

# RULES CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carol Skornicka, Secretary of the Department of Industry,

Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to equal opportunities in fair housing and public accommodations

(Subject)

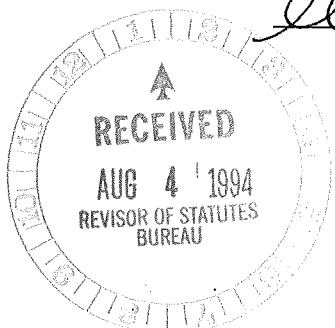
were duly approved and adopted by this department on August 4, 1994.

(Date)

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 8:45 a.m. in the city of Madison, this 4th day of August A.D. 19 94.

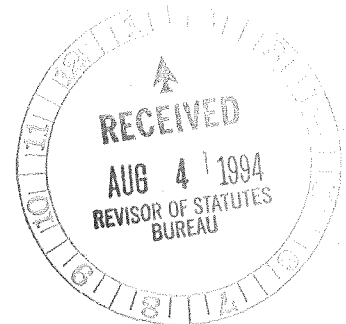
Carol Skornicka  
Secretary







# RULES in FINAL DRAFT FORM



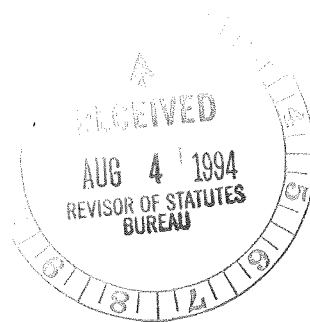
**Rule No.:** ILHR 220 and 221

**Relating to:** Equal opportunities in fair housing and public accommodations

**Clearinghouse Rule No.:** 94-32



# RULES in FINAL DRAFT FORM



**Rule No.:** ILHR 220 and 221

**Relating to:** Equal opportunities in fair housing and public accommodations

**Clearinghouse Rule No.:** 94-32

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to repeal s. Ind 89 and to create s. ILHR 220 relating to equal opportunities in fair housing and s. ILHR 221 relating to equal opportunities in public accommodations.

SECTION 1. Chapter Ind 89, is repealed.

SECTION 2. Chapter ILHR 220, is recreated to read:

Chapter ILHR 220  
Equal Opportunities - Fair Housing

ILHR 220.01 PURPOSE. The purpose of this chapter is to implement the laws prohibiting discrimination in housing and to provide an impartial and speedy procedure for resolving disputes of alleged housing discrimination.

ILHR 220.02 DEFINITIONS. In addition to those terms defined in s. 101.22, Stats., the following are definitions for terms used in this chapter:

- (1) "Act" means s. 101.22, Stats., unless the context requires otherwise.
- (2) "Administrative law judge" means the examiner appointed to conduct hearings under s. 101.22, Stats.
- (3) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.
- (4) "Day", when used in time computations in this chapter, means a calendar day, except that if the last day of the time period is a Saturday, Sunday or a legal holiday, the last day shall be the next business day.
- (5) "Department" means the department of industry labor and human relations.
- (6) "Division" means the equal rights division of the department.
- (7) "Filing" means the physical receipt of a document at any division office.
- (8) "Lawful source of income" includes, but is not limited to, lawful compensation or lawful remuneration in exchange for goods or services provided; profit from financial investments; any negotiable draft, coupon or voucher representing monetary value such as food stamps; social security; public assistance; unemployment compensation or worker's compensation payments.
- (9) "Licensing or chartering agencies" means those regulatory agencies established under state law to license persons to perform activities which are covered by the act.

(10) "Person" includes, but is not limited to, one or more individuals, partnerships, associations, corporations, joint-stock companies, trusts, unincorporated organizations, legal representatives, trustees, or trustees or receivers in bankruptcy.

(11) "Probable cause" means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe, that discrimination probably has been or is being committed.

(12) "Reasonable cause," when used in s. 101.22(6m)(d), Stats., means probable cause, as defined in s. ILHR 220.02(11).

(13) "Receipt of service" means either the date that a document is delivered by certified mail or the date that the division is notified by the U.S. postal service that it was unable to deliver the document by certified mail.

(14) "Test" means a simulation of any transaction covered by the act for the purpose of comparing the responses given by persons such as landlords, sellers of real estate, and lenders of money for real estate to individuals such as renters or buyers of real estate or borrowers of money for real estate, to determine whether housing discrimination as defined under s. 101.22(2), (2m) or (2r), Stats., is being or has been committed.

ILHR 220.03 HOUSING FOR OLDER PERSONS; EXEMPTIONS AND EXCLUSIONS. (1) CERTIFICATION THAT HOUSING IS FOR OLDER PERSONS. Housing primarily intended and primarily operated for occupancy by at least one person 55 years of age or older per dwelling unit may qualify as housing for older persons entitled to the exemption under s. 101.22(5m) 1e., Stats., only if that housing actually satisfied all of the factors required for such housing by s. 101.22(5m) 1e. a., b. and c., Stats., at the time that the alleged discriminatory housing practice occurred.

(2) EXEMPTIONS FROM OCCUPANCY REQUIREMENTS. Housing shall not fail to qualify for the exemptions and exclusions for housing for older persons set forth in s. 101.22(5m) 1 and 1e. b., Stats., by reason of either of the following:

(a) The existence of unoccupied units, provided that such units are reserved for occupancy by persons 55 years of age or over.

(b) The occupancy of one or more units by bona fide employes of the housing (and family members renting in the same unit) who are under 55 years of age, provided that they perform substantial duties directly related to management or maintenance of the housing.

ILHR 220.04 COMPLAINTS. (1) WHO MAY FILE COMPLAINTS. A complaint may be filed by any person or by the person's duly authorized representative. A complaint filed by a representative shall state that the representative is authorized to file the complaint.

(2) PERSONS AGAINST WHOM COMPLAINTS MAY BE FILED. A complaint may be filed against any person alleged to be engaged or to have engaged in a discriminatory housing practice prohibited under the act.

