

PARISH ADMINISTRATOR'S REFERENCE GUIDE TO STATE LAWS AND REGULATIONS

December 2014



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December 2014

We at the Wisconsin Catholic Conference (WCC) are pleased to present this tenth edition of the *WCC Parish Administrator's Reference Guide to State Laws and Regulations*.

This *Reference Guide* provides a "lay language" summary of a number of the laws and administrative regulations that may affect pastors or administrators of parishes in Wisconsin. While not intended to provide an exhaustive overview of the entire body of law and regulations affecting churches in our state, it should offer a useful summary of those items that are most likely to impact parishes day-to-day.

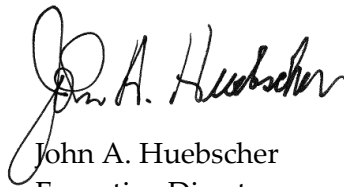
Parishes with schools are encouraged to contact their superintendents or contact the Wisconsin Council of Religious and Independent Schools (WCRIS) for assistance (<http://www.wcris.org>).

The book is organized into five sections. Each section includes a short summary of how the law or administrative code treats the subject at hand and includes a reference to the specific section of the state statutes or the administrative code that governs the issue.

While care has been taken to ensure accuracy, I caution you to keep in mind that this is merely a general guide to the law and not an authoritative interpretation. Moreover, the law is constantly changing so that specific sections of this handbook may be altered or superseded by new legislation. Specific questions about any situation in a specific parish or community should be referred to a parish or diocesan attorney, or to the appropriate diocesan office.

This *Reference Guide* will be updated in two years, after the laws of the 2015-17 Legislature have been codified. Until then, I hope it proves to be a helpful and valuable resource to you and your staff.

Sincerely,


John A. Huebscher
Executive Director

PARISH ADMINISTRATOR’S REFERENCE GUIDE

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PART ONE - CORPORATE AND ADMINISTRATIVE ISSUES

- A. **Parish Corporations.** Laws governing the corporate structure and legal status of religious organizations are found in [Chapter 187](#) of the statutes. [Sections 187.19 to 187.33](#) apply specifically to the Roman Catholic Church.

Most of these provisions pertain to basic matters such as the bishops' authority to incorporate parishes, the formation and makeup of the parish board of trustees ([s. 187.19\(1\)](#)), the powers and responsibilities of parish corporations ([s. 187.19\(2\)](#)), parish bylaws ([s. 187.19\(6\)](#)), the filing and amendment of articles of incorporation ([s. 187.19\(7-9\)](#)), and the dissolution of the parish and its property ([s. 187.19\(10\)-\(11\)](#)).

- B. **Indemnification.** "Indemnification" means that an organization's resources will be used to pay directors' legal costs, judgments, settlements, etc. Directors' and officers' liability insurance is purchased in advance by the organization to cover the organization's indemnification obligations and any direct costs imposed on directors and officers.

The purpose of indemnification is to provide financial protection to directors (and officers) against expenses and liabilities they may incur in connection with actual and threatened legal proceedings connected to their service to a corporation.

[Sections 187.20 to 187.31](#) address matters of indemnification of parish officials and volunteers.

The law sets forth general provisions governing indemnification, which may be modified by specific actions of the parish. Generally, parishes are obligated to indemnify directors and officers in certain cases and are permitted to indemnify in others.

The parish is obligated to indemnify a director or officer to the extent he or she is successful on the merits in the defense of a legal proceeding. This indemnification shall cover reasonable expenses incurred in the proceeding if the person was a party to the proceeding because of his or her role as a director or officer of the parish.

The parish may also indemnify a director and officer for other actions against them unless the liability was incurred due to a breach or failure to perform a duty owed to a parish.

Examples of such a failure would include:

- a. failure to deal fairly with the parish on a matter in which the director

- has a conflict of interest;
- b. a violation of criminal law, unless the director had reasonable cause to believe his act or conduct was lawful;
- c. a transaction from which the director derived an improper personal gain; or
- d. willful misconduct.

Requests for indemnification for matters not required by law, or already provided for by the parish bylaws, must be in writing.

However, both the obligation and the discretion to indemnify mentioned above may be limited by the parish's articles of incorporation. [ss. 187.21\(4\)](#) and [187.24](#)

Further, a parish may indemnify its officers and directors to a greater extent than provided by law by amending its articles of incorporation by resolution or by written agreement. [s. 187.25](#) Parishes may also indemnify persons who are neither directors nor officers through general or specific action by the board of directors. [s. 187.27](#)

Courts may order indemnification if they determine that the parish unreasonably refused the director's or officer's request for indemnification. [s. 187.26](#)

- C. Limitation of Liability.** “Limited liability” means that corporate officers and directors are generally liable neither for the performance (or nonperformance) of corporate contracts, nor for corporate debts or other corporate obligations. Those dealing with an organization at arm’s length (suppliers, customers, lenders, etc.) may look only to the credit of the organization and not to those who control its activities, its officers, and its directors. However, individual directors (but more typically officers), acting in a corporate capacity, may assume contractual liability if they personally receive something of value outside the contract, or if they have made misrepresentations in connection with a contract.

The law limits the liability of officers and directors for certain damages and obligations arising from a breach or failure to perform their duties. However, this limitation does not apply to situations as described in Part I-B, a.-d. above. [s. 187.32](#)

The provisions governing limited liability also extend to volunteers. [s. 187.33](#) A volunteer is defined as “an individual, other than an employee of the incorporated Roman Catholic Church, who provides service to or on behalf of the incorporated Roman Catholic Church without compensation.” Volunteers are not liable for damages, settlements, fees, fines, penalties, or other monetary liabilities arising from any act or omission as a volunteer, unless the person asserting the liability can prove that the act or omission resulted from:

- a. a violation of criminal law;
- b. willful misconduct;
- c. if the volunteer is also an officer or director of the parish, the act or omission took place within the scope of his or her official duties; or
- d. an act or omission for which the volunteer received compensation or a thing of value in lieu of compensation.

The limitations on liability of volunteers also do not apply to the following:

- a. Civil or criminal proceedings brought by a government agency, unless the action is brought by the agency in its capacity as a contractor.
- b. Proceedings brought for a violation of state or federal law where the proceeding is brought pursuant to a private right of action under those laws, unless the action is brought by the agency in its capacity as a contractor.
- c. Claims arising from a volunteer's negligent operation of an automobile, truck, train, airplane, or other vehicle.
- d. A proceeding against a volunteer who holds a license, certificate, permit, or registration which is based on an act or omission related to the scope of practice under the license, certificate, etc.

D. Validity of Church Records. The law provides that any church, parish, or baptismal record pertaining to birth, marriage, or death may be admitted as prima facie evidence of the fact contained in the record. In order to be accepted, the record must be produced by its proper custodian and be supported by his/her oath that it is genuine. Records maintained by a person authorized to solemnize marriages may also be admitted under these conditions. [s. 891.09\(2\)](#)

E. Building Codes - General. General industry regulations regarding safe places, contained in [Chapter 101](#) of the state statutes, pertain to churches. These laws are administered by the state's Department of Safety and Professional Services (DPS) and, in some cases, the Department is assisted by local authorities and local building codes. Some local codes may be more stringent than the state law.

Because this combination of statutes and administrative law is very precise and changes frequently, this handbook will point out only the general requirements. Administrators are cautioned to check with proper state and local authorities if they have specific questions, such as construction requirements for building additions and changes.

DPS is given authority to supervise "places of employment," which include private

schools, in order to protect the health and safety of both the employees and those who frequent the building. “Frequenter” is specifically defined to include students at an educational institution, as well as persons who are in the school building on legitimate business and not trespassing. [s. 101.01](#)

Parishes and schools, as employers, are expected to furnish a place of employment that is safe for employees, students, and visitors. The building must be equipped with safety devices and safeguards, and proper maintenance is constantly required. The law prohibits employees from removing, destroying, damaging, or interfering with safety devices and procedures designed for the protection of users of the building. [s. 101.11](#)

State statutes have specific requirements for places of employment in regards to: ventilation ([s. 101.025](#)); safety glazing ([s. 101.125](#)); access for the physically disabled ([s. 101.13](#)); machines and boilers ([s. 101.17](#)); electrical wiring ([s. 101.862](#)); petroleum storage tanks ([s. 168.28](#)); fire suppression ([s. 101.14](#)); and an employee's right to know about toxic substances in the work place. [ss. 101.58-101.599](#) Parishes must observe these laws, as well as federal laws and their own local ordinances, which may be more stringent, when performing routine maintenance and repairs. New construction may need to comply with additional requirements, such as erosion control standards. [s. 101.1206\(1\)](#) Certain requirements dealing with water and sewage standards are also located in [Chapter 281](#) of the state statutes.

