OTHER STATUTES AFFECTING WORKER'S COMPENSATION

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

15.227 Same; Councils. (4) Council on worker's compensation. There is created in the department of workforce development a council on worker's compensation appointed by the secretary of workforce development to consist of a designated employee of the department of workforce development as chairperson, 5 representatives of employers, and 5 representatives of employees. The secretary of workforce development shall also appoint 3 representatives of insurers authorized to do worker's compensation insurance business in this state as nonvoting members of the council.

(11) Self-insurers council. There is created in the department of workforce development a self-insurers council consisting of 5 members appointed by the secretary of workforce development for 3-year terms.

CHAPTER 19
GENERAL DUTIES OF PUBLIC OFFICIALS

19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

CHAPTER 20
APPROPRIATIONS AND BUDGET MANAGEMENT

20.445 Workforce development, department of. There is appropriated to the department of workforce development for the following programs:

(1) WORKFORCE DEVELOPMENT**.** (a) General program operations. The amounts in the schedule for general program operations.

(aa) Special death benefit. A sum sufficient for the payment of death benefits under s. 102.475.

(f) Death and disability benefit payments; public insurrections. A sum sufficient for the payment of death and disability benefits under s. 106.25.

(ga) Auxiliary services. All moneys received from fees collected under ss. 102.16 (2m) (d), 103.005 (15) and 106.09 (7) for the delivery of services under ss. 102.16 (2m) (f), 103.005 (15) and 106.09 and ch. 108.

(ra) Worker's compensation operations fund; administration. From the worker's compensation operations fund, the amounts in the schedule for the administration of the worker's compensation program by the department. All moneys received under ss. 102.28 (2) (b) and 102.75 for the department's activities and not appropriated under par. (rp) shall be credited to this appropriation. From this appropriation, an amount not to exceed $5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation.

(rb) Worker's compensation operations fund; contracts. From the worker's compensation operations fund, all moneys received in connection with contracts entered into under s. 102.31 (7) for the purpose of carrying out those contracts.

(rp) Worker's compensation operations fund; uninsured employers program; administration. From the worker's compensation operations fund, the amounts in the schedule for the administration of ss. 102.28 (4) and 102.80 to 102.89.

(s) Self-insured employers liability fund. All moneys paid into the self-insured employers liability fund under s. 102.28 (7), to be used for the discharge of liability and claims service authorized under such subsection.

(sm) Uninsured employers fund; payments. From the uninsured employers fund, a sum sufficient to make the payments under s. 102.81 (1) and to obtain reinsurance under s. 102.81 (2). No moneys may be expended or encumbered under this paragraph until the first day of

the first July beginning after the day that the secretary of workforce development files the certificate under s. 102.80 (3) (a).

(t) Work injury supplemental benefit fund. All moneys paid into the work injury supplemental benefit fund under ss. 102.35 (1), 102.47, 102.49, 102.59, 102.60, and 102.75 (2), to be used for the discharge of liabilities payable under ss. 102.44 (1), 102.49, 102.59, 102.63, 102.64 (2), and 102.66.

CHAPTER 40
PUBLIC EMPLOYEE TRUST FUND

40.02 Definitions. In this chapter, unless the context requires otherwise:

(41m) "Monthly salary" means the gross amount paid to a participant making a claim under s. 40.65, at the time he or she becomes disabled within the meaning of s. 40.65 (4), by the employer in whose employ the injury occurred or the disease was contracted. Overtime pay may not be considered part of an employee's monthly salary unless the employee received it on a regular and dependable basis.

(48) (a) (a) "Protective occupation participant" means any participant whose principal duties are determined by the participating employer, or, subject to s. 40.06 (1) (dm), by the department head in the case of a state employee, to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.

(48) (am) "Protective occupation participant" includes any participant whose name is certified to the fund as provided in s. 40.06 (1) (d) and (dm) and who is any of the following:

1. A conservation warden.
2. A conservation patrol boat captain.
3. A conservation patrol boat engineer.
4. A conservation pilot.
5. A conservation patrol officer.
6. A forest fire control assistant.
7. A member of the state traffic patrol.
8. A state motor vehicle inspector.
9. A police officer.
10. A fire fighter.
11. A sheriff.
12. An undersheriff.
13. A deputy sheriff.
14. A state probation and parole officer.
15. A county traffic police officer.
16. A state forest ranger.
17. A fire watcher employed at Wisconsin veterans facilities.
18. A state correctional-psychiatric officer.
19. An excise tax investigator employed by the department of revenue.
20. A special criminal investigation agent in the department of justice.
21. An assistant or deputy fire marshal.
22. A person employed under s. 61.66 (1).

