed by a physician which states that the owner or family member is allergic to the type of animal the individual possesses.

(c) *Design and construction of covered multifamily housing.* In addition to discrimination prohibited under pars. (b) and (bm) and subs. (2) and (2m), no person may design or construct covered multifamily housing, as defined in s. 101.132 (1) (d), unless it meets the standards specified in s. 101.132 (2) (a) 1. to 4. In addition, no person may remodel, as defined in s. 101.132 (1) (h), housing with 3 or more dwelling units unless the remodeled housing meets the standards specified in s. 101.132 (2) (a) 1. to 4. as required under s. 101.132 (2) (b) 1., 2. or 3., whichever is applicable.

**(5m) EXEMPTIONS AND EXCLUSIONS.** (a) 1. Nothing in this section prohibits discrimination based on age or family status with respect to housing for older persons.

1e. Under this paragraph, housing under sub. (1m) (m) 3. may qualify as housing for older persons only if the owner of the housing maintains records containing written verification that all of the following factors apply to the housing:

b. At least 80% of the dwelling units under sub. (1m) (m) 3. are occupied by at least one person 55 years of age or older.

c. Policies are published and procedures are adhered to that demonstrate an intent by the owner or manager to provide housing under sub. (1m) (m) 3. for persons 55 years of age or older. The owner or manager may document compliance with this subd. 1e. c. by maintaining records containing written verification of the ages of the occupants of the housing.

1m. No person may discriminate by refusing to continue renting to a person living in housing for older persons under sub. (1m) (m) 3. who is subject to a hardship condition.

2. Under this paragraph, housing may qualify as housing for older persons with respect to persons first occupying the housing on or after September 1, 1992, regardless of whether a person who had not attained the age of 62 resided in the housing on that date or regardless of whether one or more dwelling units were unoccupied on that date, if the persons who first occupy the housing on or after that date have attained the age of 62.

(b) Nothing in this section shall prohibit a person from exacting different or more stringent terms or conditions for financing housing based on the age of the individual applicant for financing if the terms or conditions are reasonably related to the individual applicant.

(c) Nothing in this section shall prohibit the development of housing designed specifically for persons with disabilities and preference in favor of persons with disabilities in relation to such housing.

(d) Nothing in this section requires that housing be made available to an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property or whose tenancy would result in substantial physical damage to the property of others, if the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations. A claim that an individual's tenancy poses a direct threat or a substantial risk of harm or damage must be evidenced by behavior by the individual that caused harm or damage, that directly threatened harm or damage, or that caused a reasonable fear of harm or damage to other tenants, persons employed on the property, or the property. No claim that an individual's tenancy would constitute a direct threat to the safety of other persons or would result in substantial damage to property may be based on the tenant's status as a victim of domestic abuse, sexual assault, or stalking.

(dm) It is not discrimination based on status as a victim of domestic abuse, sexual abuse, or stalking for a landlord to bring an action for eviction of a tenant based on a violation of the rental agreement or of a statute that entitles the landlord to possession of the premises, unless subd. 1. or 2. applies. A tenant has a defense to an action for eviction brought by a landlord if the tenant proves by a preponderance of the evidence that the landlord knew or should have known any of the following:

1. That the tenant is a victim of domestic abuse, sexual abuse, or stalking and that the basis for the action for eviction is conduct that related to the commission of domestic abuse, sexual abuse, or stalking by a person who was not the invited guest of the tenant.

2. That the tenant is a victim of domestic abuse, sexual abuse, or stalking, that the basis for the action for eviction is conduct that related to the commission of domestic abuse, sexual abuse, or stalking by a person who was the invited guest of the tenant, and that the tenant has done one of the following:

a. Sought an injunction under s. 813.12, 813.122, 813.123, or 813.125 enjoining the person from appearing on the premises.

b. Upon receiving notice under s. 704.17, provided a written statement to the landlord indicating that the person will no longer

be an invited guest of the tenant and has not subsequently invited the person to be a guest of the tenant.

(e) It is not discrimination based on family status to comply with any reasonable federal, state or local government restrictions relating to the maximum number of occupants permitted to occupy a dwelling unit.

(em) 1. Subject to subd. 2., nothing in this section applies to a decision by an individual as to the person with whom he or she will, or continues to, share a dwelling unit, as defined in s. 101.71 (2) except that dwelling unit does not include any residence occupied by more than 5 persons.

2. Any advertisement or written notice published, posted or mailed in connection with the rental or lease of a dwelling unit under subd. 1. may not violate sub. (2) (d), 42 USC 3604 (c), or any rules or regulations promulgated under this section or 42 USC 3601 to 3619, except that such an advertisement or written notice may be for a person of the same sex as the individual who seeks a person to share the dwelling unit for which the advertisement or written notice is placed.

