

D-NOTE

Due Friday

2007 BILL

Regen

1 AN ACT *to repeal* 101.123 (1) (br), 101.123 (1) (c), 101.123 (1) (dg), 101.123 (1)
2 (j), 101.123 (2) (am), 101.123 (2) (b), 101.123 (3), 101.123 (4), 101.123 (5) (b),
3 101.123 (6) (title) and 101.123 (7) (title); *to renumber* 101.123 (1) (a), 101.123
4 (1) (dm) and 101.123 (2) (c); *to renumber and amend* 101.123 (1) (e), 101.123
5 (1) (h), 101.123 (2) (ar), 101.123 (2) (bm), 101.123 (2) (br), 101.123 (2) (bv),
6 101.123 (6) and 101.123 (7); *to consolidate, renumber and amend* 101.123
7 (5) (intro.) and (a); *to amend* 77.52 (2) (ag) 39. (intro.), 101.123 (title), 101.123
8 (1) (am), 101.123 (1) (b), 101.123 (1) (d), 101.123 (1) (f), 101.123 (1) (g), 101.123
9 (1) (i), 101.123 (2) (a) (intro.), 101.123 (2) (a) 10., 101.123 (8) (a), 101.123 (8) (b),
10 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a) and 814.63 (1)
11 (c); *to repeal and recreate* 101.123 (2) (title), 101.123 (2) (a) 1., 101.123 (2) (a)
12 4., 101.123 (2) (a) 5. and 101.123 (5) (title); and *to create* 101.123 (1) (ab),
13 101.123 (1) (ac), 101.123 (1) (bn), 101.123 (1) (dj), 101.123 (1) (im), 101.123 (2)
14 (a) 2m., 101.123 (2) (a) 2r., 101.123 (2) (a) 5m., 101.123 (2) (a) 5t., 101.123 (2)

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1 (a) 7m., 101.123 (2) (a) 9m., 101.123 (2) (d) (intro.), 101.123 (3m) and 101.123
 2 (4m) (title) of the statutes; **relating to:** prohibiting smoking and the use of
 3 chewing tobacco in places of employment, restaurants, taverns, and other
 4 indoor areas and prohibiting the use of chewing tobacco at certain outdoor
 5 locations *and providing a penalty*

Analysis by the Legislative Reference Bureau

Prohibition against smoking

Public place or
 X
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 Current law prohibits smoking in most enclosed indoor locations *areas* that are accessible to the public unless there has been a specific area that has been designated a smoking area. Under this bill, designated smoking areas may no longer be permitted in any place of employment with exceptions for private residences, designated ~~smoking~~ rooms in lodging establishments, and certain retirement homes. The bill defines "a place of employment" to be any indoor area that employees normally frequent during the course of employment such as an office, a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. Other locations where ~~smoking~~ areas may no longer be permitted under the bill, regardless of whether they meet the definition of "place of employment," include the following:

1. Mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Residence halls and dormitories of colleges and universities.
4. Day care centers ~~and at-home day cares.~~
5. Inpatient health care facilities, such as community-based residential facilities and nursing homes.
6. Prisons, jails, and juvenile correctional facilities.
7. Mental health institutions and hospitals where the primary purpose is the treatment of mental illness, alcoholism, or drug abuse.
8. Centers for the developmentally disabled.
9. Restaurants and taverns, as described below.
10. Retail establishments.
11. Public waiting rooms.
12. Governmental buildings.

Current law also provides exceptions from the prohibition against smoking for bowling centers, halls used for private functions, for rooms in which the main occupants are smokers, and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exceptions.

Current law allows smoking in any restaurant that has a seating capacity of 50 individuals or less, or that holds a liquor license, if the sale of alcohol beverages accounts for more than 50 percent of the restaurant's receipts. This bill prohibits

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smoking in any restaurant regardless of seating capacity or the number of liquor sale receipts.

Current law allows smoking in any tavern holding a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license, issued by a municipality (liquor license). This bill prohibits smoking in any tavern.

