

1989 Senate Bill 66

Date of enactment: **December 6, 1989**  
Date of publication\*: **December 18, 1989**

# 1989 WISCONSIN ACT 97

**AN ACT** to repeal 101.123 (3) (e) and (g) and 101.123 (8) (b); to renumber and amend 101.123 (4) (a); to amend 53.46 (1) (a), 101.123 (1) (c), 101.123 (4) (b), 101.123 (8) (a), 101.123 (9), 165.60, 165.87 (2) (a) and 814.63 (1) and (2); to repeal and recreate 101.123 (3) (b); and to create 101.123 (1) (bg), 101.123 (1) (bm), 101.123 (1) (br), 101.123 (1) (dm), 101.123 (1) (i), 101.123 (4) (a) 2 and 3, 101.123 (4) (am) and 101.123 (4) (bm) of the statutes, relating to: the coverage and enforcement of the clean indoor air law and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 53.46 (1) (a) of the statutes is amended to read:

53.46 (1) (a) On or after October 1, 1987, if a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a) or (5) or state laws or municipal or county ordinances involving nonmoving traffic violations, the court, in addition, shall impose a jail assessment in an amount of one percent of the fine or forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the court shall determine the jail assessment on the basis of each fine or forfeiture. If a fine or forfeiture is suspended in whole or in part, the court shall reduce the jail assessment in proportion to the suspension.

**SECTION 1m.** 101.123 (1) (bg) of the statutes is created to read:

101.123 (1) (bg) "Jail" means a county jail, rehabilitation facility established by s. 59.07 (76), county house of correction under s. 56.16 or secure detention facility as defined in s. 48.02 (16).

**SECTION 2.** 101.123 (1) (bm) of the statutes is created to read:

101.123 (1) (bm) "Lockup facility" has the meaning given in s. 53.30.

**SECTION 3.** 101.123 (1) (br) of the statutes is created to read:

101.123 (1) (br) "Motor bus" has the meaning given in s. 340.01 (31).

**SECTION 4.** 101.123 (1) (c) of the statutes is amended to read:

101.123 (1) (c) "Office" means any area, whether publicly or privately owned or occupied, that serves as a place of work at which the principal activities consist of professional, clerical or administrative services.

**SECTION 5.** 101.123 (1) (dm) of the statutes is created to read:

101.123 (1) (dm) "Prison" means a prison described in s. 53.01.

**SECTION 6.** 101.123 (1) (i) of the statutes is created to read:

101.123 (1) (i) "State institution" means a prison, a secured correctional facility, a mental health institute as defined in s. 51.01 (12) or a center for the developmentally disabled as defined in s. 51.01 (3).

**SECTION 7.** 101.123 (3) (b) of the statutes is repealed and recreated to read:

101.123 (3) (b) Rooms in which the main occupants are smokers, even if nonsmokers are periodically present in the office or room.

**SECTION 8.** 101.123 (3) (e) and (g) of the statutes are repealed.

**SECTION 9.** 101.123 (4) (a) of the statutes is renumbered 101.123 (4) (a) 1. and amended to read:

101.123 (4) (a) 1. A Except as provided in subd. 2, a person in charge or his or her agent may designate smoking areas in the places where smoking is regulated under sub. (2) unless a fire marshal, law, ordinance or resolution prohibits smoking. Entire rooms and buildings may be designated smoking areas.

**SECTION 10.** 101.123 (4) (a) 2. and 3. of the statutes are created to read:

101.123 (4) (a) 2. A person in charge or his or her agent may not designate an entire building as a smoking area or designate any smoking areas in a motor bus. Subject to sub. (3) (b), a person in charge or his or her agent may not designate an entire room as a smoking area.

3. This paragraph does not apply to places described in par. (am).

**SECTION 11.** 101.123 (4) (am) of the statutes is created to read:

101.123 (4) (am) 1. The secretary of health and social services or his or her designee may designate areas where smoking is permitted in a state institution, unless a fire marshal, law or resolution prohibits smoking in the area. The secretary or his or her designee may designate an entire room as a smoking area in a state institution.

2. A person in charge of a jail or lockup facility, or his or her agent, may designate areas where smoking is permitted in the jail or lockup facility, unless a fire marshal, law or resolution prohibits smoking in the area. The person in charge or his or her agent may designate an entire room in the jail or lockup facility as a smoking area.

3. Except in a prison, secured correctional facility, jail or lockup facility, an entire building may not be designated as a smoking area.

**SECTION 12.** 101.123 (4) (b) of the statutes is amended to read:

101.123 (4) (b) The person in charge or his or her agent shall post notice of the designation of a smoking area in or near the area designated. If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all entrances to the room normally used by the public. ~~If an entire building is designated a smoking area, notice of the designation shall be posted on or near all entrances to the building normally used by the public, but posting notice of the designation on or near entrances to rooms within the building is not required. This paragraph does not apply to a place described in par. (bm).~~

**SECTION 13.** 101.123 (4) (bm) of the statutes is created to read:

101.123 (4) (bm) The person in charge of a state institution, jail or lockup facility, or his or her agent, shall post notice of the designation of a smoking area under par. (am) in or near the area designated. If an entire room is designated a smoking area, the person in charge or his or

her agent shall post notice of the designation conspicuously on or near all normally used entrances to the room. If an entire building in a prison, secured correctional facility, jail or lockup facility is designated a smoking area, the person in charge, or his or her agent, shall post notice of the designation on or near all normally used entrances to the building, but need not post notice of the designation on or near entrances to rooms within the building.

**SECTION 14.** 101.123 (8) (a) of the statutes is amended to read:

101.123 (8) (a) On and after April 1, 1985, Any person who wilfully violates sub. (2) (a) after being advised by an employe of the facility that smoking in the area is prohibited or any person in charge or his or her agent who wilfully fails to comply with sub. (5) shall forfeit not more than \$25 ~~\$10.~~

**SECTION 15.** 101.123 (8) (b) of the statutes is repealed.

**SECTION 16.** 101.123 (9) of the statutes is amended to read:

101.123 (9) INJUNCTION. ~~After July 1, 1985 Notwithstanding s. 165.60,~~ state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

**SECTION 17.** 165.60 of the statutes is amended to read:

**165.60 Law enforcement.** The department of justice is authorized to enforce ss. 101.123 (2), (5) and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03 and 945.04 and is invested with the powers conferred by law upon sheriffs and municipal police officers in the performance of those duties. This section does not deprive or relieve sheriffs, constables and other local police officers of the power and duty to enforce those sections, and those officers shall likewise enforce those sections.

**SECTION 17m.** 165.87 (2) (a) of the statutes is amended to read:

165.87 (2) (a) On or after July 1, 1988, whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a) or (5) or state laws or municipal or county ordinances involving non-moving traffic violations, there shall be imposed in addition a penalty assessment in an amount of 20% of the fine or forfeiture imposed. If multiple offenses are involved, the penalty assessment shall be based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.

**SECTION 18m.** 814.63 (1) and (2) of the statutes are amended to read:

814.63 (1) In all forfeiture actions in circuit court, except an action for a violation of s. 101.123 (2) (a) or (5), the clerk of court shall collect a fee of \$15 to be paid by

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the defendant when judgment is entered against the  
defendant.

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