(f) 1. Nothing in this section prohibits an owner or agent from requiring that a person who seeks to buy or rent housing supply information concerning family status, and marital, financial, and business status but not concerning race, color, disability, sexual orientation, ancestry, national origin, religion, creed, status as a victim of domestic abuse, sexual assault, or stalking, or, subject to subd. 2., age.

2. Notwithstanding subd. 1., an owner or agent may require that a person who seeks to buy or rent housing under sub. (1m) (m) 3. supply information concerning his or her age for the purpose of verifying compliance with par. (a) 1e. b.

(g) A person may not be held personally liable for monetary damages for a violation of sub. (2), (2m) or (2r) if the person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons. For purposes of this paragraph, a person may show reasonable reliance, in good faith, on the application of the exemption under this subsection relating to housing for older persons only if the person shows all of the following:

1. That he or she has no actual knowledge that the housing is not or will not be eligible for the exemption.

2. That the owner of the housing has stated formally, in writing, that the housing complies with the requirements for the exemption.

(6) FAIR HOUSING ADMINISTRATIVE ENFORCEMENT. (a) *Complaints*. 1. The department may receive and investigate a complaint charging a violation of sub. (2), (2m) or (2r) if the complaint is filed with the department not later than one year after the alleged discrimination occurred or terminated.

2. The complaint shall include a written statement of the essential facts constituting the discrimination that is charged, and shall be signed by the complainant.

3. The complaint may be filed by an aggrieved person, by an interested person, by the department of workforce development under par. (b) or, if the complaint charges a violation of sub. (2r) (c), by the department of commerce. The department of workforce development shall, upon request, provide appropriate assistance in completing and filing complaints.

4. The department shall serve notice on the aggrieved person acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under this subsection and the right to bring a private civil action under sub. (6m).

5. Upon the filing of an initial, amended, final or supplemental complaint, the department shall promptly serve a copy of the complaint upon the respondent, except where testing may be conducted. The initial complaint shall be served before the commencement of the investigation by the department, except where testing may be conducted. The notice shall be sent by certified

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mail, return receipt requested. The notice to the respondent shall include a written statement from the department directing the respondent to respond in writing to the allegations in the complaint within 20 days after the date of the notice and further stating that, if the respondent fails to answer the complaint in writing, the department will make an initial determination as to whether discrimination has occurred based only on the department's investigation and the information supplied by the complainant.

6. The department may dismiss the complaint if the complainant fails to respond to the department within 20 days from the date of mailing of any correspondence from the department concerning the complaint, if the department's correspondence requests a response and if the correspondence is sent by certified mail, return receipt requested, to the last known address of the complainant.

(b) *Powers and duties of department.* The department of workforce development and its duly authorized agents may hold hearings, subpoena witnesses, take testimony and make investigations as provided in this subsection. The department of workforce development may test and investigate for the purpose of establishing violations of sub. (2), (2m) or (2r) and may make, sign and file complaints alleging violations of sub. (2), (2m) or (2r). In addition, the department of commerce may make, sign and file complaints alleging violations of sub. (2r) (c). The department of workforce development shall employ examiners to hear and decide complaints of discrimination under this section, and to assist in the administration of this section. The examiners may make findings and issue orders under this subsection. The department of workforce development shall develop and implement an investigation manual for use in conducting investigations under par. (c).

(c) *Investigation and finding of probable cause.* 1. The department shall investigate all complaints that allege a violation of this section and that are filed within the time specified under par. (a). The department may subpoena persons or documents for the purpose of investigation. If during an investigation it appears that the respondent has engaged in discrimination against the complainant which is not alleged in the complaint, the department may advise the complainant that the complaint should be amended. If the complaint is amended, the department shall also investigate the allegations of the amended complaint.

2. At the conclusion of the investigation of the allegations, the department shall make a determination as to whether probable cause exists to believe that discrimination has occurred or is about to occur. In making a determination of probable cause, the department shall consider whether the facts concerning the alleged discrimination are sufficient to warrant the initiation of a civil action. If the department determines that probable cause exists, the department shall immediately issue a charge on behalf of the aggrieved person and refer the charge to the attorney general. If the attorney general concurs in the department's determination of probable cause, the attorney general shall represent the aggrieved person at the hearing under par. (f) or, if an election is made under subd. 2m., shall commence a civil action in the name of the state on behalf of the aggrieved person under sub. (6m).

2m. Service of copies of the charge shall be made on the complainant, the respondent, and the aggrieved person by certified mail, return receipt requested. When a charge is filed, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action under sub. (6m) in lieu of a hearing under par. (f). The election shall be made no later than 20 days after the receipt by the electing person of service of the charge, along with information about how to make the election. If an election is made, the person making the election shall give notice of doing so to the department and to all other complainants and respondents to whom the charge relates. The department shall notify the aggrieved persons that an election is made.

3. No charge may be issued regarding alleged discrimination after the beginning of the trial of a civil action commenced by the

aggrieved party under sub. (6m) or 42 USC 3613, seeking relief with respect to that discriminatory act.