Prohibition against chewing tobacco

This bill expands the prohibitions against smoking that are in current law and in this bill to include a prohibition against the chewing of tobacco.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:
2 77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and
3 hospitals but not in residential facilities including personal residences, apartments,
4 long-term care facilities, as defined under s. 16.009 (1) (em), ~~state institutions, as~~
5 ~~defined under s. 101.123 (1) (i), prisons, mental health institutions, as defined in s.~~
6 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type
7 1 secured juvenile correctional facilities, as defined in s. 938.02 (19), or similar
8 facilities including, by way of illustration but not of limitation, all of the following:

9 **SECTION 2.** 101.123 (title) of the statutes is amended to read:
10 **101.123 (title) Smoking Using tobacco products prohibited.**

11 **SECTION 3.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).

12 **SECTION 4.** 101.123 (1) ^(ac) ~~(ab)~~ of the statutes is created to read: INS

13 101.123 (1) ^(ac) ~~(ab)~~ "Correctional facility" means any prison, juvenile correctional
14 facility, or any other correctional facility that is used to incarcerate persons convicted
15 of crimes or adjudged delinquent but does not include a facility that is the private

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1 residence of the incarcerated person at which no one is employed to insure the
2 person's incarceration.

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

4 101.123 (1) (ac) "At-home day care site" means a site operated for profit by any
5 person in a private residence to provide care and supervision for one or more children
6 who are under 7 years of age for less than 24 hours a day.

7 **SECTION 6.** 101.123 (1) (am) of the statutes is amended to read:

8 101.123 (1) (am) "Hospital" has the meaning given in s. 50.33 (2), except that
9 "hospital" does not include a nursing home licensed under s. 50.03 that is operated
10 in connection with a hospital ~~or a retirement home that is operated in connection~~
11 ~~with a hospital.~~

12 **SECTION 7.** 101.123 (1) (b) of the statutes is amended to read:

13 101.123 (1) (b) "Inpatient health care facility" means a hospital, a county home
14 established under s. 49.70, a county infirmary established under s. 49.72 ~~or~~, a
15 community-based residential facility or a nursing home licensed under s. 50.03.

16 **SECTION 8.** 101.123 (1) (bn) of the statutes is created to read:

17 101.123 (1) (bn) "Lodging establishment" means any of the following:

- 18 1. A bed and breakfast establishment, as defined in s. 254.61 (1).
- 19 2. A hotel, as defined in s. 254.61 (3).
- 20 3. A tourist rooming house, as defined in s. 254.61 (6).

21 **SECTION 9.** 101.123 (1) (br) of the statutes is repealed.

22 **SECTION 10.** 101.123 (1) (c) of the statutes is repealed.

23 **SECTION 11.** 101.123 (1) (d) of the statutes is amended to read:

24 101.123 (1) (d) "Person in charge" means ~~the person who ultimately controls,~~
25 ~~governs or directs the activities aboard a public conveyance or within a place where~~

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✓ or
a business operator or
other person
at a
location

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1 ~~smoking using tobacco products is prohibited or regulated under this section,~~ ↓
 2 ~~regardless of the person's status as owner or lessee.~~

3 **SECTION 12.** 101.123 (1) (dg) of the statutes is repealed.

4 **SECTION 13.** 101.123 (1) (dj) of the statutes is created to read:

5 101.123 (1) (dj) ^{Not with standing S. 101.01 (11),} "Place of employment" means any indoor area that employees
 6 normally frequent during the course of employment, including an office, a work area,
 7 an employee lounge, a restroom, a conference room, a meeting room, a classroom, a
 8 hallway, a stairway, a vehicle, or a cafeteria that is provided by the employer. "Place

9 of employment" does not include any of the following:
 10 1. A private residence that is not an at-home day care site.
 11 2. A room used by a person in a retirement home as his or her residence.
 12 3. A hotel room in which using tobacco products is permitted under sub. (3m).

13 **SECTION 14.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m)

14 **SECTION 15.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and
 15 amended to read:

16 101.123 (1) (cm) "~~Public conveyance~~" "Passenger vehicle" means a mass transit
 17 vehicles vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01
 18 (31), and a school buses bus as defined by in s. 340.01 (56).