(3) WHERE TO FILE COMPLAINTS. A complaint may be filed in person with any division office, or it may be mailed to one of the following division offices:

(a) Equal Rights Division, 201 East Washington Avenue, Madison, Wisconsin 53708.

(b) Equal Rights Division, 819 North Sixth Street, Milwaukee, Wisconsin 53203.

(4) FORM AND CONTENT OF COMPLAINT. A complaint shall be written on a form which is available at any division office or on any other form acceptable to the department. Each complaint shall be signed by the person filing the complaint or by the person's duly authorized representative. The signature constitutes a certificate that the party or the representative has read the complaint; that to the best of that person's knowledge, information and belief the complaint is well-founded; and that the complaint is not being used for any improper purpose, such as to harass the party against whom the complaint is filed. Each complaint shall contain substantially the following information:

(a) The name and address of the complainant.

(b) The name and address of the known aggrieved persons, if different than the complainant.

(c) The name and address of the respondent.

(d) A description and the address of the dwelling which is involved.

(e) A concise statement of the essential facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(5) DATE OF FILING OF COMPLAINT. A complaint is filed when it is received by the department in a form that reasonably meets the standards of s. ILHR 220.04(4).

(6) DATE OF FILING OF DEFERRED COMPLAINT. A complaint which is deferred to the department by a federal or local fair housing agency with which the department has a worksharing agreement complies with the requirements of sub. (4) and is considered filed when received by the federal or local agency.

(7) AMENDMENT OF COMPLAINT. Subject to the approval of the department, a complaint may be amended no later than 20 days before hearing unless good cause is shown for the failure to amend the complaint prior to that time. If the complaint is amended prior to the issuance of an initial determination,

the department shall investigate the allegations of the amended complaint. If the complaint is amended after the case has been certified to hearing, the chief of the hearing section or the administrative law judge may remand the complaint to the investigation section to conduct an investigation and issue an initial determination as to whether probable cause exists to believe that discrimination has been committed as alleged in the amended complaint. An amended complaint shall be dismissed if it does not meet the requirements of s. ILHR 220.05(1).

(8) **WITHDRAWAL OF COMPLAINT.** A complaint may be withdrawn at any time. A request for withdrawal shall be in writing and shall be signed by the complainant or by the complainant's duly authorized representative or attorney of record. Upon the filing of a request for withdrawal, the department shall dismiss the complaint by written order. Such dismissal shall be with prejudice unless otherwise expressly stated in the order.

ILHR 220.05 PRELIMINARY REVIEW OF COMPLAINTS. (1) **REVIEW OF COMPLAINT.** The department shall review every complaint filed to determine all of the following:

- (a) Whether the complainant is protected by the act.
- (b) Whether the respondent is subject to the act.
- (c) Whether the complaint states a claim for which relief can be granted under the act.
- (d) Whether the complaint was timely filed.

(2) **PRELIMINARY DETERMINATION DISMISSING COMPLAINT.** The department shall issue a preliminary determination dismissing any complaint which fails to meet the requirements of sub (1). The order of dismissal shall be sent by first class mail to the last known address of each party and to their attorneys of record.

(3) **APPEAL OF PRELIMINARY DETERMINATION.** A complainant may appeal from an order dismissing a complaint under sub. (2) by filing a written request with the department. The appeal shall be filed within 20 days of the date of the order and shall state specifically the grounds upon which it is based. If a timely appeal is filed, the department shall serve a copy of the appeal upon all other parties. The matter shall be referred to the hearing section of the division for review by an administrative law judge. The administrative law judge shall issue a decision which shall either affirm, reverse, modify or set aside the preliminary determination. The decision of the administrative law judge shall be served upon the parties. If the decision reverses or sets aside the preliminary determination, the complaint shall be remanded for investigation. If the decision affirms the preliminary determination, it is the final decision of the department. A copy of the decision and order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.



ILHR 220.06 TESTING. (1) CONDITIONS UNDER WHICH TESTING MAY BE DONE BY THE DEPARTMENT. The department may engage in testing for the purpose of establishing violations of s. 101.22(2), (2m) or (2r), Stats. by verifying allegations of unlawful housing discrimination or to determine whether sufficient evidence exists to initiate its own complaint. Testing may occur under circumstances including but not limited to the following:

(a) Where no other means exists for verifying or refuting the allegations contained in a complaint, or where the findings of the investigator would be significantly strengthened by the inclusion of test results.

(b) Where the number or content of complaints against a specific respondent is sufficient to indicate that a pattern of unlawful discrimination may exist.

(c) Where demographic statistics would lead a reasonable person to believe that a pattern of unlawful discrimination exists in a particular geographical area.

(2) TESTING PROCEDURES. Any person engaged in testing for the department shall do so only after having specific authorization by the department. The results of each test for potential discrimination shall be submitted to the department in written form by those persons who conducted the test.

3) NOTICE OF TESTING. The department may not give notice of testing to the person who shall be tested. If the testing is undertaken as the result of a complaint naming a specific respondent, the department shall delay sending the notice of the complaint to the respondent until after the completion of the testing.

ILHR 220.07 INVESTIGATIONS. The department shall investigate all complaints which satisfy the review under s. ILHR 220.05(1). In conducting investigations under this chapter, the department may seek the voluntary cooperation of all persons to provide requested materials to the department; to obtain access to premises, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation. The department may subpoena persons or documents for the purpose of the investigation. Subpoenas may be enforced pursuant to s. 885.11, Stats.

ILHR 220.08 INITIAL DETERMINATION. (1) GENERAL. At the conclusion of the investigation, the department shall issue an initial determination which shall state whether or not there is probable cause to believe that housing discrimination occurred as alleged in the complaint. This initial determination shall set forth the facts upon which its conclusion is based.

(2) INITIAL DETERMINATION OF PROBABLE CAUSE. If the initial determination of the department is that probable cause exists, the department shall issue a charge under s. ILHR 220.11.