4. If the department initially determines that there is no probable cause to believe that discrimination occurred as alleged in the complaint, it may dismiss those allegations. The department shall, by a notice to be served with the determination, notify the parties of the complainant's right to appeal the dismissal of the claim to the secretary for a hearing on the issue by a hearing examiner. Service of the determination shall be made by certified mail, return receipt requested. If the hearing examiner determines that no probable cause exists, that determination is the final determination of the department and may be appealed under par. (j).

(d) *Temporary judicial relief.* At any time after a complaint is filed alleging discrimination in violation of sub. (2), (2m), or (2r), the department may request the attorney general to file a petition in the circuit court for the county in which the act of discrimination allegedly occurred or for the county in which a respondent resides or transacts business, seeking a temporary injunction or restraining order against the respondent to prevent the respondent from performing an act that would tend to render ineffectual an order that the department may enter with respect to the complaint, pending final determination of proceedings under this section. On receipt of the department's request, the attorney general shall promptly file the petition.

(e) *Conciliation.* 1. Upon the filing of a complaint alleging discrimination in violation of sub. (2), (2m) or (2r), the department may endeavor to eliminate the discrimination by conference, conciliation and persuasion. The department shall notify the parties that conciliation services are available.

2. Conciliation efforts may be undertaken by the department during the period beginning with the filing of the complaint and ending with the dismissal of the complaint under par. (c) 4. or the issuance of a charge under par. (c) 2.

3. If conciliation resolves the dispute, a written conciliation agreement shall be prepared which shall state all measures to be taken by each party. The agreement may provide for dismissal of the complaint if the dismissal is without prejudice to the complainant's right to pursue the complaint against any respondent who fails to comply with the terms of the agreement. The agreement shall be signed by the respondent, the complainant and the aggrieved person and is subject to approval by the department. A conciliation agreement entered into under this subdivision is a public record and is subject to inspection under s. 19.35, unless the parties to the agreement request that the record be exempt from disclosure and the department finds that disclosure is not required to further the purposes of this section.

4. Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement, the department shall refer the matter to the attorney general with a recommendation that a civil action be filed for enforcement of the agreement.

(f) *Hearing procedures.* 1. After the department issues a charge under par. (c) 2., the department shall serve the charge, along with a written notice of hearing, specifying the nature and acts of discrimination which appear to have been committed, and requiring the respondent to answer the charge at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the charge, and a place of hearing within the county in which the violation is alleged to have occurred.

2. If an election is not made under par. (c) 2m., the hearing shall be conducted by a hearing examiner. If the attorney general has concurred in the department's determination of probable cause under par. (c) 2., the aggrieved person on whose behalf the charge was issued shall be represented by the attorney general. Any other person who is aggrieved, with respect to the issues to be determined at the hearing, may be represented by private counsel.

3. The department, the attorney general, or a party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4) and shall be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the hearing examiner who is responsible for conducting the hearing.

4. The testimony at the hearing shall be recorded by the department. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence. The hearing under this paragraph shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The burden of proof is on the party alleging discrimination.

5. If after the hearing the examiner finds by a fair preponderance of the evidence that the respondent has violated sub. (2), (2m) or (2r), the examiner shall make written findings and order the respondent to take actions that will effectuate the purpose of sub. (2), (2m) or (2r), and may order other penalties, damages and costs as provided in pars. (h) and (i). The department shall serve a certified copy of the final findings and order on the aggrieved party, the complainant and the respondent. The order shall have the same force as other orders of the department and be enforced as provided in this subsection except that the enforcement of the order is automatically stayed upon the filing of a petition for review under par. (j).

6. If the examiner finds that the respondent has not engaged in discrimination as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the aggrieved party, the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

(g) *Time limitations.* 1. The department shall commence proceedings with respect to a complaint before the end of the 30th day after receipt of the complaint.

2. The department shall investigate the allegations of the complaint and complete the investigation not later than 100 days after receipt of the complaint. If the department is unable to complete the investigation within 100 days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

3. The department shall make final administrative disposition of a complaint within one year after the date of receipt of a complaint, unless it is impracticable to do so. If the department is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(h) *Damages and penalties.* 1. If the hearing examiner finds that a respondent has engaged in or is about to engage in a discriminatory act prohibited under sub. (2), (2m) or (2r), the hearing examiner shall promptly issue an order for such relief as may be appropriate, which may include economic and noneconomic damages suffered by the aggrieved person, regardless of whether he or she intervened in the action, and injunctive or other equitable relief. The hearing examiner may not order punitive damages.