40.65 Duty disability and death benefits; protective occupation participants. (2) (a) This paragraph applies to participants who first apply for benefits before May 3, 1988. Any person desiring a benefit under this section must apply to the department of workforce development, which department shall determine whether the applicant is eligible to receive the benefit and the participant's monthly salary. Appeals from the eligibility decision shall follow the procedures under ss. 102.16 to 102.26. If it is determined that an applicant is eligible, the department of workforce development shall notify the department of employee trust funds and shall certify the applicant's monthly salary. If at the time of application for benefits an applicant is still employed in any capacity by the employer in whose employ the disabling injury occurred or disease was contracted, that continued employment shall not affect that applicant's right to have his or her eligibility to receive those benefits determined in proceedings before the department of workforce development or the labor and industry review commission or in proceedings in the courts. The department of workforce development may promulgate rules needed to administer this paragraph.

(b)1. This paragraph applies to participants who first apply for benefits under this section on or after May 3, 1988.

2. An applicant for benefits under this section shall submit or have submitted to the department an application that includes written certification of the applicant’s disability under sub. (4) by at least 2 physicians, as defined in s. 448.01 (5), who practice in this state and one of whom is approved or appointed by the department, and a statement from the applicant’s employer that the injury or disease leading to the disability was duty−related.

3. The department shall determine whether or not the applicant is eligible for benefits under this section on the basis of the evidence in subd. 2. An applicant may

appeal a determination under this subdivision to the department of workforce development.

4. In hearing an appeal under subd. 3., the department of workforce development shall follow the procedures under ss.102.16 to 102.26.

5. The department shall be an interested party in an appeal under subd. 3., and the department shall receive legal assistance from the department of justice, as provided under s. 165.25 (4).

(3) The Wisconsin retirement board shall determine the amount of each monthly benefit payable under this section and its effective date. The board shall periodically review the dollar amount of each monthly benefit and adjust it to conform with the provisions of this section. The board may request any income or benefit information, or any information concerning a person's marital status, which it considers to be necessary to implement this subsection and shall require a participant to submit a certified copy of his or her most recent state or federal income tax return. The board may terminate the monthly benefit of any person who refuses to submit information requested by the board or who submits false information to the board.

(4) A protective occupation participant is entitled to a duty disability benefit as provided in this section if:

(a) The employee is injured while performing his or her duty or contracts a disease due to his or her occupation;

(b) The disability is likely to be permanent; and

(c) 1. The disability causes the employee to retire from his or her job;

2. The employee's pay or position is reduced or he or she is assigned to light duty; or

3. The employee's promotional opportunities within the service are adversely affected if state or local employer rules, ordinances, policies or written agreements specifically prohibit promotion because of the disability.

(4m) A protective occupation participant who is a state motor vehicle inspector hired on or after January 1, 1968, is not entitled to a duty disability benefit under this section for an injury or disease occurring before May 1, 1990.

(4r) A protective occupation participant who is an emergency medical technician is not entitled to a duty disability benefit under this section for an injury or disease occurring before the date on which the department receives notification of the participant's name as provided in s. 40.06 (1) (d) and (dm).

(4v) A state probation and parole officer who becomes a protective occupation participant on or after January 1, 1999, is not entitled to a duty disability benefit under this section for an injury or disease occurring before January 1, 1999.

(5) (a) The monthly benefit payable to participants who qualify for benefits under s. 40.63 or disability benefits under OASDHI is 80% of the participant's monthly salary adjusted under par. (b) and sub. (6), except that the 80% shall be reduced by 0.5% for each month of creditable service over 30 years or over 25 years for persons who are eligible for benefits under subch. II at the date of application, but not to less than 50% of the participant's monthly salary. For participants who do not qualify for benefits under s. 40.63 or disability benefits under OASDHI, the monthly benefit under this section is 75% of the participant's monthly salary adjusted under par. (b) and sub. (6), except that the 75% shall be reduced by 0.5% for each month of creditable service over 30 years or over 25 years for persons who are eligible for benefits under subch. II on the date of application.

(b) The Wisconsin retirement board shall reduce the amount of a participant's monthly benefit under this section by the amounts under subds. 1. to 6., except that the board may determine not to reduce a participant's benefit because of income related to therapy or rehabilitation. The Wisconsin retirement board may assume that any benefit or amount listed under subds. 1. to 6. is payable to a participant until it is determined to the board's satisfaction that the participant is ineligible to receive the benefit or amount, except that the department shall withhold an amount equal to 5% of the monthly benefit under this section until the amount payable under subd. 3. is determined.

1. Any OASDHI benefit payable to the participant or the participant's spouse or a dependent because of the participant's work record.

