

254.52 Lyme disease; treatment, information and research.

- (1) The department shall perform research relating to Lyme disease in humans.
- (2) The department, in consultation with the department of public instruction, the department of natural resources and the department of agriculture, trade and consumer protection, shall do all of the following:
 - (a) Monitor the spread and incidence of Lyme disease.
 - (b) Investigate suspected and confirmed cases of Lyme disease.
 - (c) Review materials, activities and epidemiologic investigations prepared or conducted in other states in which Lyme disease is endemic and recommend a statewide strategy for dealing with Lyme disease.
 - (d) Develop, update and disseminate information for use by clinicians, laboratory technicians and local health departments that diagnose or treat Lyme disease or investigate cases or suspected cases of Lyme disease.
 - (e) Develop and distribute information through offices of physicians and local health departments and by newsletters, public presentations or other releases of information. That information shall include all of the following:
 1. A description of Lyme disease.
 2. Means of identifying whether or not individuals may be at risk of contracting Lyme disease.
 3. Measures that individuals may take to protect themselves from contracting Lyme disease.
 4. Locations for procuring additional information or obtaining testing services.
 - (f) Conduct research on the serological prevalence of Lyme disease.

History: 1989 a. 31; 1993 a. 27 s. 49; Stats. 1993 s. 254.52; 1995 a. 27 s. 9145 (1); 1997 a. 27.

SUBCHAPTER VI

HUMAN HEALTH HAZARDS

254.55 Definitions. In this subchapter:

- (1) "Dwelling" means any structure, all or part of which is designed or used for human habitation.
- (2) "Owner" means any of the following:
 - (a) A person who has legal title to a dwelling.
 - (b) A person who has charge, care, or control of a dwelling or unit of a dwelling as an agent of or as personal representative, trustee, or guardian of the estate of a person under par. (a).

History: 1993 a. 27; 2001 a. 102.

254.56 Public places. The owner and occupant and everyone in charge of a public building, as defined in s. 101.01 (12), shall keep the building clean and sanitary.

History: 1971 c. 185 s. 7; 1993 a. 27 s. 352; Stats. 1993 s. 254.56; 1995 a. 27.

254.57 Smoke. The common council of any city or the board of any village may regulate or prohibit the emission of dense smoke into the open air within its limits and one mile from its limits.

History: 1993 a. 27 s. 357; Stats. 1993 s. 254.57.

The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

254.58 Powers of villages, cities and towns. Section 95.72 may not be construed as depriving any city or village from enacting any ordinance prohibiting the rendering of dead animals within the boundaries specified in s. 66.0415, as nullifying any existing law or ordinance prohibiting the rendering of dead animals within the area or as prohibiting any city or village from licensing, revoking the license, and regulating the business of rendering and transporting dead animals under sanitary conditions no less

stringent than provided under s. 95.72 and the rules of the department of agriculture, trade and consumer protection. Any licensing and regulation by a city or village is supplementary to the provisions of this section and the rules of the department and may not be construed as excusing or justifying any failure or neglect to comply with this section and the rules of the department. Section 95.72 shall be expressly construed as modifying the powers granted to towns and any city, village or town may take any action permitted under s. 254.59, may institute and maintain court proceedings to prevent, abate or remove any human health hazards under s. 254.59 and may institute and maintain any action under ss. 823.01, 823.02 and 823.07.

History: 1973 c. 206; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1977 c. 29 s. 1650m (4); 1993 a. 27 s. 358; Stats. 1993 s. 254.58; 1999 a. 150 s. 672.