Rural school buildings had been exempt from these statutes, but this exemption was repealed in 1989.

State law does make some exceptions for historical landmarks that would be defaced if modern building codes were followed. Some older buildings may come under the state historic building code. [s. 101.121](#) (See below “Building Codes – Historic Buildings”.)

Some safety laws and regulations require on-site visits by government officials. Administrators are urged to give full assistance to these officials acting in the line of duty. For example, the fire chief of every city, village, or town must inspect schools at least once every 6 months to check any conditions that might cause a fire, and to insure that all state laws and local ordinances relating to fire hazards or prevention of fires are being obeyed. (In the City of Milwaukee, the fire chief may establish a different schedule for fire inspections.) [s. 101.14](#)

Wisconsin Administrative Code [Chapter SPS 314](#) (SPS stands for Safety and Professional Services) deals with fire prevention and reflects the National Fire Protection Association’s NFPA 1, *Fire Code*. Numerous references to the NFPA can

be found throughout [SPS 314](#). A copy of NFPA 1, *Fire Code*, may be purchased from the National Fire Protection Association, 11 Tracy Drive, Avon, MA, 02322, or is available to view or purchase online at <http://www.nfpa.org>. There are also copies available at the Wisconsin Department of Safety and Professional Services (DSPS) and the Legislative Reference Bureau.

- F. Building Codes - Historic Buildings.** Historic buildings are governed by the historic building code in [s. 101.121](#) of the statutes. The law defines a historic building as “any building or structure that is significant in the history, architecture or culture of this state, its rural or urban communities or the nation.”

A building may be designated as a historic building in one of several ways: 1) it may be placed on the national or state register of historic places; 2) it may be located in a district that is on the federal or state register of historic places; 3) it is determined by the state historical society to contribute to the historic significance of the historic district; or 4) it is listed on a local register of historic property.

The state historic building code permits the use of alternate materials in order to maintain the historical character of the building. It permits the owner to obtain a variance from the standard building code if the variance retains the building’s historical character and if the purpose of the code can be met in some alternate way. State or local historic building codes may also limit the ability of the owner to destroy, remodel, or sell the building.

Parish administrators of older buildings that may be subject to the code are advised to consult legal counsel before proceeding with any decision or activity that may affect the building structure.

- G. Building Codes - Barrier-Free Designs for Persons with Disabilities.** The state requires all new buildings or recently remodeled buildings to incorporate accessible designs, the requirements of which are partially outlined in [SPS 362.1101-1110](#). The overall intent is to conform key parts of the building code to provisions of the Americans with Disabilities Act (ADA) and fair housing laws (both state and federal).

Much of the Wisconsin Administrative Code incorporates the International Building Code (IBC). Wisconsin Administrative Code should be read in conjunction with the IBC, which references another code produced by the American National Standards Institute (ANSI), *ICC/ANSI A117.1*, on accessible and usable buildings and facilities. To obtain a copy of the IBC, contact the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, or online at <http://www.iccsafe.org>. A copy of the ICC ANSI is available from the American National Standards

Institute, 25 W 43rd Street, 4th Floor, New York, NY, 10036, or online at <http://webstore.ansi.org>.

While the ADA exempts churches from many of its provisions, Wisconsin law has traditionally not exempted church-owned buildings from its general requirements. Alterations to the administrative code that provide for increased access by persons with disabilities have also not included such exceptions. Review of the IBC would be necessary to determine whether there are applicable exceptions that would apply to a parish. Application of key parts of the ADA to all buildings is consistent with current law and past practice.

H. Fundraising - Bingo. Bingo is regulated by the Department of Administration (DOA) under [Chapter 563](#) of the statutes. Generally, a parish or other eligible organization may conduct bingo if they have obtained a license from the DOA. License application requirements are covered under [s. 563.12](#). Each organization that conducts bingo must maintain a separate bingo account. [s. 563.63](#) The actual playing of bingo is regulated by [s. 563.51](#) of the statutes.

Prizes. Prizes are limited to \$500 per game and \$2,500 per occasion. [s. 563.51\(9\)\(a\)](#) These limits, however, do not apply to progressive jackpot bingo. [s. 563.51\(9\)\(c\)](#) Alcoholic or fermented malt beverages may not be awarded as prizes. [s. 563.51\(10\)](#) Neither may an interest in real estate or securities be awarded. The regular bingo game fee is limited to \$1. [s. 563.51\(15\)](#) Prizes must be awarded on the same day the bingo is played, except in the case of progressive jackpot bingo. [s. 563.51\(16\)](#) If a game has more than one winner, the prize is to be divided equally among them. [s. 563.51\(27\)](#)

Progressive Jackpot Bingo. A player wins progressive jackpot bingo by covering all the numbers on his or her bingo card within a specified number of calls. The number of calls for the first game shall be at least 48. The number of calls shall increase by one in each succeeding game until a player wins the progressive jackpot bingo prize. The starting prize for progressive jackpot bingo shall be any of the following:

1. Fifty percent of the card sales for the first progressive jackpot bingo game.
2. An amount specified before the start of play, not to exceed \$500.

The prize for each succeeding game of progressive jackpot bingo shall be 50 percent of the card sales for the game plus the prize amount from the preceding game. After the requisite number of calls for a game of progressive jackpot bingo is complete, if no person has won, the game shall continue until a player covers all of the numbers on his or her card and that player shall be awarded a consolation prize of not less than \$100. The consolation prize may not be paid from the 50 percent of card sales

used to fund the progressive jackpot bingo prize. No card for a game of progressive jackpot bingo may be sold after the game has begun. Once started, progressive jackpot bingo shall be played at each succeeding bingo occasion until a player wins a game of progressive jackpot bingo, except that progressive jackpot bingo may be played only once per day. Progressive jackpot bingo may be played only on special bingo cards. [s. 563.54](#)

Limitations on Players and Playing Time. Persons under the age of 18 may not play bingo unless accompanied by an adult who is a relative by blood, marriage, or adoption, or is the minor's guardian, and is present in the building or on the premises while the minor plays. [s. 563.51\(13\)\(a\)](#) Minors may neither conduct bingo nor assist in the conduct of bingo. [s. 563.51\(13\)\(b\)](#) Bingo may not be played before 7:00am or after midnight unless a local ordinance so provides. [s. 563.51\(26\)](#)

- I. **Fundraising - Raffles.** Like bingo, raffles are regulated under [Chapter 563](#) of the statutes, specifically [ss. 563.90-563.99](#). As with bingo, qualified organizations that conduct raffles must obtain a license for a fee of \$25 and cannot exceed 200 raffles in a year. The license is valid for 12 months. Two classes of licenses may be issued by the DOA: 1) a Class A license for conduct of a raffle in which some or all of the tickets are sold on days other than the same day of the drawing; or 2) a Class B license, for a raffle in which all of the tickets are sold on the same day that the drawing occurs or within the 24 hours immediately preceding the start of the drawing.

The law governs the form and content of the raffle ticket and provides that no ticket sold under a Class A license may exceed \$500 in cost. Tickets sold under this license may not be offered for sale more than 270 days prior to the scheduled date of the drawing, unless the organization requesting the license has been in existence for five years prior to the issuance of the Class A license. Organizations that have been in existence for five years prior to the issuance of such license may offer tickets for sale up to one year before the date of the drawing. The organization that conducts a raffle under a Class A license shall provide the purchaser of a raffle ticket or calendar the purchaser's portion of the ticket or calendar before each drawing is held, but need not provide it at the time of purchase. [s. 563.93\(4m\)](#) Purchasers of tickets under a Class A license need not be present at the drawing to win a prize.