2. In addition to any damages ordered under subd. 1., the hearing examiner may assess a forfeiture against a respondent who is not a natural person in an amount not exceeding \$10,000, unless the respondent who is not a natural person has been adjudged to have committed any prior discriminatory act under sub. (2), (2m) or (2r). If a respondent who is not a natural person has been adjudged to have committed one other discriminatory act under sub. (2), (2m) or (2r) during the preceding 5-year period, based on the offense date of the prior discriminatory act, the hearing examiner may assess a forfeiture in an amount not exceeding \$25,000. If a respondent who is not a natural person has been adjudged to have committed 2 or more prior discriminatory acts

under sub. (2), (2m) or (2r) during the preceding 7-year period, based on the offense date of the prior discriminatory act, the hearing examiner may assess a forfeiture in an amount not exceeding \$50,000.

3. In addition to any damages ordered under subd. 1., the administrative law judge may assess a forfeiture against a respondent who is a natural person in an amount not exceeding \$10,000, unless the respondent who is a natural person has been adjudged to have committed any prior discriminatory act under sub. (2), (2m) or (2r). If a respondent who is a natural person has been adjudged to have committed one other prior discriminatory act under sub. (2), (2m) or (2r) based on an offense date that is before September 1, 1992, the administrative law judge may assess a forfeiture in an amount not exceeding \$25,000. If a respondent who is a natural person has been adjudged to have committed 2 or more prior discriminatory acts under sub. (2), (2m) or (2r) based on an offense date that is before September 1, 1992, the administrative law judge may assess a forfeiture in an amount not exceeding \$50,000.

(i) *Attorney fees and costs.* The hearing examiner may allow a prevailing complainant, including the state, reasonable attorney fees and costs. The state shall be liable for those fees and costs if the state is a respondent and is determined to have committed a discriminatory act under sub. (2), (2m) or (2r).

(j) *Judicial review.* Within 30 days after service upon all parties of an order or determination of the department under this subsection, the respondent, the complainant or the aggrieved party may appeal the order or the determination to the circuit court for the county in which the alleged discrimination took place by the filing of a petition for review. The court shall review the order or determination as provided in ss. 227.52 to 227.58.

**(6m) CIVIL ACTIONS.** (a) Any person alleging a violation of sub. (2), (2m), or (2r), including the attorney general on behalf of an aggrieved person, may bring a civil action for injunctive relief, for damages, including punitive damages, and, in the case of a prevailing plaintiff, for court costs and reasonable attorney fees.

(b) An action commenced under par. (a) may be brought in the circuit court for the county where the alleged violation occurred or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within one year after the alleged violation occurred or terminated. The one-year statute of limitations under this paragraph shall be tolled while an administrative proceeding with respect to the same complaint is pending.

(c) The court may issue a permanent or temporary injunction or restraining order to assure the rights granted by this section. The court may order other relief that the court considers appropriate, including monetary damages, actual and punitive, a forfeiture as provided in sub. (6) (h) and costs and fees as provided in sub. (6) (i).

(d) If the attorney general has reasonable cause to believe that any person is engaged in a pattern or practice of discrimination in violation of sub. (2), (2m) or (2r) or that any person has been denied any of the rights granted under sub. (2), (2m) or (2r), and such denial raises an issue of general public importance, the department of justice may commence a civil action.

**(8) DISCRIMINATION BY LICENSED OR CHARTERED PERSONS.** (a) If the department finds reasonable cause to believe that an act of discrimination has been or is being committed in violation of this section by a person taking an action prohibited under sub. (2), (2m) or (2r) and that the person is licensed or chartered under state law, the department shall notify the licensing or chartering agency of its findings and may file a complaint with such agency together with a request that the agency initiate proceedings to suspend or revoke the license or charter of such person or take other less restrictive disciplinary action.

(b) Upon filing a complaint under par. (a), the department shall make available to the appropriate licensing or chartering agency

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all pertinent documents and files in its custody, and shall cooperate fully with such agency in the agency's proceedings.

**History:** 1971 c. 185 s. 1; 1971 c. 228 s. 42; 1971 c. 230; 1971 c. 307 s. 51; Stats. 1971 s. 101.22; 1975 c. 94, 275, 421, 422; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 110; 1979 c. 177 s. 85; 1979 c. 188, 221, 355; 1981 c. 112, 180; 1981 c. 391 s. 210; 1983 a. 27, 189; 1985 a. 238, 319; 1987 a. 262; 1989 a. 47 ss. 2 to 5, 8 to 11; 1989 a. 94, 106, 139, 359; 1991 a. 295, 315; 1993 a. 27; 1995 a. 27 s. 3687; Stats. 1995 s. 106.04; 1995 a. 225; 1995 a. 448 ss. 66, 68; 1997 a. 112, 237, 312; 1999 a. 82 ss. 38 to 74; Stats. 1999 s. 106.50; 1999 a. 150 s. 672; 1999 a. 162; 2001 a. 30 s. 108; 2001 a. 109; 2005 a. 25; 2007 a. 11; 2009 a. 95.