(3) INITIAL DETERMINATION OF NO PROBABLE CAUSE. If the initial determination of the department is that there is no probable cause to believe that housing discrimination occurred as alleged in the complaint, it shall dismiss the complaint. The department shall notify the parties and their attorneys of record of the complainant's right to appeal as provided in s. ILHR 220.09.

ILHR 220.09 APPEAL OF INITIAL DETERMINATION OF NO PROBABLE CAUSE. (1) WHEN FILED. Within 20 days after the date of an initial determination finding that there is no probable cause, a complainant may file a written request for a hearing on the issue of probable cause. The department shall notify the respondent that an appeal has been filed within 10 days of receiving the appeal.

(2) DISMISSAL FINAL IF NO APPEAL FILED. If no timely written request for a hearing is filed, the initial determination's order of dismissal shall be the final determination of the department.

(3) CERTIFICATION TO HEARING ON ISSUE OF PROBABLE CAUSE; RIGHT TO STIPULATE THAT CASE MAY BE HEARD ON MERITS. If a timely appeal is filed, the division shall certify the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. ILHR 220.14 and 220.16 to 220.23, except that the parties may stipulate prior to the hearing that the administrative law judge may decide the case on the merits.

ILHR 220.10 CONCILIATION. (1) CONCILIATION. Upon the consent of all parties, the department may assist the parties to reach a mutually agreeable and just resolution of the complaint at any time during the proceedings. If conciliation resolves a dispute, the terms of the agreement shall be set forth in a conciliation agreement.

(2) REMEDY FOR BREACH OF CONCILIATION AGREEMENT. If, within one year after the effective date of a conciliation agreement, a complainant believes that the terms of the agreement have been breached by a respondent, the complainant may petition the department to re-open the complaint against that respondent. The department may conduct a hearing to determine whether the terms of the conciliation agreement have been breached. If the department determines that the respondent has breached the conciliation agreement, it may do either of the following:

(a) Refer the matter to the department of justice with a recommendation that a civil action be filed under s. 101.22(6)(e) 4., Stats., for the enforcement of the terms of the conciliation agreement.

(b) Issue an order allowing the complainant to proceed with the complaint starting at the point in the administrative proceedings when the conciliation agreement became effective, provided that the complainant places any monetary proceeds which were received as a result of the conciliation agreement in an escrow account pending the final resolution of the complaint process.

3) STAY OF PROCEEDINGS. Any proceedings before the division under this section shall be stayed pending any enforcement action by the department of justice or any contract action to enforce the conciliation agreement brought by the complainant in circuit court.

ILHR 220.11 CHARGE OF DISCRIMINATION. (1) WHEN CHARGE SHALL BE ISSUED. If the department makes an initial determination that there is probable cause to believe that housing discrimination occurred as alleged in the complaint, or if it issues a decision finding probable cause after a hearing, it shall issue a charge on behalf of the complainant. The charge may be incorporated into an initial determination finding probable cause under s. ILHR 220.08(2) or into a decision of an administrative law judge finding probable cause under s. ILHR 220.23(1).

(2) EXCEPTION IF CIVIL TRIAL HAS COMMENCED. The department shall not issue a charge under this section if it has been informed, in writing, that an aggrieved person has commenced a civil action in court under the federal fair housing act, 42 U.S.C. 3613, or the Wisconsin open housing law, s. 101.22(6m), Stats., seeking relief with respect to the alleged discriminatory housing practice, and that the trial in the action has begun. If a charge may not be issued because of the commencement of such a trial, the department shall dismiss the complaint. The department shall notify the parties of the dismissal of the complaint by first class mail.

ILHR 220.12 ELECTION OF CIVIL ACTION; CERTIFICATION TO HEARING. (1) ELECTION OF CIVIL ACTION. If a charge is issued under s. ILHR 220.11, a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed may elect, in lieu of an administrative proceeding under s. ILHR 220.14-220.23, to have the claims asserted in the charge decided in a civil action under s. 101.22(6m), Stats. The election shall be in writing and shall be filed with the department no later than 20 days after the receipt of service of the charge by the electing person. The department shall notify the parties and their attorneys of record that an election has been made. Upon the filing of an election, the department shall dismiss the complaint. The order of dismissal shall become effective 90 days after the date the order is issued. The order of dismissal shall state that it is without prejudice to the parties' rights to proceed on the complaint in another forum. The administrative proceedings shall be concluded upon the effective date of the department's order of dismissal. The complainant or the aggrieved person shall have 90 days from the date of receipt of service of the notice of election to file a summons and complaint in circuit court. Thereafter, the complaint shall proceed as provided under s. 101.22(6m), Stats.

(2) CERTIFICATION TO HEARING ON THE MERITS OF THE COMPLAINT. If an election is not made under this section, the department shall issue a notice certifying the matter to hearing. A hearing on the merits shall thereafter be noticed and conducted in accordance with the provisions of s. ILHR 220.14-23.

ILHR 220.13 DISMISSAL OF COMPLAINT FOR LACK OF JURISDICTION OR OTHER PROCEDURAL BASIS FOLLOWING CERTIFICATION TO HEARING. A complaint may be

dismissed for the reasons set forth in s. ILHR 220.05(1) after the case is certified to hearing under either s. ILHR 220.09(3) or s. ILHR 220.12(2). In determining whether to dismiss the complaint, the administrative law judge may consider documents and affidavits presented by any party and may hold a hearing to allow the parties to establish facts which may have a bearing on whether the complaint should be dismissed. If the administrative law judge issues an order dismissing the complaint under this section, a certified copy of the order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.

ILHR 220.14 NOTICE OF HEARING. (1) CONTENT. In any matter which has been certified to hearing following the issuance of a charge under s. ILHR 220.11 or an appeal of an initial determination of no probable cause under s. ILHR 220.09(3), the department shall send a notice of hearing to the parties and their attorneys of record, by first-class mail, advising them of the specific time, date and place established for the hearing. The notice of hearing shall fully identify the parties and the case number. It shall specify a time and date of hearing not less than 30 days after the date of mailing of the notice of hearing. The notice of hearing shall specify the nature of the housing discrimination which is alleged to have occurred and shall state the legal authority on which the hearing is based. A copy of the complaint shall be attached to the notice of hearing.