Tickets sold under a Class B license may not exceed \$10 in cost and the purchaser of such a ticket, or their representative, must be present at the drawing to win a prize. In the case of a representative claiming a prize for the purchaser, organizations conducting raffles are not responsible or liable in any dispute regarding ownership of the ticket. A Class B raffle where more than one drawing is held and more than one prize is awarded, on the same date in the same location, is considered one raffle under [s. 563.91](#) if the drawing for each prize or group of prizes is made from a

container specific to each prize, and the purchaser gets to place his or her ticket in the container of his or her choice. [s. 563.935\(10\)](#)

Organizations licensed by the state to conduct a raffle (using tickets or calendars) must report to the state, in compliance with [s. 563.98](#), the following information regarding the raffles it conducted: the number and dates of the raffles conducted, the receipts, the amount of prizes paid, the net profit or loss, and other expenses paid. Other games of chance may require additional reporting. The organization is to submit its report to the DOA on or before the last day of the twelfth month beginning after the date on which the license is issued, and on or before that same date in each subsequent year. [s. 563.98\(1\)](#) For instance, if the state issues a license on June 1, 2014, the report is due at DOA by June 30, 2015. (License renewal requires earlier action.)

If an organization has total receipts from the conduct of the raffle(s) of more than \$50,000 during the reporting period, it must report the names and addresses of all persons winning prizes with a retail value of \$100 or more, and the prizes won, during the reporting period. [s. 563.98](#) If an organization fails to file a report, or the report is not accurately completed, DOA may refuse to renew a license, or may choose to suspend a license.

All proceeds from a raffle must be used to further the purposes of the sponsoring organization. [s. 563.94](#)

- J. Fundraising - Street Trades.** One category of work that requires a specialized work permit is “street trades.” A street trade means the selling, soliciting for, collecting for, displaying or distributing of any articles, goods, merchandise, commercial service, posters, circulars, newspaper, magazines, or the blacking of boots in any street or public place or from door-to-door. [s. 103.21](#)

Street trades legislation applies to minors selling and/or soliciting door-to-door, or performing services on the street. Minors under the age of 12 are generally not permitted to work in street trades, but the street trades law was amended by the Legislature in 1985 to provide an exception to the street trades permit and age requirements for public and private school students engaged in fundraising campaigns. [s. 103.23](#) Street trade permits and identification cards are not required when students are engaged in fundraising for a school. The law requires written permission from the parent or guardian for all minors under 12 who work a fundraising sale for a school, and children under nine years of age must be accompanied by a person over 16 years of age. [ss. 103.21-103.28](#)

A minor working in street trades must have both a specific street trade permit, which

is given to the employer, and a nontransferable identification card, which the minor carries while engaged in street trade. [s. 103.25](#) A recent amendment to the street trades law also places limitations on the hours and days of employment for minors identical to those required for other forms of employment (with an exception for minors of any age who are engaged in the delivery of newspapers). [s. 103.24](#)

Sales where individuals travel by two or more persons, who are not immediate family, in groups and that require overnight accommodation away from a person's residence are regulated by statutes pertaining to traveling sales crews. [s. 103.34](#)

K. Fundraising - Reports. Many organizations that engage in fundraising are required to report on their activities to the Department of Safety and Professional Services. These requirements are included in [s. 202.12](#) of the statutes. However, [s. 202.12\(5\)](#) specifically exempts churches, the religious activities of any religious order, private schools, and certain other nonprofit religious organizations from its provisions.

L. Meals Served to the Public. [Section 254.74](#) of the statutes authorizes the Department of Health Services to regulate businesses, agencies, and organizations that serve food to the public. The regulations governing this are found in [Chapter DHS 196](#) of the Wisconsin Administrative Code and the accompanying [appendix](#).

The regulations differentiate between restaurants and other entities, which serve meals. [ss. 254.61\(5\)\(b\)](#) and [254.64](#) Churches, religious, fraternal, youth or patriot organizations, service clubs, and civic organizations that occasionally prepare, serve, or sell meals to the public are specifically excluded from the definition of a restaurant. [s. 254.61\(5\)\(b\)](#) Public and private school lunchrooms where food service is directly provided by the school are also exempt (this does not include food service provided by contract). [s. 254.61\(5\)\(c\)](#)

Generally, parishes and parish organizations will fall into one of two categories:

1. Special organizations serving meals. This category applies to organizations that serve or sell food at least four, but no more than 12, days in any 12-month period.
2. Organizations that offer "occasional sales," defined as serving or selling meals on not more than three days in any 12-month period.

For the purposes of [DHS 196](#), meals served in conjunction with a worship service, such as a wedding or a funeral, are not included in the count of meals served during the 12-month period. In addition, meals served incidental to normal activities of the church and intended exclusively for the members of the church are also not counted against the limits mentioned above.

If a parish sells food on four or more days in a 12-month period, the provisions in the Administrative Code that apply to special organizations serving meals must be followed. These are set forth in the appendix to DHS 196, entitled the Wisconsin Food Code.

These regulations provide that meals prepared by an organization must be serviced by a person who has successfully completed a state-approved food handler-training course of at least two hours in length. The regulations also address issues such as storage, food supply and protection, employee health, equipment and utensils, utensil sanitation, maintenance, insect and rodent control, and plumbing.

If a parish or parish organization sells food on fewer than four days in a 12-month period, it is exempt from these regulations although it would be prudent to follow them where practicable.

Meals served by groups such as the Home and School Association, the Knights of Columbus, etc., will be treated as meals served by the parish in determining the count of meals, unless it can be shown that these groups operate independently of the parish.

Under Wisconsin law, a retail food establishment, defined in [s. 97.30\(1\)\(c\)](#) to include facilities from which (processed) food is sold to customers at retail, must obtain a license ([s. 97.30\(2\)](#)). However, Wisconsin Administrative Code [ATCP 75.03\(9\)\(h\)](#) provides an exemption from this requirement for a food establishment operated by a religious, charitable, or nonprofit organization for no more than 12 days in any license year.

- M. Potluck Events.** State law exempts potluck events from the public health regulations of restaurants, as long as attendees provide food and beverages to be shared with other attendees and consume them at the event, and no compensation is involved. [ss. 254.61\(3m\)](#), [254.61\(5\)\(h\)](#), and [254.64](#)

PART TWO - LAWS AFFECTING PASTORAL ACTIVITY

- A. **Reporting of Child Abuse and Neglect.** State law requires school personnel, as well as health professionals, social workers, child care workers, law enforcement officers, and certain other professionals to report immediately all cases of suspected abuse or neglect involving children under the age of 18 seen in the course of their professional duties. In the case of existing abuse or neglect, the person reporting must have reasonable cause to suspect that the child has been abused or neglected. In the case of “threatened” abuse, the person reporting must have reason to believe that the act will occur. [s. 48.981](#)

2003 Wisconsin Act 279 established a requirement for members of the clergy and religious orders to report suspected sexual abuse of a minor. The added provision requires clergy to report in two ways. [s. 48.981\(2\)\(bm\)](#) First, persons who are defined as clergy must report actual or suspected sexual abuse of a child seen in the course of their professional duties. Clergy are also required to report “threatened” abuse if there is reason to believe that the act will occur.

Second, clergy are required to report in cases where they have reasonable cause to suspect, based either on observation or information received, that a member of the clergy has abused a child or threatened to abuse a child.

[Section 48.981\(1\)\(cx\)](#) defines clergy as described in [s. 765.002\(1\)](#) (the section that defines who may officiate at a marriage) as a spiritual advisor of any religion, and expands on that definition to also include a “member of the religious orders,” such as brothers, ministers, monks, nuns, priests, rabbis, and sisters. The term “member of a religious order” is defined as a person who: 1) has taken vows devoting himself or herself to religious or spiritual principles; and 2) who is authorized to provide spiritual religious advice or service. [s. 48.981\(1\)\(cv\)](#)

The law described above applies only to information learned in the course of duty as clergy. If members of the clergy also function as members of other professions whose members are mandatory reporters, they must report any actual or suspected abuse or neglect of a child they see in the course of those professional duties.