**NOTE:** 1991 Wis. Act 295, which affected this section, contains extensive legislative council notes.

**Cross Reference:** See also ch. DWD 220, Wis. adm. code.

"Harassment" under sub. (2) (f) includes sexual harassment as defined in s. 111.32 (13). Sexual harassment injures the tenant's dignity and civil rights, and those injuries are compensable. *Chomiccki v. Wittekind*, 128 Wis. 2d 188, 381 N.W.2d 561 (Ct. App. 1985).

A violation of sub. (2) (d) requires that an ordinary reader find that an advertisement suggests a particular class is preferred or "dispreferred." *Milwaukee Fair Housing Council v. LIRC*, 173 Wis. 2d 199, 496 N.W.2d 159 (Ct. App. 1992).

The state, in administering the fair housing act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. *County of Sawyer Zoning Board v. Department of Workforce Development*, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99-0707.

To establish a disability under this section, the complainant must show: 1) that he or she has an actual impairment, a record of impairment, or is regarded as having an impairment; and 2) that the impairment, whether real or perceived, is one that substantially limits one or more major life activities, or is regarded by the respondent as substantially limiting one or more major life activities. *Kitten v. DWD*, 2002 WI 54, 252 Wis. 2d 561, 644 N.W.2d 649, 00-3562.

The Wisconsin open housing law permits, but does not require, the department to receive and process class action complaints of housing discrimination. 70 Atty. Gen. 250.

The insurer of an apartment had a duty to defend an owner and manager for liability under this section. *Gardner v. Romano*, 688 F. Supp. 489 (E. D. Wis. 1988).

Federal rent vouchers are not clearly within the meaning of "lawful source of income." *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272 (1995).

Closing the Door on Cohabitants Under Wisconsin's Open Housing Law. *Neuman*. 1995 WLR 965.

### 106.52 Public places of accommodation or amusement. (1) DEFINITIONS. In this section:

(a) "Complainant" means a person who files a complaint alleging a violation of sub. (3).

(b) "Conciliation" has the meaning given in s. 106.50 (1m) (d).

(c) "Disability" has the meaning given in s. 106.50 (1m) (g).

(cm) "Fitness center" means an establishment, whether operated for profit or not for profit, that provides as its primary purpose services or facilities that are purported to assist patrons in physical exercise, in weight control, or in figure development. "Fitness center" does not include an organization solely offering training or facilities in an individual sport or a weight reduction center, as defined in s. 100.177 (1) (e).

(d) "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).

4. A campground.

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

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

a. Members of the organization or institution.

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

c. Guests named by the organization or institution.

(f) "Respondent" means the person accused in a complaint or amended complaint of committing a violation of sub. (3).

(fm) "Service animal" means a guide dog, signal dog, or other animal that is individually trained or is being trained to do work or perform tasks for the benefit of a person with a disability, including the work or task of guiding a person with impaired vision, alerting a person with impaired hearing to intruders or sound, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

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

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

(3) PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT. (a) No person may do any of the following:

1. Deny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, disability, sexual orientation, national origin or ancestry.

1m. Deny to an adult or charge an adult a higher price than the regular rate for the full and equal enjoyment of a lodging establishment because of age, subject to s. 125.07.

2. Give preferential treatment to some classes of persons in providing services or facilities in any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

3. Directly or indirectly publish, circulate, display or mail any written communication which the communicator knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of sex, race, color, creed, disability, sexual orientation, national origin or ancestry or that the patronage of a person is unwelcome, objectionable or unacceptable for any of those reasons.

3m. Directly or indirectly publish, circulate, display or mail any written communication which the communicator knows is to the effect that any of the facilities of a lodging establishment will be denied to an adult because of age, subject to s. 125.07.

4. Refuse to furnish or charge another a higher rate for any automobile insurance because of race, color, creed, disability, national origin or ancestry.

5. Refuse to rent, charge a higher price than the regular rate or give preferential treatment, because of sex, race, color, creed, sexual orientation, national origin or ancestry, regarding the use of any private facilities commonly rented to the public.

(am) 1. Subject to subs. 2., 3., and 4., no person may do any of the following:

a. Refuse to permit entrance into, or use of, or otherwise deny the full and equal enjoyment of any public place of accommodation or amusement to a person with a disability or to a service animal trainer because the person with a disability or the trainer is accompanied by a service animal.

b. Charge a person with a disability or a service animal trainer a higher price than the regular rate, including a deposit or surcharge, for the full and equal enjoyment of any public place of accommodation or amusement because the person with a disability or the trainer is accompanied by a service animal.

c. Directly or indirectly publish, circulate, display, or mail any written communication that the communicator knows is to the effect that entrance into, or use of, or the full and equal enjoyment of any of the facilities of the public place of accommodation or amusement will be denied to a person with a disability or a service animal trainer because the person with a disability or the trainer is accompanied by a service animal or that the patronage of a per-

son with a disability or a service animal trainer is unwelcome, objectionable, or unacceptable because the person with a disability or the trainer is accompanied by a service animal.