(2) PLACE OF HEARING. The hearing shall be held in the county where the alleged act of discrimination occurred, or at another location with the consent of the parties. For purposes of this subsection, the county where the alleged act of housing discrimination occurred is the county where the housing which is the subject of the complaint is located, unless no specific housing is involved, in which case the county where the alleged act of housing discrimination occurred is the county where the respondent resides.

ILHR 220.15 ANSWER. (1) WHEN REQUIRED. Within 10 days after the date of a notice of hearing on the merits, each respondent shall file with the hearing section of the division an answer to those allegations of the complaint upon which there has been a finding of probable cause. The department shall serve a copy of the answer upon all other parties.

(2) CONTENT OF ANSWER. The answer shall contain the respondent's current address. It shall also contain a specific admission, denial or explanation of each allegation of the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this shall have the effect of a denial. Admissions or denials may be to all or part of an allegation, but shall fairly meet the substance of the allegation. Any affirmative defense relied upon, including without limitation the statute of limitations, shall be raised in the answer unless it has previously been raised by a motion in writing. Failure to raise the affirmative defense that a complaint is barred by the statute of limitations in an answer filed within the time permitted under sub. (1) may, in the absence of good cause, be held to constitute a waiver of such affirmative defense.

ILHR 220.16 PRE-HEARING CONFERENCE. In any case which has been certified to hearing, a pre-hearing conference may be held in accordance with the provisions of s. 227.44(4), Stats.

ILHR 220.17 SUBPOENAS AND MOTIONS. (1) SUBPOENAS. The cost of service and witness and mileage fees shall be paid by the person requesting the subpoena. Witness and mileage fees shall be the same as set forth in s. 814.67(a) and (c), Stats. Subpoenas may be enforced pursuant to s. 885.11, Stats.

(2) MOTIONS. Motions made during a hearing may be stated orally and shall, with the ruling of the administrative law judge, be included in the record of the hearing. All other motions shall be in writing and shall state briefly the relief requested and the grounds upon which the moving party is entitled to relief. All written motions shall be filed with the administrative law judge assigned to the case. Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion. Any party opposing the motion may file a written response. All written motions shall be decided without further argument unless requested by the administrative law judge.

ILHR 220.18 PRE-HEARING DISCOVERY. (1) WHEN DISCOVERY MAY BEGIN. Discovery may not be used prior to the time that a matter is certified to hearing, except that the taking and preservation of evidence shall be permitted prior to certification to hearing under the circumstances set forth in s. 227.45(7), Stats.

(2) DISCOVERY DIRECTED TO A PARTY NOT REPRESENTED BY LEGAL COUNSEL. In the case of discovery directed to a party who is not represented by legal counsel, the party seeking that discovery must, not less than 10 days prior to conducting such discovery, state in writing to the chief of the hearing section, or the administrative law judge if one has been assigned to the case, that it intends to seek discovery. The party seeking discovery must file copies of all demands for discovery and notices of depositions with the department at the time they are served upon the party from whom the discovery is sought. Copies of responses to discovery by an unrepresented party and the original transcript of any deposition of an unrepresented party shall be filed with the department by the party which instituted those discovery requests as soon as practicable after the discovery has been taken.

(3) SCOPE, METHOD AND USE OF DISCOVERY. The scope of discovery, the methods of discovery and the use of discovery at hearing shall be the same as set forth in ch. 804, Stats.

(4) FAILURE TO COMPLY WITH DISCOVERY REQUESTS; DUTY TO CONSULT WITH OPPOSING PARTY. The administrative law judge has the same authority to compel discovery, to issue protective orders and to impose sanctions as the court has under ch. 804., Stats. All motions to compel discovery or motions for protective orders must be accompanied by a statement in writing by the party making the motion that, after consultation in person or by telephone with the opposing party and sincere attempts to resolve their differences, the parties

are unable to reach agreement. The statement shall state the date and place of such consultation and the names of all parties participating in the consultation.

(5) FILING WITH DEPARTMENT. Copies of discovery requests and responses to discovery requests need not be filed with the division, except as required under s. ILHR 220.18(2).

ILHR 220.19 DISQUALIFICATION OF THE ADMINISTRATIVE LAW JUDGE. Upon the administrative law judge's own motion, or upon a timely and sufficient affidavit filed by any party, the administrative law judge shall determine whether to disqualify himself or herself because of personal bias or other reason. The administrative law judge's determination shall be made a part of the record and decision in the case.

ILHR 220.20 EXCHANGE OF NAMES OF WITNESSES AND COPIES OF EXHIBITS. By no later than the tenth day prior to the day of the hearing, the parties shall file with the division and serve upon the other party a written list of names of witnesses and copies of the exhibits which the parties intend to use at the hearing. For the purpose of this section only, service is complete on mailing rather than on receipt. The administrative law judge may exclude witnesses and exhibits not identified in a timely fashion pursuant to this section. This section does not apply to witnesses and exhibits offered in rebuttal which the party could not have reasonably anticipated using prior to the hearing.

ILHR 220.21 HEARING. (1) PROCEDURE. Hearings shall be conducted in conformity with the act and the provisions of ch. 227, Stats.

(2) POSTPONEMENTS AND CONTINUANCES. All requests for postponements shall be filed with the administrative law judge or with the chief of the hearing section within 10 days after the date of the notice of hearing, except where emergency circumstances arise after the notice is issued but prior to the hearing. The party requesting a postponement shall mail a copy of the request to all other parties at the time the request is filed with the division. Postponements and continuances may be granted only for good cause shown and shall not be granted solely for the convenience of the parties or their attorneys.

(3) APPEARANCE OF PARTIES. Parties may appear at the hearing in person and by counsel or other representative.

(4) FAILURE TO APPEAR AT HEARING. If the complainant fails to appear at the hearing, either in person or by a representative authorized to proceed on behalf of the complainant, the administrative law judge shall dismiss the complaint. If the respondent fails to appear at the hearing, the hearing shall proceed as scheduled. If, within 10 days after the date of the hearing, any party who failed to appear shows good cause in writing for the failure to appear, the administrative law judge may reopen the hearing.