[Section 48.981\(2\)\(bm\)3](#) specifically exempts confidential communications from the clergy reporting requirement when conveyed in a private or confessional setting where there is an expectation of secrecy as dictated by the faith tradition.

[Section 48.981\(4\)](#) provides immunity from civil and criminal liability to persons and institutions participating in good faith in the making of a report.

While the law mandates clergy to report actual or suspected abuse or of a child of a *sexual* nature when seen in the course of their professional duties (and requires clergy to report on other clergy if they observe or receive information that causes them to suspect a colleague of abuse), diocesan policies implemented in compliance with the national *Charter for the Protection of Children & Young People*, establish a more rigorous reporting standard. Diocesan policies require clergy to report *all suspected abuse or neglect* (unless they become aware of it through a confidential communication, under the seal of the confessional).

Wisconsin law does not mandate volunteers who work with children to report suspected child abuse or neglect, however, diocesan policies address the responsibility of volunteers in this regard. Again, it must be emphasized that the Charter and the local diocesan policies establish more rigorous standards than those imposed by the law. Parishes should seek guidance on local diocesan policies.

- B. Authority to Conduct Marriages.** Marriage in Wisconsin is regulated by [Chapter 765](#) of the statutes. [Section 765.16](#) specifies that ordained members of the clergy are duly authorized to be “officiating persons” of marriage ceremonies. The requirement that members of the clergy who do not reside in Wisconsin obtain a letter of sponsorship from a member of the clergy of the same denomination who does reside in the state was repealed and is no longer in effect. Any officiating person must be at least 18 years old. [s. 765.16\(2m\)](#)

Other sections of [Chapter 765](#) include requirements and provisions governing who may legally marry, who may issue marriage licenses, who may object to a marriage, and the prescribed forms of the marriage document.

- C. Sexual Exploitation by Therapists.** Current law provides that persons who are sexually exploited by their therapist may recover damages. For the purposes of this law, the term “therapist” is defined in [s. 895.441](#) of the statutes. This definition includes members of the clergy.

- D. Sexual Exploitation by a Member of the Clergy.** [Section 895.442](#) creates a cause of action under which any person who suffers injury as a result of sexual contact with a member of the clergy may bring a civil action against that individual for damages. In addition, the law establishes a cause of action against the religious organization that employed the member of the clergy for damages caused by the sexual contact if an individual responsible for supervising that member of the clergy knew, or should have known, that the member of the clergy previously had sexual contact with a minor and failed to either report that previous instance, or exercise ordinary care to prevent similar instances.

- E. **Privileged Communications.** There is a general obligation under the law to furnish evidence when called upon to do so. However, in certain cases, a person may exercise the privilege of protecting a confidential relationship and not provide the desired information to authorities. [Chapter 905](#) of the statutes sets forth the situations in which this privilege to withhold evidence may be invoked. [Section 905.06](#) applies specifically to communications to members of the clergy.

This section treats confidential communications with clergy as “privileged” communications. The law spells out that a communication is “confidential” if it is “made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.”

[Section 905.06](#) also includes a general rule of privilege to prevent disclosure of a confidential communication made to a member of the clergy in his or her capacity as a spiritual advisor. However, this section also clarifies that the privilege does not apply to instances in which the law mandates clergy to report on observations or information received regarding suspected child sexual abuse.

NOTE: Pastors should be advised that nothing in the state law may supersede the “seal of the confessional.”

- F. **Access to Information about Registered Sex Offenders.** [Section 301.45](#) of the statutes requires certain persons convicted of sex related crimes, or so ordered by the court, to register as sex offenders with the Department of Corrections (DOC). Information about such individuals is kept on the DOC registry, (<http://offender.doc.state.wi.us/public>). Certain organizations are permitted, but not required, to request information from the DOC regarding persons on the list. [Section 301.46\(4\)](#) allows agencies and organizations other than law enforcement agencies access to information from the DOC regarding registered sex offenders. Among the agencies and organizations named in [s. 301.46\(4\)](#) are private schools, group homes, foster homes, and child welfare agencies.

This provision raises the question of whether those agencies or organizations, or their agents, could be held liable for a failure to either request the information or to notify others about a sex offender. [Section 301.46\(7\)](#) provides that a person acting under this section is immune from liability for any “good faith act or omission” regarding the release of such information to the public. However, what constitutes “good faith” may be a debatable matter.

Administrators may wish to consider whether or not it is prudent to adopt a policy or guideline for dealing with this law. It would be helpful to consult with diocesan attorneys as that question is assessed.

- G. Parental Consent for Abortions.** Wisconsin's parental consent law provides that a minor who wishes to obtain an abortion must first have the consent of at least one parent or adult family member. Minors also have the option of obtaining a "judicial by-pass" to this consent requirement by requesting a court to approve her request for the abortion. The law governing the judicial by-pass provides that a member of the clergy may file the petition on the minor's behalf and perform other acts intended to help her obtain the judicial consent necessary for the abortion. Such participation by clergy or anyone else in the by-pass procedure is voluntary and not mandated by the law. [s. 48.257](#)

In July of 1992, Wisconsin's bishops advised pastors and others that assisting in the by-pass procedure constitutes a form of "positive cooperation" in the performance of an abortion, which is expressly prohibited by Church teaching and canon law.

Pastors and others who may be approached to help a minor obtain a judicial by-pass should respond in a sensitive and compassionate way to a minor who may be distraught, confused, and in need of love and support. Pastors should affirm the value and goodness of children who are pregnant and make sure they are aware of the Church's desire to help them through the pregnancy. However, no Catholic clergy may assist in obtaining the judicial by-pass.

- H. Religious Services to Inmates of Government Correctional and Other Institutions.** Several statutes specify that clergy have a right to provide religious services and sacraments to persons in state institutions who desire them. [Section 46.066](#) grants this right to persons who are residents of institutions under the control of the Department of Health Services. These services must be available at least once a week. [Section 58.01](#) does the same for residents of private asylums, hospitals, and societies. [Section 301.33](#) extends this guarantee to inmates under the control of the Department of Corrections (DOC). In all cases, the institutions have the right to impose reasonable limitations on the services.

These sections differ slightly regarding the frequency of services. [Sections 46.066](#) and [301.33](#) mandate that services may be available once a week. [Section 58.01](#) merely requires that they be provided at "proper times and places."

A member of the clergy may possess no more than two ounces of wine in a prison, jail, or house of correction if he or she intends to use it in a religious service. A member of the clergy may give or deliver a reasonable amount of wine to an inmate and an inmate may consume that wine as part of a religious service. The DOC is not required to purchase or store wine for an inmate, a chaplain, or any other member of the clergy. [s. 302.375\(2m\)](#)

- I. **Exemption from Quarantines.** [Chapter 252](#) of the statutes permits the Department of Health Services and/or a local health officer to impose a quarantine on individuals with certain communicable diseases. In such situations, persons may not have direct contact with the patient(s) without a written permit. However, [s. 252.06\(4\)\(a\)](#) exempts members of the patient's immediate family and certain other professionals, including clergy, from the quarantine provisions.
- J. **Laws Governing Cemeteries.** Cemeteries are regulated under [Chapter 157](#) of the statutes, Subchapter II, and [ss. 440.90-440.95](#). Subchapter II of Chapter 157 pertains to all cemeteries, including cemeteries that are organized and operated by any religious association, any fraternal or benevolent society, or any incorporated college of a religious order. However, religious associations or societies and their affiliated cemeteries are exempt from a number of the law's provisions.

In some cases the exemptions are dependent on the proper and timely filing of an annual certification of compliance, verified by the cemetery or religious authority with which it is affiliated. It is important to note that the authority that verifies the certification is liable for any damages that result from a failure by the cemetery to fully comply with the designated statutes (i.e., improperly certified). [s. 157.63](#)

Enforcement. The Department of Safety and Professional Services (DSPS) has broad administrative power over cemeteries and cemetery authorities. DSPS authority is aided by various reporting and recordkeeping requirements applicable to cemetery authorities.