254.59 Human health hazards.

- (1)** If a local health officer finds a human health hazard, he or she shall order the abatement or removal of the human health hazard on private premises, within a reasonable time period, and if the owner or occupant fails to comply, the local health officer may enter upon the premises and abate or remove the human health hazard.
- (2)** If a human health hazard is found on private property, the local health officer shall notify the owner and the occupant of the property, by registered mail with return receipt requested, of the presence of the human health hazard and order its abatement or removal within 30 days of receipt of the notice. If the human health hazard is not abated or removed by that date, the local health officer shall immediately enter upon the property and abate or remove the human health hazard or may contract to have the work performed. The human health hazard shall be abated in a manner which is approved by the local health officer. The cost of the abatement or removal may be recovered from the person permitting the violation or may be paid by the municipal treasurer and the account, after being paid by the treasurer, shall be filed with the municipal clerk, who shall enter the amount chargeable to the property in the next tax roll in a column headed "For Abatement of a Nuisance" as a special tax on the lands upon which the human health hazard was abated, and the tax shall be collected as are other taxes. In case of railroads or other lands not taxed in the usual way, the amount chargeable shall be certified by the clerk to the secretary of administration who shall add the amount designated in the certificate to the sum due from the company owning, occupying, or controlling the land specified, and the secretary of administration shall collect the amount as prescribed in subch. I of ch. 76 and return the amount collected to the town, city, or village from which the certificate was received. Anyone maintaining such a human health hazard may also be fined not more than \$300 or imprisoned for not more than 90 days or both. The only defenses an owner may have against the collection of a tax under this subsection are that no human health hazard existed on the owner's property, that no human health hazard was corrected on the owner's property, that the procedure outlined in this subsection was not followed or any applicable defense under s. 74.33.
- (4)** In cities under general charter, the local health officer may enter into and examine any place at any time to ascertain health conditions, and anyone refusing to allow entrance at reasonable hours shall be fined not less than \$10 nor more than \$100. If the local health officer deems it necessary to abate or remove a human health hazard found on private property, the local health officer shall serve notice on the owner or occupant to abate or remove within a reasonable time that is not less than 24 hours; and if he or she fails to comply, or if the human health hazard is on property whose owner is a nonresident, or cannot be found, the local health officer shall cause abatement or removal.
- (5)** The cost of abatement or removal of a human health hazard under this section may be at the expense of the municipality and may be collected from the owner or occupant, or person causing, permitting, or maintaining the human health hazard, or may be charged against the premises and, upon certification of the local health officer, assessed as are other special taxes. In cases of railroads or other lands not taxed in the usual way, the amount chargeable shall be certified by the clerk to the secretary of administration who shall add the amount designated in the certificate to the sum due from the company owning, occupying, or controlling the land specified, and the secretary of administration shall collect the amount as prescribed in subch. I of ch. 76 and return the amount collected to the town, city, or village from which the certificate was received. Anyone maintaining such a human health hazard may also be fined not more than \$300 or imprisoned for not more than 90 days or both. The only defenses an owner may have against the collection of a tax under this subsection are that no human health hazard existed on the owner's property, that no human health hazard was corrected on the owner's property, that the procedure outlined in this subsection was not followed, or any applicable defense under s. 74.33.
- (6)** A 1st class city may, but is not required to, follow the provisions of this section. A 1st class city may follow the provisions of its charter.

(7)

- (a) A county, city, village, or town with a local health department may enact an ordinance concerning abatement or removal of a human health hazard that is at least as restrictive as this section.
- (b) An ordinance enacted under par. (a) may be enforced in the county, city, village, or town that enacted it.
- (c) This subsection may not be construed to prohibit any agreement under s. 66.0301 between a county and a city, town, or village that has a local health department, concerning enforcement under this section.

History: 1979 c. 102 s. 237, 176; 1981 c. 20 s. 2200; 1987 a. 378; 1993 a. 27 ss. 361, 363, 477; Stats. 1993 s. 254.59; 2003 a. 33; 2007 a. 130; 2009 a. 180.

254.593 Authority of the department and local health departments. The department or a local health department may declare housing that is dilapidated, unsafe or unsanitary to be a human health hazard.

History: 1993 a. 27.