2. Any unemployment insurance benefit payable to the participant because of his or her work record.

3. Any worker's compensation benefit payable to the participant, including payments made pursuant to a compromise settlement under s. 102.16 (1). A lump sum worker's compensation payment or compromise settlement shall reduce the participant's benefit under this section in monthly amounts equal to 4.3 times the maximum benefit which would otherwise be payable under ch. 102 for the participant's disability until the lump sum amount is exhausted.

4. Any disability and retirement benefit payable to the participant under this chapter, or under any other retirement system, that is based upon the participant's earnings record and years of service. A reduction under this subdivision may not be greater in amount than the amount of disability or retirement benefit received by the participant. If the participant is not eligible for a retirement benefit because he or she received a lump sum payment or withdrew his or her contributions on or after the date the participant became eligible to receive a benefit under this section, the amount received or withdrawn shall reduce the participant's benefit under this section in the amount of benefit that would be payable if, on the date the amount was received or withdrawn, the full amount received or withdrawn was applied under s. 40.23 (2m) (d) as additional employee contributions credited to the participant's account.

5. All earnings payable to the participant from the employer under whom the duty disability occurred.

6. All earnings payable to the participant from an employer, other than the employer under whom the duty disability occurred, and all income from self-employment, the total of such earnings and income shall reduce the participant's benefit as follows:

a. For the amount of the total that is less than 40% of the participant's monthly salary, one-third of such amount;

b. For the amount of the total that is from 40% to 80% of the participant's monthly salary, one-half of such amount; and

c. For the amount of the total that is more than 80% of the participant's monthly salary, two-thirds of such amount.

(c) The Wisconsin retirement board may not reduce a participant's benefit because of income or benefits that are attributable to the earnings or work record of the participant's spouse or other member of the participant's family, or because of income or benefits attributable to an insurance contract, including income continuation programs.

(6) The Wisconsin retirement board shall adjust the monthly salary of every participant receiving a benefit under this section using the salary index for the previous calendar year as follows:

(a) For the purposes of sub. (5) (b) 6., annually on January 1 until the participant's death;

(b) For the purposes of sub. (5) (a), if the participant is receiving an annuity under s. 40.63 (1), annually on January 1 until the participant's death; and

(c) For the purposes of sub. (5) (a), if the participant is not receiving an annuity under s. 40.63 (1), annually on January 1 until the first January 1 after the participant's 60th birthday. Beginning on the January 1 after the participant's 60th birthday the participant's monthly salary shall be increased annually in a percentage amount equal to the percentage amount of dividend awarded under s. 40.27 (2) until the participant's death. Notwithstanding s. 40.27 (2), any benefits payable under this section are not subject to distribution of annuity reserve surpluses.

(7)(a) This paragraph applies to benefits based on applications filed before May 3, 1988. If a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under age 18, a monthly benefit shall be paid as follows:

1. To the surviving spouse, if the spouse was married to the participant on the date the participant was disabled within the meaning of sub. (4), one-third of the participant's monthly salary as reflected at the time of death until the surviving spouse marries again.

2. To the guardian of a surviving unmarried child under age 18, $15 per child until the child marries, dies or reaches 18 years of age.

3. The total monthly amount paid under subds. 1. and 2. may not exceed 65% of the participant's monthly salary as reflected at the time of death. Any reduction of benefits caused by such limitation shall be done on a proportional basis.

(am) This paragraph applies to benefits based on applications filed on or after May 3, 1988. If a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under the age of 18, a monthly benefit shall be paid as follows:

1. To the surviving spouse until the surviving spouse remarries, if the spouse was married to the participant on the date that the participant was disabled under sub. (4), 50% of the participant's monthly salary at the time of death, but reduced by any amount payable under sub. (5) (b) 1. to 6.

2. To a guardian for each of that guardian's wards who is an unmarried surviving child under the age of 18, 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches the age of 18, whichever occurs first. The marital status of the surviving spouse shall have no effect on the payments under this subdivision.

3. The total monthly amount paid under subds. 1. and 2. may not exceed 70% of the participant's monthly salary at the time of death reduced by any amounts under sub. (5) (b) 1. to 6. that relate to the participant's work record.

4. Benefits payable under this paragraph shall be increased each January 1 by the salary index

(ar) 1. This paragraph applies to benefits based on applications filed on or after May 12, 1998. If a protective occupation participant, who is covered by the presumption under s. 891.455, dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under the age of 18, a monthly benefit shall be paid as follows:

a. To the surviving spouse until the surviving spouse remarries, if the surviving spouse was married to the participant on the date that the participant was disabled under sub. (4), 70% of the participant's monthly salary at the time of death, but reduced by any amount payable under sub. (5) (b) 1. to 6.

b. If there is no surviving spouse or the surviving spouse subsequently dies, to a guardian for each of that guardian's wards who is an unmarried surviving child under the age of 18, 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches the age of 18, whichever occurs first.