With certain exceptions, the DSPS may audit, at reasonable times and frequency, the records, trust funds, and accounts of any cemetery, including matters pertaining to services provided by a cemetery authority that are not otherwise subject to the requirements of the statutes. Audits may occur on a random basis and must be conducted without prior notice.

The cemetery authority for a cemetery affiliated with a religious society, or the affiliated religious society, may file an annual certification with the DSPS affirming that the cemetery authority has either fully or substantially complied with the care fund and pre-need sale fund requirements. The filing of such certification provides exemption from notice that a cemetery not meeting the requirements is not an endowment care cemetery.

Minimum Acreage Requirement. In addition to endowment care status, a cemetery dedicated on or after November 1, 1991, must generally consist of at least 20 contiguous acres. However, this requirement does not apply if a religious

association owns the cemetery and the total acreage of all other cemeteries owned by the association exceeds 20 acres, and the religious association is responsible for all liabilities of the cemetery.

General Care Funds. When filing an annual certification, a cemetery affiliated with a [Chapter 187](#) religious society is exempt from the requirements of deposit, reporting, and investment of general care funds.

Transfer of Ownership of Cemetery Land. A cemetery authority is required to notify DSPS in writing of a proposed sale or encumbrance of cemetery land, except sales of cemetery lots or mausoleum spaces intended to be used for the burial of human remains of the purchaser or the purchaser's family members. A Chapter 187 religious society is not subject to DSPS disapproval of a sale or encumbrance of cemetery land.

Annual Report and Recordkeeping Requirements. Cemetery authorities must file an annual report with the cemetery board containing certain statutorily specified information regarding trust funds.

A cemetery authority must maintain a copy of the annual report at its principal place of business. Except for those portions that by statute are confidential, the report must be available for inspection, upon reasonable notice, by any person with an interest in a cemetery lot or a mausoleum space.

Cemetery authorities are required to maintain records needed to prepare the annual report; records indicating the name of the purchaser or beneficiary of a contract relating to the deposit of money in a trust fund or account and the item purchased; and a copy of each contract for the sale of a cemetery lot, mausoleum space, or cemetery merchandise.

Reporting requirements, as well as exemptions to those requirements, may be found at [s. 157.62](#).

Preneed Sales. "Preneed sales" include the sale of cemetery merchandise to be delivered after the date of the initial payment or the sale of the mausoleum space not ready for use on the date of the sale. Preneed sales contracts must be in writing, must include notice of the purchaser's various rights, and may be voided by the purchaser at any time within 10 days after the date of the initial payment. A percentage of each payment received for an undeveloped mausoleum space must be deposited in a preneed trust fund under a formula.

If the cemetery authority of a cemetery is affiliated with a religious society organized

under Chapter 187, and that religious society files an annual certification with the DSPS, neither the cemetery authority nor any employee of the cemetery is required to be licensed as a cemetery preneed seller during the period for which the certification is effective.

Liability. The religious society that is affiliated with a cemetery to which a certification under this subsection applies is liable for the damages of any person that results from the failure of any employee specified, or the cemetery authority, to fully comply with the law during the 12-month period for which such compliance has been certified under this subsection.

Sales Representatives. As mentioned above, if the cemetery authority of a cemetery that is affiliated with a religious society organized under Chapter 187 or that religious society files an annual certification with the DSPS, neither the cemetery authority, nor any employee, is required to be licensed as a cemetery preneed seller while the certification is effective.

The certificate includes the notarized statement of a person legally authorized to act on behalf of the religious society which indicates that during the 12-month period immediately preceding the date on which the certification was filed with the DSPS, each employee specified and the cemetery authority have either fully complied or substantially complied with the law governing preneed sales.

The religious society that is affiliated with a cemetery to which a certification under this subsection applies is liable for the damages of any person that result from the failure of an employee to fully comply with the law for which such compliance has been certified.

Construction of Mausoleums. The construction of mausoleums is now also subject to DSPS regulations and is no longer under the auspices of the Department of Commerce.

Restricted Burial Rights. A cemetery authority of a cemetery affiliated with a religious society organized under Chapter 187 may prohibit the burial of human remains in the cemetery if the individual was in a class of individuals prohibited from being buried in the cemetery under regulations adopted by the cemetery authority or religious society.

Winter Burials. Cemeteries are required to provide for burials during each season, insofar as practicable. It is up to individual cemeteries, including those affiliated with a religious society, to determine what is practicable. The cemetery authority may charge a reasonable fee to recover the costs related to providing for a burial during

difficult weather conditions.

Authorization for Final Disposition. [Section 154.30](#) allows an individual to complete an advance directive designating and authorizing a representative to control and provide for the final disposition of the declarant's remains. Under this provision, a cemetery authority that fails to complete arrangements for final disposition due to a disagreement between representatives cannot be found civilly or criminally liable for its action, unless directed to act under the order of the probate court, or through a written, signed agreement of the representatives. Also, no cemetery authority that, in good faith, relies on instructions concerning final disposition from a representative who is not the representative of highest priority cannot be held liable for such action.

- K. Sacramental Wine.** The laws governing the sale of alcoholic beverages provides authority for the Department of Revenue to permit manufacturers and wholesalers of wine to sell wine directly to religious bodies holding a permit to purchase sacramental wine. [s. 125.56](#) The permit is issued to the parish and there is no charge for it. Once issued, the permit lasts for the life of the parish and need not be renewed or updated.

PART THREE - EMPLOYMENT

- A. **Fair Employment Practices/Preference in Hiring.** Wisconsin state law prohibits employers from discriminating against properly qualified individuals on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest or conviction record, or military service. [ss. 111.321-111.365](#)

Employers may also not discriminate against qualified individuals based on their use or nonuse of lawful products off the employer's premises during non-work hours. A new law also prevents discrimination against an individual who declines to attend a meeting or to participate in any communication about religious or political matters. [s. 111.321](#) "Religious matters" means religious affiliation or the decision to join or not to join, or to support or not to support, any bona fide religious association. [s. 111.32\(12p\)](#)

However, it is not considered employment discrimination if an employee declines to participate in the meetings described above and the employer is a not-for-profit religious association, or an organization or corporation that is owned or controlled by such an association, and the primary purpose of the meeting is to communicate the employer's religious beliefs, tenets, or practices. [s. 111.365\(2\)](#) There is also an exemption for information the employer is required by law to communicate to an employee.

This law does not limit the employer's executive, managerial, or administrative personnel's ability to discuss issues related to the operation of the employer's business. Nor does it limit the right of the employer to offer meetings and communications about religious matters for which participation is voluntary. [s. 111.365\(3\)](#)

The law permits a not-for-profit religious organization or corporation controlled/owned by a religious association to give preference in hiring or promotion to applicants or employees who are members of the same or similar denominations. The law also permits a not-for-profit religious organization or corporation controlled/owned by a religious association to give preference to applicants or employees who adhere to the religious association's creed if the job description demonstrates that the position is clearly related to the religious teachings and beliefs of the religious association. [s. 111.337\(2\)](#)

Employment discrimination toward protected groups includes termination or refusal to hire, as well as discrimination regarding compensation, promotion, or employment conditions. Discriminatory language in employment advertisements or applications is also prohibited. An employee cannot be discriminated against or

discharged for lodging a complaint or testifying in proceedings related to this law.