254.595 Property violating codes or health orders.

- (1) If real property is in violation of those provisions of a municipal building code that concern health or safety, the city, village, or town in which the property is located may commence an action to declare the property a nuisance. If real property is in violation of an order or a regulation of the local board of health, the city, village, or town in which the property is located may commence an action to declare the property a human health hazard. A tenant or class of tenants of property that is in violation of the municipal building code or of an order or regulation of the local board of health or any other person or class of persons whose health, safety or property interests are or would be adversely affected by property that is in violation of the municipal building code or of an order or regulation of the local board of health may file a petition with the clerk of the city, village, or town requesting the governing body to commence an action to declare the property a nuisance or human health hazard. If the governing body refuses or fails to commence an action within 20 days after the filing of the petition, a tenant, class of tenants, other person or other class of persons may commence the action directly upon the filing of security for court costs. The court before which the action of the case is commenced shall exercise jurisdiction in rem or quasi in rem over the property and the owner of record of the property, if known, and all other persons of record holding or claiming any interest in the property shall be made parties defendant and service of process may be had upon them as provided by law. Any change of ownership after the commencement of the action shall not affect the jurisdiction of the court over the property. At the time that the action is commenced, the municipality or other parties plaintiff shall file a lis pendens. If the court finds that a violation exists, it shall adjudge the property a nuisance or human health hazard and the entry of judgment shall be a lien upon the premises.
- (2) A property owner or any person of record holding or claiming any interest in the property shall have 60 days after entry of judgment to eliminate the violation. If, within 60 days after entry of judgment under sub. (1), an owner of the property presents evidence satisfactory to the court, upon hearing, that the violation has been eliminated, the court shall set aside the judgment. It may not be a defense to this action that the owner of record of the property is a different person, partnership or corporate entity than the owner of record of the property on the date that the action was commenced or thereafter if a lis pendens has been filed prior to the change of ownership. No hearing under this subsection may be held until notice has been given to the municipality and all the plaintiffs advising them of their right to appear. If the judgment is not so set aside within 60 days after entry of judgment, the court shall appoint a disinterested person to act as receiver of the property for the purpose of abating the nuisance or human health hazard.
- (3)
 - (a) Any receiver appointed under sub. (2) shall collect all rents and profits accruing from the property, pay all costs of management, including all general and special real estate taxes or assessments and interest payments on first mortgages on the property, and make any repairs necessary to meet the standards required by the building code or the order or regulation of the local board of health. The receiver may, with the approval of the circuit court, borrow money against and encumber the property as security for the money, in the amounts necessary to meet the standards.
 - (b) At the request of and with the approval of the owner, the receiver may sell the property at a price equal to at least the appraisal value plus the cost of any repairs made under this section for which the selling owner is or will become liable. The receiver shall apply moneys received from the sale

of the property to pay all debts due on the property in the order set by law, and shall pay over any balance with the approval of the court, to the selling owner.

- (4) The receiver appointed under this section shall have a lien, for the expenses necessarily incurred to abate the nuisance or in the execution of the order, upon the premises upon or in respect of which the work required by the order has been done or expenses incurred. The municipality that sought the order declaring the property to be a nuisance or human health hazard may also recover its expenses and the expenses of the receiver under subs. (3) (a) and (5), to the extent that the expenses are not reimbursed under s. 632.103 (2) from funds withheld from an insurance settlement, by maintaining an action against the property owner under s. 74.53.
- (5) The court shall set the fees and bond of the receiver, and may discharge the receiver when the court deems appropriate.
- (6) Nothing in this section relieves the owner of any property for which a receiver has been appointed from any civil or criminal responsibility or liability otherwise imposed by law, except that the receiver shall be civilly and criminally responsible and liable for all matters and acts directly under his or her authority or performed by him or her or at his or her direction.
- (7) This section shall not apply to owner-occupied one or 2-family dwellings.
- (8) The commencement of an action by a tenant under this section is not just cause for eviction.

History: 1973 c. 306; Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.22; 1983 a. 476; 1987 a. 378; 1989 a. 347; 1993 a. 27 s. 493; Stats. 1993 s. 254.595; 2001 a. 86.

In an action alleging a public nuisance, it was sufficient to allege that the defendants knowingly caused the lowering of the ground water table from which the area residents drew water from private wells, which caused numerous citizens great hardship. *State v. Michels Pipeline Construction, Inc.* 63 Wis. 2d 278, 217 N.W.2d 339, 219 N.W.2d 308 (1974).