ILHR 220.22 RECORD OF HEARING. (1) METHOD OF RECORDING HEARING. A stenographic, electronic or other record of oral proceedings shall be made at all hearings conducted under the act. Any party wishing to have a court reporter present to transcribe the proceedings will be permitted to do so at their own expense. If the hearing is tape-recorded, the original tapes will remain in the division for 5 years following the hearing, after which they will be discarded.

(2) FILING TRANSCRIPTS WITH THE DIVISION. Transcription of the record shall be at the expense of any party who requests the transcription. The transcript shall be prepared by an independent, reputable, court reporter or transcriptionist. If a transcript is filed with the division, it shall include a certification by the transcriptionist that the transcript is an original, verbatim, transcript of the proceedings.

(3) TRANSCRIPTION OF RECORD AT DEPARTMENT EXPENSE. The department shall provide, without cost, a copy of the transcript for the purpose of judicial review if a party submits a sworn affidavit of indigency and the inability to obtain funds to pay the cost of a transcript.

ILHR 220.23 DECISION AND ORDER. (1) DECISION AND ORDER AFTER HEARING ON THE ISSUE OF PROBABLE CAUSE. After a hearing on the issue of probable cause, the administrative law judge shall issue a written decision and order which dismisses the allegations of the complaint or which orders that a charge be issued under s. ILHR 220.11, depending upon the administrative law judge's findings and conclusions on the issue of probable cause. If the decision of the administrative law judge concludes that no probable cause exists, a certified copy of the decision and order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.

(2) DECISION AND ORDER AFTER HEARING ON THE MERITS. After a hearing on the merits, the administrative law judge shall issue a written decision and an order which shall either dismiss the allegations of the complaint or shall order such action by the respondent as shall effectuate the purposes of the act, depending upon the administrative law judge's findings and conclusions on the merits of the complaint. Economic and noneconomic damages including, but not limited to, lost wages, medical expenses, the increased costs of alternative housing, and compensation for damages caused by emotional distress, damage to reputation, or embarrassment may be ordered. A forfeiture may be ordered under s. 101.22(6)(h)2. or 3., Stats., if the respondent's violation of the act was found to have been willful. A certified copy of the decision and order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.

ILHR 220.24 JUDICIAL REVIEW. Any party may file a petition for review of a final decision and order of the administrative law judge in the appropriate circuit court, pursuant to s. 101.22(6)(j), Stats. A final decision and order is one which finally disposes of the entire complaint and leaves no further proceedings on that complaint pending before the division.

SECTION 3. Chapter ILHR 221 is created to read:

Chapter ILHR 221  
Equal Opportunities - Public Accommodations

ILHR 221.01 PURPOSE. The purpose of this chapter is to implement the laws prohibiting discrimination in public accommodation and amusements, and to provide an impartial and speedy procedure for resolving disputes of alleged discrimination in public accommodations and amusements.

ILHR 221.02 DEFINITIONS. In addition to those terms defined in s. 101.22, Stats., the following are definitions for terms used in this chapter:

- (1) "Act" means s. 101.22, Stats., unless the context requires otherwise.
- (2) "Administrative law judge" means the examiner appointed to conduct hearings under the act.
- (3) "Day", when used in time computations in these rules, means a calendar day, except that if the last day of the time period is a Saturday, Sunday or a legal holiday, the last day shall be the next business day.
- (4) "Department" means the department of industry labor and human relations.
- (5) "Division" means the equal rights division of the department.
- (6) "Filing" means the physical receipt of a document at any division office.
- (7) "Person" includes, but is not limited to, one or more individuals, partnerships, associations, corporations, joint stock companies, trusts, unincorporated organizations, trustees, or trustees or receivers in bankruptcy.
- (8) "Probable cause" means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe, that discrimination probably has been or is being committed.
- (9) "Test" means a simulation of any transaction covered by the act for the purpose of comparing the responses given by persons such as owners and operators of places of public accommodations or amusements to individuals such as customers, patients or patrons of places of public accommodations or amusements, to determine whether discrimination as defined under s. 101.22(9), Stats., is being or has been committed.

ILHR 221.03 COMPLAINTS. (1) WHO MAY FILE COMPLAINTS. A complaint may be filed by any person or by the person's duly authorized representative. A



complaint filed by a representative shall state that the representative is authorized to file the complaint.

(2) WHERE TO FILE COMPLAINTS. A complaint may be filed in person with any division office, or it may be mailed to one of the following division offices:

a. Equal Rights Division, 201 East Washington Avenue, Madison, Wisconsin 53708.

b. Equal Rights Division, 819 North Sixth Street, Milwaukee, Wisconsin 53203.

(3) FORM AND CONTENT OF COMPLAINT. (a) A complaint shall be written on a form which is available at any division office or on any other form acceptable to the department. Each complaint shall be signed by the person filing the complaint or by the person's duly authorized representative and shall be notarized. Each complaint shall contain substantially the following information:

(a) The name and address of the complainant.

(b) The name and address of the respondent.

(c) A description and the address of the place of public accommodations or amusements which is involved.

(d) A concise statement of the essential facts, including pertinent dates, constituting the alleged discrimination in public accommodations or amusements.

(4) ASSISTANCE BY THE DEPARTMENT. The department shall, upon request, provide appropriate assistance in completing and filing complaints.

(5) DATE OF FILING OF COMPLAINT. A complaint is considered filed when it is received by the department in a form that reasonably meets the standards of s. ILHR 221.03(5).

(6) AMENDMENT OF COMPLAINT. Subject to the approval of the department, a complaint may be amended no later than 20 days before hearing unless good cause is shown for the failure to amend the complaint prior to that time. If the complaint is amended prior to the issuance of an initial determination, the department shall investigate the allegations of the amended complaint. If the complaint is amended after the case has been certified to hearing, the chief of the hearing section or the administrative law judge may remand the complaint to the investigation section to conduct an investigation and issue an initial determination as to whether probable cause exists to believe that discrimination has occurred as alleged in the amended complaint. An amended complaint shall be dismissed if it does not meet the requirements of s. ILHR 221.04(1).