Age discrimination refers to persons age 40 and over. Retirement systems may not be designed to circumvent the age discrimination law by preventing hiring or forcing retirement. The employer may, however, apply varying insurance coverage according to an employee's age. It is not considered age discrimination to terminate an employee who is physically or otherwise unable to perform the duties of the job. [s. 111.33](#)

It is not considered discrimination to refuse to employ or to suspend from employment a person who is subject to a pending criminal charge, or to refuse to employ or to terminate a person who has been convicted of an offense the circumstances of which are substantially related to job activity. [s. 111.335](#) A recent change in the law permits an educational agency to refuse to employ, or terminate from employment, an individual who has been convicted of a felony and who has not been pardoned for that felony. [s. 111.335\(1\)\(d\)2](#)

An employer must accommodate an employee's religious observance and practice, unless the employer can prove this would create undue hardship for its enterprise or business. [s. 111.337](#)

Discrimination against an individual with a disability includes contributing less for fringe benefits and refusing to accommodate the disability unless it would impose a hardship on the employer. It is not discriminatory to refuse to hire or to terminate the individual if the disability would make it impossible to adequately undertake the responsibilities of the job, but the law requires that each individual must be handled on a case-by-case basis and not by general rule. [s. 111.34](#)

Discrimination on the basis of sex includes distinctions in promotion or compensation where sex is not a bona fide occupational qualification. Sexual harassment or discrimination against a woman on the basis of pregnancy, childbirth, maternity leave, or related medical conditions is also prohibited. [s. 111.36](#)

An employee or prospective employee cannot be required, except under limited circumstances, to take an honesty test, such as a polygraph, voice stress analysis, or a psychological stress evaluator. [s. 111.37](#)

- B. Family and Medical Leave.** Every employer of 50 or more people is required to allow eligible employees to take up to 6 weeks of unpaid leave per year to care for a newborn or newly adopted child, so long as the leave occurs within 16 weeks of the child's birth or adoption, and up to two weeks of additional unpaid family leave per year to care for a child, spouse, domestic partner, or parent having a serious health

condition. Eligible employees may also take up to two weeks of unpaid medical leave if their own serious health condition prevents them from performing their job. Employees who wish to take family or medical leave for serious medical conditions may be required to provide certification of those conditions from a health care provider or Christian Science practitioner if the employer requests it. [s. 103.10](#)

Employees are not eligible for family or medical leave unless they have worked for the employer for more than 52 consecutive weeks and have logged at least 1,000 hours during the preceding 52 weeks.

Employees who wish to take leave for childbirth or adoption, or for planned medical treatment or care, must give the employer advance notice. Employees are not entitled to wages or salary while on leave, although they may substitute paid or unpaid leave of any other type provided by the employer for the family or medical leave authorized by this law. In addition, upon returning from leave, the employee must be returned to his or her previous job or an equivalent position.

Employers must maintain the same group health insurance coverage that was available to the employee at the time the leave began. However, the employer may require an employee to establish an escrow for an amount equal to the entire premium for eight weeks of the coverage. The employer may retain all or part of this escrow if the employee quits within 30 days of returning from a family or medical leave.

Employers covered by the law must post a notice setting forth the employee rights under the Family and Medical Leave Act. In addition, all employers of 25 or more persons must post their family and medical leave policies in a prominent location. [s. 103.10](#)

Family and medical leave is governed in part by federal law as well. Due to the limited scope of this guide, consultation with parish or diocesan attorneys to determine compliance with the law is highly recommended.

- C. **Unemployment Compensation.** Churches and parish schools are exempt from state and federal laws governing unemployment compensation. However, the Archdiocese of Milwaukee and the Dioceses of Madison, La Crosse, and Superior jointly operate a Church Unemployment Pay Program (CUPP) to cover participating parishes and schools. The Diocese of Green Bay operates a separate program. Participation is generally voluntary although certain dioceses mandate participation to some extent. Information about CUPP, its policies, and financing provisions, may be obtained from your diocesan fiscal officer.

- D. Worker's Compensation.** Employees of parishes and parish schools are covered by the state's Worker's Compensation Act if their parish or school employs three or more persons. (Parishes and schools with one or two employees may be covered depending on wages paid.) In cases of accident or death, an employee or their heirs (including certain domestic partners) may be entitled to allowances and recoveries that constitute “worker's compensation” as defined in [Chapter 102](#) of the statutes.

The usual practice is for the parish or school to contract through a commercial insurer to handle worker's compensation, but the parish or school may self-insure if they choose, as set forth in [s. 102.28](#) and administrative rule [DWD 80.60](#). If controversy arises between the employee and the organization due to a work-related injury that is covered by the law, decisions about compensation benefits are handled by the Department of Workforce Development (DWD).

The Worker's Compensation Act is very specific about the timeliness and detail of claims. Once an employee files a claim, the insurer should assist the parish or school with the necessary process and requirements. The specific conditions pertaining to employees that must exist for a parish or school to be liable under the Worker's Compensation Act are listed in [s. 102.03](#). Recently, 2011 Wisconsin Act 183 made several changes to Wisconsin worker's compensation law, including changes to the maximum weekly worker's compensation rate for permanent partial disability. In light of these changes, employers should make certain of their continued compliance with the law.

[Section 102.07\(11m\)](#) of the statutes clarifies that a volunteer who receives from a 501(c) nonprofit organization nominal payments of money or other things of value totaling not more than \$10 per week is not considered to be an employee of that organization for purposes of worker's compensation.

- E. Minimum Wage Law.** The state's minimum wage law includes in its definition of employee “every individual who is in receipt of or is entitled to any compensation for labor performed for any employer.” The wage prescribed by law is broadly termed a “living wage” (though it should be kept in mind that the state's definition of a “living wage” and what might be considered a “living” or “family wage” according to the Church's social teaching may differ). The Equal Rights Division of the Department of Workforce Development (DWD) determines the amounts. The DWD must designate the same minimum wage for both men and women. The state's minimum wage provisions are contained in [Chapter 104](#) of the Wisconsin Statutes and the Wisconsin Administrative Code. Since they can change frequently, the employer should check for updated information by phoning the Equal Rights Division at 608-266-6860 or by emailing the Division at erinfo@dwd.wisconsin.gov. (Note: In some cases, federal minimum wage law supersedes state law.)

- F. **Payment of Wages.** State law contains some very specific provisions about how wages are paid out to employees. These requirements are contained in [Chapters 103](#) and [109](#) of the statutes and they cover a broad definition of wages, including salaries, commissions, holiday and vacation pay, overtime pay, severance or dismissal pay, or bonuses.

Wages must be paid at least monthly and the law specifies that this cannot be more than 31 days from the date the wages were earned (the law makes an exception for employees of public and private schools who voluntarily request to be paid on a 12-month basis for services performed during the school year).

Any employee, without a written contract for a definite period, who quits or is discharged must be paid in full no later than the date on which the employee regularly would have been paid or within one month, whichever is earlier. Specific provisions are made for payment of the wages to dependents (including a domestic partner) in case of the employee's death. [s. 109.03\(3\)](#)

It is unlawful in many circumstances for an employer to make deductions from an employee's paycheck without the employee's consent. When deductions are withheld from an employee's paycheck, the employer must clearly state in writing the amount and reason for each deduction, except that the employee may authorize "miscellaneous deductions" for personal reasons. [s. 103.457](#) The employer may not take deductions from an employee's wages for lost, stolen, or damaged property unless: the employee authorizes the deduction; the employer and employee's designee agree that the loss was due to the employee's negligence or intentional conduct; or a court finds the employee liable. The Wisconsin Supreme Court has interpreted this statute as preventing the employer from threatening discharge as a means of forcing reimbursement for a loss. [s. 103.455](#)

- G. **Worker Classification Compliance.** Wisconsin law provides that the Department of Workforce Development (DWD) may require an employer to prove the following to ensure that an employer properly classifies the persons performing services for the employer as employees and nonemployees:

- That the employer maintains records identifying persons performing work for the employer, including the name, address, and Social Security number of each person.
- That the employer maintains worker's compensation coverage for its employees.
- That the employer has provided DWD with the information required for each newly hired employee.

- That the employer maintains records of the hours worked by its employees, the wages paid to its employees, any deductions from wages, and any other information that the employer is required to keep under certain provisions of Wisconsin law.
- That the employer complies with unemployment insurance laws (religious institutions are generally exempt from compliance).

DWD must also educate the public about the proper classification of employees and nonemployees, investigate complaints alleging violations of this law, and if necessary, authorize enforcement and violation mechanisms. [s. 103.06](#)

H. Access to Personnel Records. State law makes certain personnel records available to both current and former employees. The employer is required to let the employee inspect the records upon the employee's request, and the employer may specify that the request must be written. The employee is entitled to at least two such requests per calendar year. [s. 103.13](#)

The types of records covered by the law include documents used in determining qualifications for employment, promotion, transfer, additional compensation, termination, or disciplinary action. Medical records must also be open, but the employer may choose to release them only to the employee's physician if their disclosure might have a detrimental effect on the employee.