2. The prohibitions specified in subd. 1. apply to a service animal trainer only if the animal accompanying the service animal trainer is wearing a harness or a leash and special cape. Subdivision 1. does not prohibit a person who is accompanied by an animal from being asked whether the animal is a service animal that is required because of a disability or is an animal that is being trained to be a service animal and does not prohibit a service animal trainer from being required to produce a certification or other credential issued by a school for training service animals that the animal is being trained to be a service animal. Subdivision 1. prohibits a person with a disability from being required to produce documentation of his or her disability or a certification or other credential that the animal is trained as or is being trained to be a service animal.

3. A person may exclude a service animal from a public place of accommodation or amusement if accommodation of the service animal would result in a fundamental alteration in the nature of the accommodations, amusement, goods, or services provided or would jeopardize the safe operation of the public place of accommodation or amusement. If a service animal must be separated from the person whom the service animal is accompanying, it is the responsibility of that person to arrange for the care and supervision of the service animal during the period of separation.

4. A public place of accommodation or amusement shall modify its policies, practices, and procedures to permit the full and equal enjoyment of the public place of accommodation or amusement by a person with a disability or a service animal trainer who is accompanied by a service animal. Those policies, practices, and procedures shall ensure that a person with a disability or a service animal trainer who is accompanied by a service animal is not separated from the service animal, that the service animal is permitted to accompany the person with a disability or the service animal trainer to all areas of the public place of accommodation or amusement that are open to the general public, and that the person with a disability or the service animal trainer is not segregated from other patrons of the public place of accommodation or amusement.

(b) Nothing in this subsection prohibits separate dormitories at higher educational institutions or separate public toilets, showers, saunas and dressing rooms for persons of different sexes.

(c) Nothing in this subsection prohibits separate treatment of persons based on sex with regard to public toilets, showers, saunas and dressing rooms for persons of different sexes.

(d) Nothing in this subsection prohibits a domestic abuse services organization, as defined in s. 995.67 (1) (b), from providing separate shelter facilities, private home shelter care, advocacy, counseling or other care, treatment or services for persons of different sexes or from providing for separate treatment of persons based on sex with regard to the provision of shelter facilities, private home shelter care, advocacy, counseling or other care, treatment or services for persons of different sexes.

(e) Nothing in this section prohibits a fitness center whose services or facilities are intended for the exclusive use of persons of the same sex from providing the use of those services or facilities exclusively to persons of that sex, from denying the use of those services or facilities to persons of the opposite sex, or from directly or indirectly publishing, circulating, displaying, or mailing any written communication to the effect that the use of those services or facilities will be provided exclusively to persons of the same sex and will be denied to persons of the opposite sex.

**(4) INVESTIGATION AND REVIEW OF CLAIMS, PUBLIC PLACES.** (a) *Claims filed with department.* 1. The department may receive and investigate a complaint charging a violation of sub. (3) if the complaint is filed with the department no more than 300 days after the alleged act prohibited under sub. (3) occurred. A complaint shall

be a written statement of the essential facts constituting the act prohibited under sub. (3) charged, and shall be verified.

2. In carrying out this subsection, the department and its duly authorized agents may hold hearings, subpoena witnesses, take testimony and make investigations as provided in this chapter. The department, upon its own motion, may test and investigate for the purpose of establishing violations of sub. (3), and may make, sign and file complaints alleging violations of sub. (3), and initiate investigations and studies to carry out the purposes of this subsection and sub. (3).

3. The department shall employ such examiners as are necessary to hear and decide complaints of acts prohibited under sub. (3) and to assist in the effective administration of this subsection. The examiners may make findings and orders under this subsection.

4. If the department finds probable cause to believe that any act prohibited under sub. (3) has been or is being committed, the department may endeavor to eliminate the act by conference, conciliation and persuasion. If the department determines that such conference, conciliation and persuasion has not eliminated the alleged act prohibited under sub. (3), the department shall issue and serve a written notice of hearing, specifying the nature and acts prohibited under sub. (3) which appear to have been committed, and requiring the person named, in this subsection called the “respondent”, to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the complaint, and a place of hearing within the county in which the violation of sub. (3) is alleged to have occurred. The attorney of record for any party may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. The testimony at the hearing shall be recorded by the department. In all hearings before an examiner, except those for determining probable cause, the burden of proof is on the party alleging an act prohibited under sub. (3). If, after the hearing, the examiner finds by a fair preponderance of the evidence that the respondent has violated sub. (3), the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of this subsection and sub. (3). The department shall serve a certified copy of the examiner’s findings and order on the respondent and complainant. The order shall have the same force as other orders of the department and shall be enforced as provided in this subsection, except that the enforcement of the order is automatically stayed upon the filing of a petition for review with the commission. If the examiner finds that the respondent has not engaged in an act prohibited under sub. (3) as alleged in the complaint, the department shall serve a certified copy of the examiner’s findings on the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

5. At any time after a complaint is filed, the department may file a petition in the circuit court for the county in which the act prohibited under sub. (3) allegedly occurred, or for the county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this subsection, including an order or decree restraining the respondent from performing an act tending to render ineffectual an order the department may enter with respect to the complaint. The court may grant such temporary relief or restraining order as the court deems just and proper.