(7) WITHDRAWAL OF COMPLAINT. A complaint may be withdrawn at any time. A request for withdrawal shall be in writing and shall be signed by the complainant or by the complainant's duly authorized representative or attorney of record. Upon the filing of a request for withdrawal, the department shall dismiss the complaint by written order. Such dismissal shall be with prejudice unless otherwise expressly stated.

ILHR 221.04 PRELIMINARY REVIEW OF COMPLAINTS. (1) REVIEW OF COMPLAINT. The department shall review every complaint filed to ascertain all of the following:

- (a) Whether the complainant is protected by the act.
- (b) Whether the respondent is subject to the act.
- (c) Whether the complaint states a claim for which relief can be granted under the act.
- (d) Whether the complaint was timely filed.

(2) PRELIMINARY DETERMINATION DISMISSING COMPLAINT. The department shall issue a preliminary determination dismissing any complaint which fails to meet the requirements in sub. (1). The order of dismissal shall be sent by first class mail to the last known address of each party and to their attorneys of record.

(3) APPEAL OF PRELIMINARY DETERMINATION. A complainant may appeal from an order dismissing a complaint under sub. (2) by filing a written request with the department. The appeal shall be filed within 20 days of the date of the order and shall state specifically the grounds upon which it is based. If a timely appeal is filed, the department shall serve a copy of the appeal upon all other parties. The matter shall be referred to the hearing section of the division for review by an administrative law judge. The administrative law judge shall issue a decision which shall either affirm, reverse, modify or set aside the preliminary determination. The decision of the administrative law judge shall be served upon the parties. If the decision reverses or sets aside the preliminary determination, the complaint shall be remanded for investigation. If the decision affirms the preliminary determination, it may be appealed to the labor industry review commission if it is a final decision and order as defined in s. ILHR 221.22(1).

ILHR 221.05 NOTICE TO RESPONDENTS. The department shall serve a copy of a complaint upon each respondent prior to the commencement of any investigation. The notice shall direct the respondent to respond in writing to the allegations of the complaint within 10 days after the date of the notice. The notice shall advise the respondent that if no response to the complaint is filed within the time provided, the division will make an initial determination based on the information provided by the complainant.

ILHR 221.06 TESTING. (1) CONDITIONS UNDER WHICH TESTING MAY BE DONE BY THE

DEPARTMENT. The department may engage in testing for the purpose of verifying allegations of discrimination in public accommodations and amusements, or to determine whether sufficient evidence exists to initiate its own complaint. Testing may occur under circumstances including, but not limited to, the following:

(a) Where no other means exists for verifying or refuting the allegations contained in a complaint, or where the findings of the investigator would be significantly strengthened by the inclusion of test results.

(b) Where the number or content of complaints against a specific respondent is sufficient to indicate that a pattern of unlawful discrimination may exist.

(c) Where demographic statistics would lead a reasonable person to believe that a pattern of unlawful discrimination exists in a particular geographical area.

(2) TESTING PROCEDURES. Any person engaged in testing for the department shall do so only after having received specific authorization by the department. The results of each test for potential discrimination shall be submitted to the department in written form by those persons who conducted the test. No test which constitutes entrapment shall be utilized by the department.

3) NOTICE OF TESTING. The department may not give notice of testing to the persons who will be tested. If the testing is undertaken as the result of a complaint naming a specific respondent, the department shall delay sending the notice of the complaint to the respondent until after the completion of the testing.

ILHR 221.07 COMPLAINANT'S DUTY TO RESPOND TO CORRESPONDENCE FROM THE DEPARTMENT. 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, provided that such correspondence was sent by certified mail, return receipt requested, to the last known address of the complainant.

ILHR 221.08 INVESTIGATIONS. (1) CONDUCT OF INVESTIGATION. The department shall investigate all complaints which satisfy the review under s. ILHR 221.04(1). In conducting investigations under this chapter, the department shall seek the voluntary cooperation of all persons to provide requested materials to the department; to obtain access to premises, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the investigation. The department may subpoena persons or documents for the purpose of the investigation. Subpoenas may be enforced pursuant to s. 885.11, Stats.

(2) ADVISING COMPLAINANT TO AMEND COMPLAINT: 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 investigate the allegations of the amended complaint, as well as the allegations of the initial complaint.

ILHR 221.09 INITIAL DETERMINATION. (1) GENERAL. At the conclusion of the investigation, the department shall issue a written initial determination which shall state whether or not there is probable cause to believe that discrimination occurred as alleged in the complaint. The initial determination shall state the facts upon which its conclusion is based and shall be served upon the parties and their attorneys of record by first class mail.

(2) INITIAL DETERMINATION OF PROBABLE CAUSE. If the department initially determines that there is probable cause to believe that a violation of the act occurred as alleged in the complaint, those allegations shall be certified to hearing.

(3) INITIAL DETERMINATION OF NO PROBABLE CAUSE. If the department initially determines that there is no probable cause to believe that the act was violated as alleged in the complaint, it shall dismiss those allegations in the complaint. The department shall, by a notice to be incorporated in the initial determination, notify the parties of the complainant's right to appeal as provided in s. ILHR 221.10.

ILHR 221.10 APPEAL OF INITIAL DETERMINATION OF NO PROBABLE CAUSE. (1) WHEN FILED. Within 20 days after the date of an initial determination finding that there is no probable cause, a complainant may file with the division a written request for a hearing on the issue of probable cause. The department shall notify the respondent that an appeal has been filed within 10 days of receiving the appeal.

(2) DISMISSAL FINAL IF NO APPEAL FILED. If no timely written request for a hearing is filed, the initial determination's order of dismissal shall be the final determination of the department.