By law, the employee must be given a chance to view the records at a reasonable time and convenient place within seven working days of making a request. The employee has a right to make or receive copies of the records.

There are some significant exceptions to the personnel records law. For example, it does not apply to records relating to possible criminal offenses of the employee; letters of reference about the employee; portions of test documents, though the employee may see cumulative scores; information which would invade the privacy of another person; or materials used by the employer for staff management planning.

If the employee disagrees with any of the information contained in the records, the employer and employee may mutually agree upon removal or correction. If agreement cannot be reached, the employee may submit a written statement that the employer must attach to the disputed portion of the record. As long as the matter is in dispute, the statement must be submitted to any third party who requests that section of the records. [s. 103.13](#)

I. Work Permits for Minors. Parishes and other organizations that employ minors are governed by state standards for employment of minors as set forth in [ss. 103.65-67](#).

These laws prevent employment that is detrimental or prejudicial to a minor's life, health, and safety. [Section 103.67](#) sets forth certain specific limitations on the number of hours minors may work.

[Section 103.67\(2\)](#) allows children 12 and 13 years of age to serve as officials for athletic events sponsored by private, nonprofit organizations so long as they are employed under direct adult supervision. The child also must be eligible to participate in the event and must either be the same age or older than event participants.

J. New Hire Reporting. Beginning in 1998, Wisconsin Statutes [s. 103.05](#), [Chapter DWD 142](#) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, (42 U.S.C. 653a), require all employers to report newly hired and re-hired employees to the Wisconsin Department of Workforce Development (DWD) within 20 days of their hire date. DWD provides employers with information on how and when to make new hire reports, and also maintains a state directory of new hires.

K. Caregiver Background Checks. Certain organizations that fall within the definition of a child welfare entity, as well as certain individuals who are responsible for the care and custody of persons, may be subject to caregiver background check requirements. A child welfare entity includes child care centers that operate in a school setting. These entities are required to conduct a criminal history and child abuse background check on employees, prospective employees, and certain non-client residents. [s. 48.685](#) If the entity also receives, or wishes to receive, payments under the Wisconsin Shares child care subsidy for the provision of services, then caregivers subject to a background check will also be required to be fingerprinted and those prints may be shared with the Federal Bureau of Investigation. [s. 48.685\(2\)\(br\)](#)

The background check includes, but is not limited to, a check of the Department of Justice criminal history database, the abuse registry maintained by the Department of Health Services (DHS), as well certain DHS actions surrounding compliance and licensing, the Department of Safety and Professional Services databases of state-granted credentials, determinations or decisions finding child abuse or neglect by the Department of Children and Family (DCF), and the sex offender registry. The law provides that a person who has been convicted of a serious crime may not be employed as a health care or child care provider, or be a non-client resident at a facility, unless he or she demonstrates to DHS, or a tribal entity in the case of a Native American, that he or she has been rehabilitated. Additionally, [s. 48.685\(5\)\(br\)](#) creates a list of offenses, which if a person is convicted of or adjudicated delinquent on after attaining the age of 12, will not be permitted to demonstrate rehabilitation.

Entities will be required to provide report information obtained through these checks to appropriate government authorities who will in turn periodically forward on the information to DCF.

PART FOUR - TAXATION

- A. **Income Tax - Housing Allowance.** The law governing the state income tax includes a definition of income in [s. 71.52\(6\)](#). This definition includes “housing allowances provided to members of the clergy” in its definition of income when computing eligibility for the Homestead Tax Credit Program.
- B. **Property Tax - Exemption.** State law exempts certain property owned by educational, religious, benevolent, or charitable institutions from property taxes. [s. 70.11](#) In the case of schools, the property must be owned and used exclusively by the educational institution and the school must offer regular courses 6 months a year. [s. 70.11\(4\)](#) The statute sets maximum limits on the number of acres of land that may be exempted. Housing used by ordained teachers and members of religious orders or communities may also be exempt, regardless of whether it is contiguous to the religious school’s property. If the school leases some of its property to a second party, it must meet certain statutory requirements to retain its property tax exemption. [s. 70.11](#)
- C. **Reports by Owners of Tax-Exempt Property.** Once every two years, owners of tax-exempt property must file a report with the local tax district. This report, due on March 31 of each even numbered year, must include: a) the name and address of the owner; b) the legal description and parcel number of the property; c) the date the property was acquired; d) a description of any improvements on the land; e) a statement of whether or not the property was leased to someone else in the previous two years; and f) the owner’s estimate of the fair market value of the property as of January 1 of the even numbered year. These reports are collected and summarized by the local tax district and a copy of a local summary report, classified by type of owner, is sent to the Department of Revenue on July 1. [s. 70.337](#)
- D. **Sales Tax.** Gross receipts from the sale of tickets or admission to school activities are exempt from the state sales tax, so long as the entire proceeds are expended for educational, religious, or charitable purposes. [s. 77.54\(9\)](#) Sales of tangible personal property and items by schools, and the sale of certain property or services by a cemetery company or corporation described under section 501(c)(13) of the Internal Revenue Code, are also exempt (for cemeteries, the property or services must be used exclusively by the company or corporation for the purposes of the cemetery). [ss. 77.54\(4\) and \(9a\)](#)

In addition, nonprofit organizations, such as parent-teacher organizations, are exempt from paying sales tax on proceeds from their events if these organizations are subject to the control and supervision of school officials and if the events meet the

definition of “occasional sales.” Sales made by a parish or church group will also be exempt if they limit such sales events to 20 days per year. Organizations that exceed the 20-day limit will still be exempt if the gross receipts from the events are less than \$25,000. [s. 77.54\(7m\)](#) (Different rules may apply for sales affiliated with bingo.)

The Department of Revenue (DOR) administers laws governing sales by nonprofit organizations according to regulations contained in [Chapter Tax 11](#) of the Wisconsin Administrative Code. Section [Tax 11.35](#) deals specifically with sales by nonprofit organizations.

In addition to the criteria mentioned above, a parish or nonprofit organization will qualify for “occasional sales” exemption if it meets all of the following three standards:

1. The organization is not engaged in a trade or business.
2. Entertainment is not involved.

NOTE: The code defines “entertainment” as entertainment provided at an admission event by all persons or groups who are paid in the aggregate \$500 or more per event by all persons for performing, for reimbursement of expenses, or for prize money.

3. The organization does not have or is not required to have a Wisconsin seller's permit, except for conducting bingo.

Standard 1: Not Engaged in a Trade or Business. A nonprofit is not engaged in a trade or business if it meets one of the following:

1. Its sales of otherwise taxable tangible personal property, items, property, and goods as defined by statute, or services, or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. In calculating whether a nonprofit exceeds the 20-day limit in the law, DOR counts only the actual days of the events and not the days during which tickets are sold.

Example: A Boy Scout troop takes orders for Christmas wreaths from October 1 through November 1. The wreaths are delivered by the troop on December 15 and 16. For purposes of determining whether its events meet the 20-day test, the troop should use the days of delivery rather than the days orders are taken.

2. Its taxable sales price for tangible personal property, items, property, and goods as defined by statute, or services for the calendar year are \$25,000 or less, regardless of the number of days on which its sales or events occur. In calculating whether sales exceed the \$25,000 limit, DOR does not count the income from sales otherwise exempt from the sales tax.

Examples: a) Church sells fresh vegetables grown by parishioners in their gardens. Since the sale of fresh vegetables is exempt from sales tax, the sales of these items are not counted as part of the sales price for purposes of the \$25,000 receipts test.

b) Nonprofit Organization, which sells hundreds of Christmas trees, sells five Christmas trees for \$100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property exempt from sales tax. As a result, this \$100 exempt sale to the school is not counted as part of the sales price for purposes of the \$25,000 receipts test.

Standard 2: No Entertainment. In order to qualify as an exempt occasional sale, entertainment shall not be involved at an event for which charges constitute admissions.

1. Entertainment defined: Entertainment provided at an “admission” event by all persons or groups (for example, band or singers) who are paid in the aggregate more than \$500 per event by all persons for performing, for reimbursement of expenses, or prize money.