2. Benefits payable under this paragraph shall be increased each January 1 by the salary index determined for the prior year.

(b) Any person entitled to a benefit under both this subsection and ch. 102 because of the death of the same participant, shall have his or her benefit under this subsection reduced in an amount equal to the death benefit payable under ch. 102.

(9) This section is applicable to protective occupation participants who apply for a benefit under this section on or after July 1, 1982. A participant may not apply for a benefit under this section if he or she is receiving a benefit under s. 66.191, 1981 stats., on July 1, 1982.

History: 1981 c. 278; 1983 a. 9; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 255; 1985 a. 332 s. 251 (1); 1987 a. 363; 1989 a. 240, 357; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 173, 237.

Cross-reference: See s. 891.45 for provision as to presumption of employment-connected disease for certain municipal fire fighters.

Cross Reference: See also LIRC and ss. ETF 52.01 and DWD 80.31, Wis. adm. code.

The Wisconsin Retirement Board may not reduce duty disability benefits under sub. (5) (b) 3. for worker's compensation benefits that are paid to a participant before the duty disability payments commence, and may do so only for worker's compensation not yet paid. Coutts v. Wisconsin Retirement Board, 209 Wis. 2d 655, 563 N.W.2d 917 (1997), 95-1905.

The Retirement Board is authorized to promulgate administrative rules interpreting sub. (3). Kuester v. Wisconsin Retirement Board, 2004 WI App 10, 269 Wis. 2d 462, 674 N.W.2d 877, 03-0056.

The Retirement Board correctly construed sub. (5) (b) in determining duty disability benefits when it reduced those benefits by earnings and lump sum worker's compensation benefits received after the effective date of the duty disability benefits. The board was reasonable in reading Coutts to hold that the statutorily specified sums are payable when they are received and that it is proper to offset them against duty disability benefits. Carey v. Wisconsin Retirement Board, 2007 WI App 17, 298 Wis. 2d 373, 728 N.W.2d 22, 06-1233.

CHAPTER 46
SOCIAL SERVICES

46.10 Cost of care and maintenance, liability; collection and deportation counsel; collections; court actions; recovery. (1) Liability and the collection and enforcement of such liability for the care, maintenance, services and supplies specified in this section is governed exclusively by this section, except in cases of child support ordered by a court under s. 48.355 (2) (b) 4., 48.357 (5m) (a) or 48.363 (2) or ch. 767.

(2) Except as provided in subs. (2m) and (14) (b) and (c), any person, including but not limited to a person admitted, committed, protected, or placed under s. 975.01, 1977 stats., s. 975.02, 1977 stats., s. 975.17, 1977 stats., s. 55.05 (5), 2003 stats., and 55.06, 2003 stats., and ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.055, 55.12, 55.13, 55.135, 971.14 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and supplies provided by any institution in this state including University of Wisconsin Hospitals and Clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, any person receiving care and services from a county department established under s. 51.42 or 51.437 or from a facility established under s. 49.73, and any person receiving treatment and services from a public or private agency under s. 980.06 (2) (c), 1997 stats., s.980.08 (5), 2003 stats., or s. 971.17 (3) (d) or (4) (e) or 980.08 (4) (g) and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their

homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability.

NOTE: Sub. (2) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

(2m) The liability specified in sub. (2) shall not apply to tuberculosis patients receiving care, maintenance, services and supplies under ss. 252.07 to 252.10, to persons 18 and older receiving care, maintenance, services and supplies provided by prisons named in s. 302.01 or to parents of a minor who receives care for alcohol or drug abuse under s. 51.47 (1) without consent of the minor's parent or guardian.

(3) After investigation of the liable persons' ability to pay, the department shall make collection from the person who in the opinion of the department under all of the circumstances is best able to pay, giving due regard to relationship and the present needs of the person or of the lawful dependents. However, the liability of relatives for maintenance shall be in the following order: first, the spouse of the patient; then, in the case of a minor, the parent or parents.

(4) (a) If a person liable under sub. (2) fails to make payment or enter into or comply with an agreement for payment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order.

(b) If judgment is rendered in an action brought under par. (a) for any balance that is 90 or more days past due, interest at the rate of 12% per year shall be computed by the clerk and added to the liable person's costs. That interest shall begin on the date on which payment was due and shall end on the day before the date of any interest that is computed under s. 814.04 (4).