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(b) *Petition for review.* 1. A respondent or complainant who is dissatisfied with the findings and order of the examiner under par. (a) may file a written petition with the department for review by the commission of the findings and order.

2. The commission shall either reverse, modify, set aside or affirm the findings and order in whole or in part, or direct the taking of additional evidence. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a respondent or complainant has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 21 days for filing the petition with the department.

3. On motion, the commission may set aside, modify or change any decision made by the commission, at any time within 28 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. The commission may on its own motion, for reasons it deems sufficient, set aside any final decision of the commission within one year from the date thereof upon grounds of mistake or newly discovered evidence, and remand the case to the department for further proceedings.

4. If no petition is filed within 21 days from the date that a copy of the findings and order of the examiner are mailed to the last-known address of the respondent and complainant, the findings and order shall be considered final.

(c) *Judicial review.* Within 30 days after service upon all parties of an order of the commission under par. (b), the respondent or complainant may appeal the order to the circuit court for the county in which the alleged act prohibited under sub. (3) took place by the filing of a petition for review. The respondent or complainant shall receive a new trial on all issues relating to any alleged act prohibited under sub. (3) and a further right to a trial by jury, if so desired. The department of justice shall represent the commission. In any such trial the burden shall be to prove an act prohibited under sub. (3) by a fair preponderance of the evidence. Costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be taxed to the prevailing party on the appeal.

(d) *Penalty.* 1. A person who willfully violates sub. (3) or any lawful order issued under this subsection shall, for the first violation, forfeit not less than \$100 nor more than \$1,000.

2. A person adjudged to have violated sub. (3) within 5 years after having been adjudged to have violated sub. (3), for every violation committed within the 5 years, shall forfeit not less than \$1,000 nor more than \$10,000.

3. Payment of a forfeiture under this paragraph shall be stayed during the period in which an appeal may be taken and during the pendency of an appeal under par. (c).

(e) *Civil actions.* 1. A person, including the state, alleging a violation of sub. (3) may bring a civil action for appropriate injunctive relief, for damages including punitive damages and, in the case of a prevailing plaintiff, for court costs and reasonable attorney fees. The attorney general shall represent the department in an action to which the department is a party.

2. An action commenced under this paragraph may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within one year after the alleged violation occurred.

3. The remedies provided for in this paragraph shall be in addition to any other remedies contained in this subsection.

**Cross Reference:** See also LIRC, Wis. adm. code.

(5) **DISCRIMINATION BY LICENSED OR CHARTERED PERSONS.** (a) If the department finds probable cause to believe that an act has been or is being committed in violation of sub. (3) and that the person who committed or is committing the act is licensed or chartered under state law, the department shall notify the licensing or chartering agency of its findings and may file a complaint with

such agency together with a request that the agency initiate proceedings to suspend or revoke the license or charter of such person or take other less restrictive disciplinary action.

(b) Upon filing a complaint under par. (a), the department shall make available to the appropriate licensing or chartering agency all pertinent documents and files in its custody, and shall cooperate fully with such agency in the agency's proceedings.

**History:** 1971 c. 185 s. 1; 1971 c. 228 s. 42; 1971 c. 230; 1971 c. 307 s. 51; Stats. 1971 s. 101.22; 1975 c. 94, 275, 421, 422; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 110; 1979 c. 177 s. 85; 1979 c. 188, 221, 355; 1981 c. 112, 180; 1981 c. 391 s. 210; 1983 a. 27, 189; 1985 a. 238, 319; 1987 a. 262; 1989 a. 47 ss. 2 to 5, 8 to 11; 1989 a. 94, 106, 139, 359; 1991 a. 295, 315; 1993 a. 27; 1995 a. 27 s. 3687; Stats. 1995 s. 106.04; 1995 a. 225; 1995 a. 448 ss. 66, 68; 1997 a. 112, 237, 312; 1999 a. 82 ss. 75 to 92, 102 to 105; Stats. 1999 s. 106.52; 1999 a. 186; 2003 a. 23; 2005 a. 155; 2005 a. 354 ss. 1 to 4, 6; 2007 a. 97.

**NOTE:** 1991 Wis. Act 295, which affected this section, contains extensive legislative council notes.

**Cross Reference:** See also ch. DWD 221, Wis. adm. code.

A newspaper's classified advertising section was not subject to the public accommodations act. *Hatheway v. Gannett Satellite Network*, 157 Wis. 2d 395, 459 N.W.2d 873 (Ct. App. 1990).