(3) CERTIFICATION TO HEARING ON ISSUE OF PROBABLE CAUSE; RIGHT TO STIPULATE THAT CASE BE DECIDED ON MERITS. If a timely written request for a hearing is filed, the division shall issue a notice certifying the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. ILHR 221.13 and 221.15 to 221.21, except that the parties may stipulate prior to the hearing that the administrative law judge may decide the case on the merits.

ILHR 221.11 CONCILIATION; PRIVATE SETTLEMENT. (1) CONCILIATION. With the consent of all parties, the department may assist the parties to reach a mutually agreeable and just resolution of the complaint at any time during the proceedings. If conciliation resolves the dispute, the terms of the agreement shall be reduced to a written conciliation agreement. The conciliation

agreement must be signed by the respondent and the complainant, or by their representatives.

(2) PRIVATE SETTLEMENT. The parties may enter into an agreement to settle the complaint at any time, with or without resort to conciliation. No complaint will be dismissed based on a settlement agreement unless the department receives a written request from the complainant withdrawing the complaint. A settlement agreement signed by the complainant which specifically authorizes the department to dismiss the complaint may be submitted by either party in place of a written request from the complainant withdrawing the complaint.

ILHR 221.12 DISMISSAL OF COMPLAINT FOR LACK OF JURISDICTION OR OTHER PROCEDURAL BASIS FOLLOWING CERTIFICATION TO HEARING. A complaint may be dismissed for the reasons set forth in s. ILHR 220.05(1) after the case is certified to hearing under either s. ILHR 220.09(3) or s. ILHR 220.12(2). In determining whether to dismiss the complaint, the administrative law judge may consider documents and affidavits presented by any party and may hold a hearing to allow the parties to establish facts which may have a bearing on whether the complaint should be dismissed. If the administrative law judge issues an order dismissing the complaint under this section, a certified copy of the order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.

ILHR 221.13 NOTICE OF HEARING. (1) CONTENT. In any matter which has been certified to hearing, the department shall send a notice of hearing to the parties and their attorneys of record, by first-class mail, advising them of the specific time, date and place established for the hearing. The notice of hearing shall fully identify the parties and the case number. It shall specify a time and date of hearing not less than 30 days after the date of mailing of the notice of hearing. The notice of hearing shall specify the nature of the discrimination which is alleged to have occurred and shall state the legal authority on which the hearing is based. A copy of the complaint shall be attached to the notice of hearing.

(2) PLACE OF HEARING. The hearing shall be held in the county where the alleged act of discrimination occurred, or at another location with the consent of the parties. For the purposes of this subsection, the county where the alleged act of discrimination occurred is the county where the place of public accommodations or amusements which is the subject of the complaint is located. If no specific place of public accommodation or amusement is involved, the place of hearing shall be the county where the respondent resides.

ILHR 221.14 ANSWER. (1) WHEN REQUIRED. Within 10 days after the date of a notice of hearing on the merits, each respondent shall file with the division an answer to the allegations of the complaint. The department shall serve a copy of the answer upon all other parties.

(2) CONTENT OF ANSWER. The answer shall contain the respondent's current address. It shall also contain a specific admission, denial or explanation of each allegation of the complaint upon which there has been a finding of probable cause. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this will have the effect of a denial. Admissions or denials may be to all or part of an allegation, but shall fairly meet the substance of the allegation. Any affirmative defense relied upon, including without limitation the statute of limitations, shall be raised in the answer unless it has previously been raised by a motion in writing. Failure to raise the affirmative defense that a complaint is barred by the statute of limitations in an answer filed within the time permitted under sub. (1) may, in the absence of good cause, be held to constitute a waiver of such affirmative defense.

ILHR 221.15 PRE-HEARING CONFERENCE. In any case which has been certified to hearing, a pre-hearing conference may be held in accordance with the provisions of s. 227.44(4), Stats.

ILHR 221.16 SUBPOENAS AND MOTIONS. (1) SUBPOENAS. Witnesses summoned by a subpoena shall be entitled to the witness and mileage fees set forth in s. 814.67(a) and (c), Stats. Subpoenas may be enforced pursuant to s. 885.11, Stats.

(2) MOTIONS. Motions made during a hearing may be stated orally and shall, with the ruling of the administrative law judge, be included in the record of the hearing. All other motions shall be in writing and shall state briefly the relief requested and the grounds upon which the moving party is entitled to relief. All written motions shall be filed with the administrative law judge assigned to the case. Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion. Any party opposing the motion may file a written response. All written motions shall be decided without further argument unless requested by the administrative law judge.

ILHR 221.17 PRE-HEARING DISCOVERY. (1) WHEN DISCOVERY MAY BEGIN. Discovery may not be used prior to the time that a matter is certified to hearing, except that the taking and preservation of evidence shall be permitted prior to certification to hearing under the circumstances set forth in s. 227.45(7), Stats.

(2) DISCOVERY DIRECTED TO A PARTY NOT REPRESENTED BY LEGAL COUNSEL. In the case of discovery directed to a party who is not represented by legal counsel, the party seeking that discovery must, not less than 10 days prior to conducting such discovery, state in writing to the unrepresented party and to the chief of the hearing section, or the administrative law judge if one has been assigned to the case, that it intends to seek discovery. The party seeking discovery must file copies of all demands for discovery and notices of depositions at the time they are served upon the unrepresented party from whom the discovery is sought. Copies of responses to discovery by an unrepresented

party and the original transcript of any deposition of an unrepresented party shall be filed with the department by the party which instituted those discovery requests as soon as practicable after that discovery has been taken.

(3) SCOPE, METHOD AND USE OF DISCOVERY. The scope of discovery, the methods of discovery and the use of discovery at hearing will be the same as set forth in ch. 804, Stats.

(4) FAILURE TO COMPLY WITH DISCOVERY REQUESTS; DUTY TO CONSULT WITH OPPOSING PARTY. The administrative law judge has the same authority to compel discovery, to issue protective orders, and to impose sanctions as the court has under ch. 804, Stats. All motions to compel discovery or motions for protective orders must be accompanied by a statement in writing by the party making the motion that, after consultation in person or by telephone with the opposing party and sincere attempts to resolve their differences, the parties are unable to reach agreement. The statement shall state the date and place of such consultation and the names of all parties participating in the consultation.