(c) If the department issues an order to compel payment under par. (a), interest at the rate of 12% per year shall be computed by the department and added at the time of payment to the person's liability. That interest shall begin on the date on which payment was due and shall end on the day before the date of final payment.

(5) If any person named in an order to compel payment issued under sub. (4) (a) fails to pay the department any amount due under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this subsection shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

(14)(e) 1. An order issued under s. 48.355 (2) (b) 4., 48.357 (5m) (a) or 48.363 (2) for support determined under this subsection constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108 and other money due or to be due in the future to the county department under s. 46.22 or 46.23 in the county where the order was entered or to the department, depending upon the placement of the child as specified by rules promulgated under subd. 5. The assignment shall be for an amount sufficient to ensure payment under the order.

2. Except as provided in subd. 3., for each payment made under the assignment, the person from whom the payer under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed $3, which shall be deducted from the money to be paid to the payer.

CHAPTER 49
PUBLIC ASSISTANCE

49.36 Work experience program for noncustodial parents. (3) (a) Except as provided in par. (f), a person ordered to register
under s. 767.55 (2) (am) shall participate in a work experience program if services are available.

(b) A person may not be required to participate for more than 32 hours per week in the program under this section.

(c) A person may not be required to participate for more than 16 weeks during each 12−month period in a program under this section.

(d) If a person is required by a governmental entity to participate in another work or training program, the person may not be required to participate in a program under this section in a week for more than 32 hours minus the number of hours he or she is required to participate in the other work or training program in that week.

(e) If a person is employed, the person may not be required to participate in a program under this section in a week for more than 80% of the difference between 40 hours and the number of hours actually worked in the unsubsidized job during that week.

(f) A person who works, on average, 32 hours or more per week in an unsubsidized job is not required to participate in a program under this section.

(4) When a person completes 16 weeks of participation in a program under this section, the county, tribal governing body, or Wisconsin works agency operating the program shall inform the clerk of courts, by affidavit, of that completion.

(5) A person participating in work experience as part of the program under this section is considered an employee of the county, tribal governing body, or Wisconsin works agency administering the program under this section for purposes of worker's compensation benefits only.

(6) A county, tribal governing body, or Wisconsin works agency administering the program under this section shall reimburse a person for reasonable transportation costs incurred because of participation in a program under this section up to a maximum of $25 per month.

(7) The department shall pay a county, tribal governing body, or Wisconsin works agency not more than $400 for each person who participates in the program under this section in the region in which the county, tribal governing body, or Wisconsin works agency administers the program under this section. The county, tribal governing body, or Wisconsin works agency shall pay any additional costs of the program.

History: 1987 a. 413; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 2135 to
2142; 1995 a. 289; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25; 2005 a. 443 s. 265;
2007 a. 20.

CHAPTER 101
DEPARTMENT OF COMMERCE-REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

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

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

(b) No employee shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, nor interfere in any way with the use thereof by any other person, nor shall any such employee interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment or

frequenter of such place of employment, nor fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employees or frequenters.

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

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

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

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

When an apartment complex was managed for a fee by a management company, the company was carrying on a business there. Reduction of rent to one of the tenants for caretaking services constituted employment on the premises. A tenant who fell on the icy parking lot after the caretaker knew of the condition need only prove negligence in maintaining the premises. Wittka v. Hartnell, 46 Wis. 2d 374, 175 N.W.2d 248 (1970).

A public sidewalk is not made a place of employment merely because an employer constructed it and kept it free of ice and snow. Petroski v. Eaton Yale & Towne, Inc. 47 Wis. 2d 617, 178 N.W.2d 53 (1970).

The fact that a violation of the safe place statute is found puts the burden on the owner to rebut the presumption of causation but does not establish as a matter of law that the defendant's negligence was greater than the plaintiff's. Frederick v. Hotel Investments, Inc. 48 Wis. 2d 429, 180 N.W.2d 562 (1970).

A store must be held to have had constructive notice of a dangerous condition when it displayed shaving cream in spray cans on a counter and a 70−year old woman fell in cream sprayed on the white floor. Steinhorst v. H. C. Prange Co. 48 Wis. 2d 679, 180 N.W.2d 525 (1970).

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

Failure to light a parking lot can support a safe place action, but the evidence must show how long the light was burned out to constitute constructive notice. Low v. Siewert, 54 Wis. 2d 251, 195 N.W.2d 451 (1972).

A parking lot owned by a city that is a continuation of a store parking lot used by the public for attending the city zoo and the store, even though maintained by the private property owner, is not a place of employment. Gordon v. Schultz Savo Stores, Inc. 54 Wis. 2d 692, 196 N.W.2d 633 (1972).