SUBCHAPTER IX

SALE OR GIFT OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS

254.911 Definitions. In this subchapter:

- (1) "Cigarette" has the meaning given in s. 139.30 (1m).
- (2) "Governmental regulatory authority" means the department, a local health department, a state agency or a state or local law enforcement agency; or a person with whom the local health department, state agency, or state or local law enforcement agency contracts to conduct investigations authorized under s. 254.916 (1) (a).
- (3) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).
- (3m) "Nicotine product" has the meaning given in s. 134.66 (1) (f).
- (4) "Retailer" has the meaning given in s. 134.66 (1) (g).
- (5) "Retail outlet" means a place of business from which cigarettes, nicotine products, or tobacco products are sold at retail to consumers.
- (6) "State agency" has the meaning given in s. 1.12 (1) (b).
- (7) "Tobacco products" has the meaning given in s. 139.75 (12).
- (8) "Tobacco vending machine" is any mechanical device that automatically dispenses cigarettes or tobacco products when money or tokens are deposited in the device in payment for the cigarettes or tobacco products.
- (9) "Tobacco vending machine operator" means a person who acquires tobacco products or stamped cigarettes from manufacturers, as defined in s. 134.66 (1) (e), or permittees, stores them and sells them through the medium of tobacco vending machines that he or she owns, operates or services and that are located on premises that are owned or under the control of other persons.
- (10) "Tobacco vending machine premises" means any area in which a tobacco vending machine is located.

History: 1999 a. 9; 2001 a. 75; 2005 a. 25; 2011 a. 249.

254.916 Investigations.

- (1)

- (a) A governmental regulatory authority may conduct unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with s. 134.66 (2) (a) and (am) or a local ordinance adopted under s. 134.66 (5). The department may contract with a local health department, a state agency, or a state or local law enforcement agency to conduct investigations authorized under this section, and a local health department, state agency, or state or local law enforcement agency may contract with any other person to conduct those investigations. A person who contracts to conduct investigations authorized under this section shall agree in the contract to train all individuals conducting investigations under the contract in accordance with the standards established under par. (b) and to suspend from conducting any further investigations for not less than 6 months any individual who fails to meet the requirements of sub. (3) (a) to (f) and the standards established by the department.
- (b) The department, in consultation with other governmental regulatory authorities and with retailers, shall establish standards for procedures and training for conducting investigations under this section.
- (c) No retailer may be subjected to an unannounced investigation more than twice annually unless the retailer is found to have violated s. 134.66 (2) (a) or (am), or a local ordinance adopted under s. 134.66 (5), during the most recent investigation.
- (2) With the permission of his or her parent or guardian, a person under 18 years of age, but not under 15 years of age, may buy, attempt to buy or possess any cigarette, nicotine product, or tobacco product if all of the following are true:
 - (a) The person commits the act for the purpose of conducting an investigation under this section.
 - (b) The person is directly supervised during the conducting of the investigation by an adult employee of a governmental regulatory authority.
 - (c) The person has prior written authorization to commit the act from a governmental regulatory authority or a district attorney or from an authorized agent of a governmental regulatory authority or a district attorney.
- (3) All of the following, unless otherwise specified, apply in conducting investigations under this section:
 - (a) If questioned about his or her age during the course of an investigation, the minor shall state his or her true age.
 - (b) A minor may not be used for the purposes of an investigation at a retail outlet at which the minor is a regular customer.
 - (c) The appearance of a minor may not be materially altered so as to indicate greater age.
 - (d) A photograph or videotape of the minor shall be made before or after the investigation or series of investigations on the day of the investigation or series of investigations. If a prosecution results from an investigation, the photograph or videotape shall be retained until the final disposition of the case.
 - (e) A governmental regulatory authority shall make a good faith effort to make known to the retailer or the retailer's employee or agent, within 72 hours after the occurrence of the violation, the results of an investigation, including the issuance of any citation by a governmental regulatory authority for a violation that occurs during the conduct of the investigation. This paragraph does not apply to investigations conducted under a grant received under 42 USC 300x-21.
 - (f) Except with respect to investigations conducted under a grant received under 42 USC 300x-21, all of the following information shall be reported to the retailer within 10 days after the conduct of an investigation under this section:
 1. The name and position of the governmental regulatory authority employee who directly supervised the investigation.
 2. The age of the minor.
 3. The date and time of the investigation.

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