Examples: a) Four different bands are paid \$200 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment for entertainment (\$800) exceeds \$500, entertainment is deemed to be involved. As a result, receipts from the event are taxable.

b) Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the band \$300. Since the total payment for entertainment (\$600) exceeds \$500, entertainment is deemed to be involved. As a result, receipts from the event are taxable.

2. Admissions defined: Admissions are involved if access to the event involving entertainment is generally restricted to only those who pay a required fee, make a “required donation,” or who must make a purchase of some kind (for example, meal or raffle ticket).

Examples: a) Nonprofit Organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid \$750. There is no separate admission charge; however, access to the dance is restricted to those who have purchased the meal. The “meal” charge constitutes an admission charge to an event involving entertainment. Therefore, sales by the organization at this event are taxable.

b) Nonprofit Organization holds a pig roast at the city park and pays a band \$600 to play at the park gazebo so that patrons, if they so wish, can be entertained while they eat. There is no admission charge and access to the band is open to anyone, whether

they purchase the meal or not. Sales by Nonprofit Organization may still qualify as exempt occasional sales.

c) Nonprofit Organization holds an educational seminar to train counselors in crisis prevention. Each participant pays a fee to attend. Nonprofit Organization hires a musical group for \$650 to play during a 30-minute intermission between speakers. The admissions to the educational seminar are not subject to Wisconsin sales and use tax because the event is not an amusement, recreational, entertainment, or athletic event.

However, sales of certain food, beverages, T-shirts, books, tapes, and any other items of tangible personal property and taxable services (e.g., parking for motor vehicles) at the seminar are taxable.

Exception: A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may do the following:

- Obtain a temporary seller's permit from the DOR for the day or days of the event involving entertainment.
- Pay the sales tax for that event, and
- Request inactivation of the seller's permit after the event by contacting the DOR.

If the above three steps have been taken, the nonprofit organization may still make exempt occasional sales on days not covered by the permit.

Note: Days and receipts from events involving admissions to entertainment for which a seller's permit was obtained **are** included with all other sales in determining the 20-day test and the \$25,000 taxable receipts test.

Caution: A nonprofit organization that obtains a seller's permit for an event and does not request inactivation of the seller's permit after the event does not qualify for the occasional sales exemption subsequent to the event, regardless of the number of days and dollar amount of its sales.

Example: For the year 2011, Nonprofit Organization plans five events covering three days each (total of 15 days). Entertainment will be involved at one event only. Sales by Nonprofit Organization would qualify as exempt occasional sales, except for the involvement of entertainment at the one event. Nonprofit Organization should obtain a seller's permit for the one event involving entertainment (3 days) and inactivate the seller's permit immediately after the event. Its sales at the other four events qualify as exempt occasional sales.

Standard 3: Seller's Permits. The organization does not have or is not required to

have a Wisconsin seller's permit, except for conducting bingo.

A nonprofit organization qualifies for the occasional sales exemption on non-bingo sales, even though it holds a seller's permit, if it otherwise meets Standards 1 and 2, and the nonprofit organization meets one of the following:

1. It is required to hold a seller's permit solely for the purpose of conducting bingo games.
2. It obtains a seller's permit solely for an admission event involving entertainment, if the seller's permit is inactivated immediately after the event.
3. It holds a seller's permit solely for the purpose of conducting bingo games and making taxable sales at an admission event involving entertainment.

Note: A nonprofit organization's bingo receipts **are not** included with all other sales in determining the 20-day test and the \$25,000 taxable receipts test in Standard 1.

Example. Nonprofit Organization has receipts of \$30,000 per year from bingo sales. It holds a seller's permit solely for conducting bingo games. Nonprofit Organization's only other sales throughout each year are \$5,000 of food and soda sales at a concession stand. Nonprofit Organization held no admission event involving entertainment. Nonprofit Organization's sales of food and soda qualify for the occasional sale exemption, because its taxable sales, except bingo, are \$25,000 or less. The \$30,000 of bingo receipts are not included in determining the \$25,000 taxable receipts test in Standard 1.

NOTE: [All examples in this section are taken from the Department of Revenue's "Publication 206: Sales Tax Exemptions for Nonprofit Organizations."](#)

- E. **Public Fire Protection.** [Section 196.03\(3\)](#) provides that a public utility, which furnishes water, shall impose a fee for water used for public fire protection costs not included in its general service charge. This fee shall be included in the water bill of each customer of the utility.

Since the fee must be imposed on any property owner who pays a water bill, the fee applies to owners of tax-exempt property such as churches. The law does not spell out how the fee is to be calculated and some municipalities assess the fee on the basis of property value. This issue was litigated by certain churches in River Falls, but the courts held that the fee is constitutional.

- F. **Other Municipal Fees.** In light of declining revenues at the local government level, many municipalities are billing churches and other nonprofit entities for other services provided by the public sector. [Section 66.0628\(2\)](#) mandates that any such

fee that is levied shall bear a reasonable relationship to the service provided and that municipalities must issue written findings to this effect. Under [s. 66.0628\(4\)](#), an appeal regarding the reasonableness of a fee may be brought before the Wisconsin Tax Appeals Commission.

PART FIVE - OTHER

- A. **Snowmobile Access.** The laws governing the use of snowmobiles expressly prohibit the operation of snowmobiles on or across a cemetery, school, or church property without the consent of the owner. [s. 350.10\(1\)\(k\)](#)
- B. **Human Growth and Development Committees.** The laws governing the operation of public school districts require any district that offers a human growth and development curriculum to appoint an advisory committee to aid the school board with the design, implementation, and review of such curriculum. The law provides that clergy or ministers shall be appointed to the committee. [s. 118.019\(5\)](#)

Recent changes to the law also replace mandated curriculum requirements with recommended areas of instruction. If a district opts to provide any of the recommended subjects, there are certain additional instructional requirements that apply. The law also again allows a school board to institute a variety of curriculum designs, including abstinence-centered instruction.

- C. **Community Service and Development Organizations.** The law encourages municipalities to create “community relations-social development commissions.” These commissions are intended to “study, analyze, and recommend solutions for the major social, economic, and cultural problems which affect people within the municipality.” The law provides that clergy shall be included among the commission’s membership. [s. 66.0125\(4\)](#)
- D. **Foreclosures of Church Property.** The laws governing foreclosures provide that no sale of a church or property owned by a tax-exempt, nonprofit, charitable organization may occur prior to 12 months from the date the judgment was entered against the property. [s. 846.10](#) This time limit does not apply in cases where the mortgager consents to an earlier sale [s. 846.101](#), or if the sale involves abandoned premises.

A premise is deemed to have been abandoned if the owner relinquishes possession or control of the property. [s. 846.102](#) A recent addition to the law allows the representative of the city, town, village, or county where the mortgaged premises are located to provide testimony or evidence to the court relating to whether it has been abandoned.

- E. **School Use Fees.** Under [s. 120.13\(17\)](#) of the statutes, school boards may allow the temporary use of public school property by religious organizations for any lawful nonschool purpose, if such use does not interfere with use for school purposes or

school-related functions. In doing so, the school board may charge fees, but not exceeding actual costs. Actual costs, for the purposes of measuring possible liability, means reasonable costs for maintenance, security, supervision of participants who are minors, if applicable, and cleaning.

- F. **Outdoor Advertising Signs.** The Department of Transportation no longer has the authority to establish and assess an annual fee for off-premises signs owned by nonprofit organizations. However, [s. 86.191\(6\)](#) prohibits a business entity from placing, or causing to be placed, any sign that advertises or promotes a business within a highway right-of-way. This prohibition does not apply to any sign advertising an event associated with a church or school.
- G. **Sign Language Interpreting.** A person who provides, for compensation, sign language interpretation services for a deaf or hard of hearing person must be licensed. However, no license is required for any person interpreting at a school or school-sponsored event if the person is licensed by the Department of Public Instruction (DPI) as an education interpreter; or for a person interpreting at a religious service or at a religious function, including educational or social events sponsored by a religious organization. However, this exception does not apply to a person interpreting for a religious organization at a professional service provided or sponsored by a religious organization. [s. 440.032\(1\)-\(2\)](#)