Detailed construction specifications and the presence of engineers to insure compliance does not manifest control over the project so as to make the commission liable. Berger v. Metropolitan Sewerage Commission of Milwaukee, 56 Wis. 2d 741, 203 N.W.2d 87 (1973).

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

A pier at a beach open to the public for a fee constitutes a place of employment. Any distinction between licensees and invitees is irrelevant, and the statute imposes a higher duty as to safety than the common law. Gould v. Allstar Insurance Co. 59 Wis. 2d 355, 208 N.W.2d 388 (1973).

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

A one−eighth inch variance in elevation between the sides of a ramp joint was too slight, as a matter of law, to constitute a violation of the safe place statute. Balas v. St. Sebastian's Congregation, 66 Wis. 2d 421, 225 N.W.2d 428 (1975).

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

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

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

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

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

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

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

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

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

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

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

That a lease allocates safe place duties between an owner and an employer/tenant does not nullify mutually shared statutory duties.

Hannebaum v. Dirienzo & Bomier, 162 Wis. 2d 488, 469 N.W.2d 900 (Ct. App. 1991).

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

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

An alarm system does not relate to the structure of a building and therefore does not relate to a safe place of employment. It is a safety device that is the responsibility of the employer and not the building owner. Naaj v. Aetna Insurance Co. 218 Wis. 2d 121, 579 N.W.2d 815 (Ct. App. 1998), 96−3640.

The obligation of a lessor of a building is limited to structural or physical defects. A temporary condition maintained by the lessee does not impose safe place liability on the lessor. Powell v. Milwaukee Area Technical College District Bd. 225 Wis. 2d 794, 594 N.W.2d 403 (Ct. App. 1999), 97−3040.

A defect is "structural" if it resulted from materials used in its construction or from improper layout or construction. Conditions "associated with the structure" are those that involve the structure being out of repair or not being maintained in a safe manner. An owner sustains safe place liability for a structural defect regardless of knowledge of the defect, but with conditions related to the structure, no liability attaches without actual or constructive notice. Barry v. Employers Mutual Casualty Co. 2001 WI 101, 245 Wis. 2d 560, 630 N.W.2d 517, 98−2557.

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

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

Land that is merely appurtenant to a place where business is carried on is not a place of employment under sub. (11). An owner must have ownership, custody, or control of the place of employment and the premises appurtenant thereto. An owner of appurtenant land who does not also have ownership, custody, or control of the place cannot be liable for injuries sustained at the place. Binsfeld v. Conrad, 2004 WI App 77, 272 Wis. 2d 341, 679 N.W.2d 341, 03−1077.

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

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

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

The safe place statute does not extend to vehicles. Hopkins v. Ros Stores, Inc. 750 F. Supp. 379 (1990).

CHAPTER 106
APPRENTICE, EMPLOYMENT AND EQUAL RIGHTS PROGRAMS

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.

CHAPTER 108
UNEMPLOYMENT INSURANCE AND RESERVES

108.101 Effect of finding, determination, decision or judgment. (1) No finding of fact or law, determination, decision or judgment made with respect to rights or liabilities under this chapter is admissible or binding in any action or administrative or judicial proceeding in law or in equity not arising under this chapter, unless the department is a party or has an interest in the action or proceeding because of the discharge of its duties under this chapter.

(2) No finding of fact or law, determination, decision or judgment made with respect to rights or liabilities under s. 108.09 is binding in an action or proceeding under s. 108.10.

(3) No finding of fact or law, determination, decision or judgment made with respect to rights or liabilities under s. 108.10 is binding in an action or proceeding under s. 108.09.

(4) No finding of fact or law, determination, decision or judgment in any action or administrative or judicial proceeding in law or equity not arising under this chapter made with respect to the rights or liabilities of a party to an action or proceeding under this chapter is binding in an action or proceeding under this chapter.

History: 1989 a. 77; 1991 a. 89.

No administrative decision made under a chapter other than ch. 108 is binding on an unemployment insurance claim. A worker's compensation decision does not bind an administrative hearing on an unemployment insurance claim or the commission reviewing it. Goetsch v. DWD, 2002 WI App 128, 254 Wis. 2d 807, 646 N.W.2d 389, 01−2777.

CHAPTER 303
PRISON LABOR

303.07 County reforestation camps. (7) If any inmate of a reforestation camp, in the performance of work in connection with the maintenance of the camp, is injured so as to be permanently incapacitated, or to have materially reduced earning power, the inmate may upon discharge be allowed and paid such compensation as the department of workforce development finds the inmate entitled to. The inmate shall be compensated on the same basis as if the injury had been covered by ch. 102, except that the total paid to any such inmate shall not exceed $1,000 and may be paid in installments. If the inmate is from an adjoining county such county shall pay such compensation. In case of dispute the procedure for hearing, award and appeal shall be as set forth in ss. 102.16 to 102.26.