(5) FILING WITH DEPARTMENT. Copies of discovery requests and responses to discovery requests need not be filed with the division, except as required under s. ILHR 221.17(2).

ILHR 221.18 DISQUALIFICATION OF THE ADMINISTRATIVE LAW JUDGE. Upon the administrative law judge's own motion, or upon a timely and sufficient affidavit filed by any party, the administrative law judge shall determine whether to disqualify himself or herself because of personal bias or other reason. Such determination shall be made a part of the record and decision in the case.

ILHR 221.19 HEARING. (1) PROCEDURE. Hearings shall be conducted in conformity with the act and the provisions of ch. 227, Stats.

(2) POSTPONEMENTS AND CONTINUANCES. All requests for postponements shall be filed with the administrative law judge within 10 days after the date of the notice of hearing, except where emergency circumstances arise after the notice is issued but prior to the hearing. The party requesting a postponement shall mail a copy of the request to all other parties at the time the request is filed with the division. Postponements and continuances may be granted only for good cause shown and shall not be granted solely for the convenience of the parties or their attorneys.

(3) APPEARANCE OF PARTIES. Parties may appear at the hearing in person and by counsel or other representative.

(4) FAILURE TO APPEAR AT HEARING. If the complainant fails to appear at the hearing, either in person or by a representative authorized to proceed on behalf of the complainant, the administrative law judge shall dismiss the complaint. If the respondent fails to appear at the hearing, the hearing

shall proceed as scheduled. If, within 10 days after the date of the hearing, any party who failed to appear shows good cause in writing for the failure to appear, the administrative law judge may reopen the hearing.

ILHR 221.20 RECORD OF HEARING. (1) METHOD OF RECORDING HEARING. A stenographic, electronic or other record of oral proceedings shall be made at all hearings conducted under the act. Any party wishing to have a court reporter present to transcribe the proceedings will be permitted to do so at their own expense. If the hearing is tape-recorded, the original tapes will remain in the division for 5 years following the hearing, after which they will be discarded.

(2) FILING TRANSCRIPTS WITH THE DIVISION. Transcription of the record shall be at the expense of any party who requests the transcription. The transcript shall be prepared by an independent, reputable court reporter or transcriptionist. If a transcript is filed with the division, it shall include a certification by the transcriptionist that the transcript is an original, verbatim, transcript of the proceedings.

(3) TRANSCRIPTION OF RECORD AT DEPARTMENT EXPENSE. The department shall provide, without cost, a copy of the transcript for the purpose of judicial review if a party submits a sworn affidavit of indigency and the inability to obtain funds to pay the cost of a transcript.

ILHR 221.21 DECISION AND ORDER. (1) GENERAL. After the close of the hearing, including any briefing which may be allowed by the administrative law judge, the administrative law judge shall prepare a formal written decision which shall include findings of fact, conclusions of law and an order, and which may be accompanied by an opinion.

(2) DECISION AND ORDER AFTER HEARING ON THE ISSUE OF PROBABLE CAUSE. After a hearing on the issue of probable cause, the administrative law judge shall issue a decision and order which dismisses the allegations of the complaint or which orders the matter scheduled for a hearing on the merits, depending upon the administrative law judge's findings and conclusions on the issue of probable cause. If the decision of the administrative law judge concludes that there is probable cause, the matter shall be certified for a hearing on the merits. If the decision of the administrative law judge determines that no probable cause exists, a certified copy of the decision and order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record. A decision and order finding no probable cause may be appealed to the labor and industry review commission if it is a final decision and order as defined in s. ILHR 221.22(1).

(3) DECISION AND ORDER AFTER HEARING ON THE MERITS. After a hearing on the merits, the administrative law judge shall issue a decision and an order which will either dismiss the allegations of the complaint or shall order such action by the respondent as will effectuate the purposes of the act, depending upon the administrative law judge's findings and conclusions on the merits of



the complaint. A certified copy of the decision and order shall be sent by first class mail to the last known address of each party and to their attorneys of record.

ILHR 221.22 PETITION FOR REVIEW BY THE LABOR AND INDUSTRY REVIEW COMMISSION.

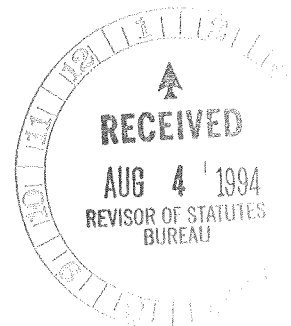
(1) APPEALS LIMITED TO FINAL DECISIONS AND ORDERS. Any party may file a written petition for review of a final decision and order of the administrative law judge by the labor and industry review commission. Only final decisions and orders of the administrative law judge are appealable. A final decision and order is one which finally disposes of the entire complaint and leaves no further proceedings on that complaint pending before the division.

(2) REQUIREMENTS FOR FILING PETITION FOR REVIEW. A petition for review shall be filed within 21 days after the date a copy of the administrative law judge's decision and order is mailed to the last known address of each party and their representative or attorney of record. The petition shall be filed with the division's Madison or Milwaukee office.

SECTION 4. INITIAL APPLICABILITY. These rules first apply to cases in which the complaint is filed on or after the date these rules become effective.

SECTION 5. EFFECTIVE DATE. These rules take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2), Stats.

PR:ns/ER0075



Tommy G. Thompson  
Governor  
Carol Skornicka  
Secretary



Mailing Address:  
201 E. Washington Avenue  
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## State of Wisconsin Department of Industry, Labor and Human Relations

August 4, 1994

Gary Poulson  
Assistant Revisor of Statutes  
Suite 800  
131 W. Wilson St.  
Madison, Wisconsin 53703-3233

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 94-32

RULE NO. ILHR 220 and 221

RELATING TO: equal opportunities in fair housing and public accommodations

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

  
Carol Skornicka  
Secretary