Section 106.04 (9) (a) 2. [now sub. (3) (a) 2.] prohibits price differentials or discounts based on the categories specified in the statute. Offering free drinks to women, and not men, is prohibited regardless of whether other promotions offer preferential treatment to men. *Novak v. Madison Motel Associates*, 188 Wis. 2d 407, 525 N.W.2d 123 (Ct. App. 1994).

In order to allege prohibited discrimination in public accommodations, an allegation that the defendant was not a private nonprofit organization was not required in the complaint. *Barry v. Maple Bluff Country Club*, 221 Wis. 2d 707, 586 N.W.2d 182 (Ct. App. 1998), 97-0736.

There is an 8-point test for determining whether an organization is an exempt bona fide private nonprofit organization under sub. (1) (e) 2., the most important of the factors being whether membership in the organization is truly selective. *Barry v. Maple Bluff Country Club, Inc.* 2001 WI App 108, 244 Wis. 2d 86, 629 N.W.2d 24, 00-1178.

**106.54 Division of equal rights. (2)** The division shall encourage and assist local units of government in guaranteeing all persons an equal opportunity for housing.

(3) All gifts, grants, bequests and devises to the division for its use are valid and shall be used to carry out the purposes for which made and received.

(4) The division shall review complaints of discrimination against public employees exercising their rights with respect to occupational safety and health matters, under s. 101.055 (8).

(5) The division shall receive complaints of discharge, retaliation or discrimination under s. 16.009 (5) (d), 46.90 (4) (b), 50.07 (3) (b), or 55.043 (1m) (c) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

(6) The division shall receive complaints under s. 146.997 (4) (a) of disciplinary action taken in violation of s. 146.997 (3) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

(7) The division shall receive complaints under s. 321.65 (7) (b) 1. or 2. and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

(8) The division shall receive complaints under s. 321.66 (5) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

(9) The division shall receive complaints under s. 49.197 (6) (d) or 49.845 (4) (d) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

**NOTE:** Sub. (9) is created eff. 2-1-10 by 2009 Wis. Act 76.

**History:** 1971 c. 185 ss. 1, 7; Stats. 1971 s. 101.222; 1977 c. 29; 1981 c. 360; 1983 a. 398; 1989 a. 47; 1995 a. 27 s. 3689; Stats. 1995 s. 106.06; 1997 a. 27, 131; 1999 a. 82 s. 93; Stats. 1999 s. 106.54; 1999 a. 176 s. 1; 2001 a. 26; 2005 a. 388; 2007 a. 200; 2009 a. 56, 76.

**106.56 Postsecondary education: prohibition against discrimination on basis of physical condition or developmental disability. (1)** Subject to sub. (3), no school, university or other institution offering courses or programs in postsecondary education or vocational training which is supported wholly or in part by public funds may refuse to admit any person to any school, institution, course or program or any curricular or extracurricular activity, or may otherwise discriminate against

any person, solely on the basis of physical condition or developmental disability as defined in s. 51.01 (5).

(2) If admission to any such school, university, institution, program or course requires that a prospective enrollee take a standardized aptitude examination and the prospective enrollee is unable to take such an examination under standard conditions because of physical condition or developmental disability as defined in s. 51.01 (5), the school, university or institution shall make a good–faith effort to modify the examination conditions in a manner which will permit the prospective enrollee to demonstrate aptitude. The failure of any school, university or institution to make such a good–faith effort is discrimination within the meaning of this section.

(3) The prohibition against discrimination under sub. (1) does not apply to:

(a) Courses, programs or activities involving the handling or operation of hazardous substances, machines or appliances if there is no feasible way in which the physical safety of the disabled student or of other persons can be adequately protected; or

(b) The admission of a person who does not meet the minimum physical standards which are reasonably necessary for a particular course, program or activity. The school, university or other insti-

tution has the burden of proving that such minimum physical standards are reasonably necessary.

(4) (a) The department shall receive and investigate complaints charging discrimination or discriminatory practices in particular cases, and publicize its findings with respect thereto. The department has all powers provided under s. 111.39 with respect to the disposition of such complaints. The findings and orders of examiners may be reviewed as provided under s. 106.52 (4) (b).

(b) Findings and orders of the commission under this section are subject to review under ch. 227. Upon such review, the department of justice shall represent the commission.

**History:** 1975 c. 275, 421; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 221; 1981 c. 334 s. 25 (2); 1991 a. 295; 1995 a. 27 s. 3690; Stats. 1995 s. 106.07; 1999 a. 82 ss. 94 to 99; Stats. 1999 s. 106.56.

**Cross Reference:** See also LIRC, Wis. adm. code.

**106.58 Discrimination in education prohibited.** No child may be excluded from or discriminated against in admission to any public school or in obtaining the advantages, privileges and courses of study of such public school on account of sex, race, religion or national origin.

**History:** 1975 c. 94; 1995 a. 27 s. 3691; Stats. 1995 s. 106.08; 1999 a. 82 s. 100; Stats. 1999 s. 106.58.