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

303.21 Compensation to injured prisoners. (1) (a) If an inmate of a state institution, in the performance of assigned work is injured so as to be permanently incapacitated or to have materially reduced earning power, the inmate may, upon being released from such institution, either upon release on parole or extended supervision or upon final discharge, be allowed and paid such compensation as the department of workforce development finds the inmate entitled to. The inmate shall be compensated on the same basis as if the injury had been covered by ch. 102, except that the total paid to any inmate may not exceed $10,000 and may be paid in installments. If the injury results from employment in a prison industry, the payment shall be made from the revolving appropriation for its operation. If there is no revolving appropriation, payment shall be made from the general fund. In case of dispute, the procedure for hearing, award and appeal shall be as set forth in ss. 102.16 to 102.26.

(b) Inmates are included under par. (a) if they are participating in a structured work program away from the institution grounds under s. 302.15 or a secure work program under s. 303.063. Inmates are not included under par. (a) if they are employed in a prison industry under s. 303.06 (2), participating in a work release program under s. 303.065 (2), participating in employment with a private business under s. 303.01 (2) (em) or participating in the transitional employment program, but they are eligible for worker's compensation benefits under ch. 102. Residents subject to s. 303.01 (1) (b) are not included under par. (a) but they are eligible for worker's compensation benefits under ch. 102.

(2) Section 102.29 applies to compensation paid under this section.

(3) This section does not apply if the inmate has made a recovery against an officer, employee or agent of the state, arising out

of the same incident under s. 895.46. If recovery has already been made under this section at the time that a recovery is made under s. 895.46, the state is entitled to a credit in the amount of the recovery against any obligation it has under s. 895.46 arising out of the same incident.

History: 1975 c. 147 s. 54; 1975 c. 199; 1977 c. 29, 195; 1981 c. 20; 1985 a. 29; 1989 a. 31 s. 1696; Stats. 1989 s. 303.21; 1993 a. 81; 1995 a. 27 ss. 6400, 6401, 9130
(4); 1995 a. 416; 1997 a. 3, 283.

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

To receive worker's compensation, a prisoner must have been injured in the performance of assigned work. The rules followed under s. 102.03 do not apply. Kopacka v. DILHR, 49 Wis. 2d 255, 181 N.W.2d 487 (1970).

303.215 Compensation to prisoners or residents injured in prison industries employment. In accordance with s. 102.03 (2), for an inmate of a state institution or a resident subject to s. 303.01 (1) (b) employed under s. 303.06 (2), compensation under ch. 102 on being released from the applicable institution, on parole, on extended supervision, on final discharge or in accordance with ch. 938, whichever is applicable, is the exclusive remedy against the department and any employee of the department for any injury sustained by the inmate or resident while performing service growing out of and incidental to that employment. The department shall make any payments required under this section from the revolving appropriation for the operation of prison industries or, if there is no revolving appropriation for the operation of prison industries, from the general fund.

History: 1993 a. 81; 1995 a. 27, 77; 1997 a. 283.

CHAPTER 626
RATE REGULATOIN IN WORKER'S COMPENSATION INSURANCE

626.12 Rating methods. In determining whether rates comply with the standards under s. 626.11, the following criteria shall be applied:

(1) Basic factors in rates. Due consideration shall be given to past and prospective loss and expense experience within and outside this state, to catastrophe hazards and contingencies, to a reasonable margin for profit, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, and to all other relevant factors.

(2) Classification. Risks may be classified in any reasonable way for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(3) Physical impairment. Rates or rating plans may not take into account the physical impairment of employees. Any employer who applies or promotes any oppressive plan of physical examination and rejection of employees or applicants for employment shall forfeit the right to experience rating. If the department of workforce development determines that grounds exist for such forfeiture it shall file with the commissioner a certified copy of its findings, which shall automatically suspend any experience rating credit for the employer. The department shall make the determination as prescribed in ss. 103.005 (5) (b) to (f), (6) to (11), (13) (b) to (d) and (16), so far as such subsections are applicable, subject to review under ch. 227. Restoration of an employer to the advantages of experience rating shall be by the same procedure.

History: 1975 c. 148; 1995 a. 27 ss. 7037, 9130 (4); 1997 a. 3.

CHAPTER 814
COURT COSTS, FEES AND SURCHARGES

814.67 Fees of witnesses and interpreters. (1) The fees of witnesses and interpreters shall be as follows:

(am) For witnesses attending before a circuit court, $16 per day.

History: 1981 c. 317; 1987 a. 27; 1995 a. 27; 2001 a. 16.

CHAPTER 891
PRESUMPTIONS

891.45 Presumption of employment−connected disease; heart or respiratory impairment or disease. (1) In this section: (a) "County fire fighter" means any person employed by a county whose duties primarily include active fire suppression or prevention.

(b) "Municipal fire fighter" includes any person designated as primarily a fire fighter under s. 61.66 (2) and any person under s.61.66 whose duties as a fire fighter during the 5−year qualifying period took up at least two−thirds of his or her working hours.

(c) "State fire fighter" means any person employed by the state whose duties primarily include active fire suppression or prevention and who is a protective occupation participant, as defined in s. 40.02 (48).

(2) In any proceeding involving the application by a state, county, or municipal fire fighter or his or her beneficiary for disability or death benefits under s. 40.65 (2) or any pension or retirement system applicable to fire fighters, where at the time of death or filing of application for disability benefits the deceased or disabled fire fighter had served a total of 5 years as a state, county, or municipal fire fighter and a qualifying medical examination given prior to the time of his or her becoming a state, county, or municipal fire fighter showed no evidence of heart or respiratory impairment or disease, and where the disability or death is found to be caused by heart or respiratory impairment or disease, such finding shall be presumptive evidence that such impairment or disease was caused by such employment.

History: 1977 c. 83; 1981 c. 278 s. 6; 1983 a. 191 s. 6; 1987 a. 399; 1987 a. 403 s. 256; 1997 a. 173; 2001 a. 16.

891.455 Presumption of employment−connected disease; cancer. (1) In this section, "state, county, or municipal fire fighter" means a fire fighter who is covered under s. 891.45 and any person under s. 61.66 whose duties as a fire fighter during the 10−year qualifying period specified in sub. (2) took up at least two−thirds of his or her working hours.

(2) In any proceeding involving an application by a state, county, or municipal fire fighter or his or her beneficiary for disability or death benefits under s. 40.65 (2) or any pension or retirement system applicable to fire fighters, where at the time of death or filing of application for disability benefits the deceased or disabled fire fighter had served a total of 10 years as a state, county, or municipal fire fighter and a qualifying medical examination given prior to the time of his or her becoming a state, county, or municipal fire fighter showed no evidence of cancer, and where the disability or death is found to be caused by cancer, such finding shall be presumptive evidence that the cancer was caused by such employment.

(3) The presumption under sub. (2) shall only apply to cancers affecting the skin, breasts, central nervous system or lymphatic, digestive, hematological, urinary, skeletal, oral or reproductive systems.

(4) The presumption under sub. (2) for cancers caused by smoking or tobacco product use shall not apply to any municipal fire fighter who smokes cigarettes, as defined in s. 139.30 (1m), or who uses a tobacco product, as defined in s. 139.75 (12), after January 1, 2001.

History: 1997 a. 173; 1999 a. 9; 2001 a. 16; 2005 a. 25.

CHAPTER 943
CRIMES AGAINST PROPERTY

943.395 Fraudulent insurance and employee benefit program claims. (1) Whoever, knowing it to be false or fraudulent, does any of the following may be penalized as provided in sub. (2): (a) Presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, to be paid under any contract or certificate of insurance; or (b) Prepares, makes or subscribes to a false or fraudulent account, certificate, affidavit, proof of loss or other document or writing, with knowledge that the same may be presented or used in support of a claim for payment under a policy of insurance. (c) Presents or causes to be presented a false or fraudulent claim or benefit application, or any false or fraudulent proof in support of such a claim or benefit application, or false or fraudulent information which would affect a future claim or benefit application, to be paid under any employee benefit program created by ch. 40.

(d) Makes any misrepresentation in or with reference to any application for membership or documentary or other proof for the purpose of obtaining membership in or noninsurance benefit from any fraternal subject to chs. 600 to 646, for himself or herself or any other person.

(2) Whoever violates this section:

(a) Is guilty of a Class A misdemeanor if the value of the claim or benefit does not exceed $2,500.

(b) Is guilty of a Class I felony if the value of the claim or benefit exceeds $2,500.

History: 1971 c. 214; 1975 c. 373, 421; 1977 c. 173; 1979 c. 89; 1981 c. 96; 1987 a. 349; 1991 a. 39; 2001 a. 16, 109. The "value of the claim" under sub. (2) refers to the amount of the entire claim and not the fraudulent portion. State v. Briggs, 214 Wis. 2d 281, 571 N.W.2d 881 (Ct. App. 1997), 97−0439.