19 **SECTION 16.** 101.123 (1) (f) of the statutes is amended to read:

20 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)
 21 ~~with a seating capacity of more than 50 persons.~~

22 **SECTION 17.** 101.123 (1) (g) of the statutes is amended to read:

23 101.123 (1) (g) "Retail establishment" means any store or shop in which retail
 24 sales is the principal business conducted, ~~except a tavern operating under a "Class~~

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1 ~~B" intoxicating liquor license or Class "B" fermented malt beverages license, and~~
2 ~~except bowling centers.~~

3 **SECTION 18.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (k) and
4 amended to read:

5 101.123 (1) (k) ~~"Smoking"~~ "Using tobacco products" means carrying a lighted
6 cigar, cigarette, pipe or any other lighted smoking equipment or using chewing
7 tobacco.

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8 **SECTION 19.** 101.123 (1) (i) of the statutes is amended to read:

9 101.123 (1) (i) "State institution" means ~~a prison,~~ a mental health institute as
10 defined in s. 51.01 (12) or a center for the developmentally disabled as defined in s.
11 51.01 (3).

↓ other than a restaurant, that holds
a

12 **SECTION 20.** 101.123 (1) (im) of the statutes is created to read:

13 101.123 (1) (im) "Tavern" means an establishment ~~operating under~~ a "Class B"
14 intoxicating liquor license or Class "B" fermented malt beverages license.

15 **SECTION 21.** 101.123 (1) (j) of the statutes is repealed.

16 **SECTION 22.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

17 101.123 (2) (title) PROHIBITION AGAINST USING TOBACCO PRODUCTS IN INDOOR

18 PLACES
AREAS.

PLAIN

19 **SECTION 23.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

20 101.123 (2) (a) (intro.) Except as provided in sub. (3), no ~~No~~ person may smoke
21 engage in using tobacco products in any of the following enclosed indoor places:

22 **SECTION 24.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

23 101.123 (2) (a) 1. Passenger vehicles.

24 **SECTION 25.** 101.123 (2) (a) 2m. of the statutes is created to read:

25 101.123 (2) (a) 2m. Residence halls or dormitories of universities or colleges.

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1 **SECTION 26.** 101.123 (2) (a) 2r. of the statutes is created to read:

2 101.123 (2) (a) 2r. Day care centers ~~on at-home day care sites.~~

3 **SECTION 27.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

4 101.123 (2) (a) 4. Theaters.

5 **SECTION 28.** 101.123 (2) (a) 5. of the statutes is repealed ~~and recreated to read:~~

6 ~~101.123 (2) (a) 5. Places of employment.~~

7 **SECTION 29.** 101.123 (2) (a) 5m. of the statutes is created to read:

8 101.123 (2) (a) 5m. Lockup facilities, jails, or correctional facilities.

9 **SECTION 30.** 101.123 (2) (a) 5t. of the statutes is created to read:

10 101.123 (2) (a) 5t. State institutions.

11 **SECTION 31.** 101.123 (2) (a) 7m. of the statutes is created to read:

12 101.123 (2) (a) 7m. Taverns.

13 **SECTION 32.** 101.123 (2) (a) ~~9m.~~^{8g} of the statutes is created to read:

14 101.123 (2) (a) ~~9m.~~^{8g} Lodging establishments except as provided in sub. (3m).

15 **SECTION 33.** 101.123 (2) (a) 10. of the statutes ~~is~~^{renumbered} amended to read:

16 101.123 (2) (a) ~~10.~~^{8r.} Any enclosed, indoor area of a state, county, city, village, or
17 town building.

18 **SECTION 34.** 101.123 (2) (am) of the statutes is repealed.

19 **SECTION 35.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
20 amended to read:

21 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
22 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

23 **SECTION 36.** 101.123 (2) (b) of the statutes is repealed.

24 **SECTION 37.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
25 and amended to read:

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Component

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renumbered 101.123 (2)(a)
8r.

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1 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
 2 ~~Outside on the premises, indoors or outdoors, of a day care center or of an at-home~~
 3 ~~day care site~~ when children who are receiving day care services are present.

4 **SECTION 38.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
 5 amended to read:

6 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
 7 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ On the
 8 grounds of a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

9 **SECTION 39.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
 10 amended to read:

11 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
 12 ~~in~~ A location that is 25 feet or less from a residence hall or dormitory that is owned
 13 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
 14 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

15 **SECTION 40.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

16 **SECTION 41.** 101.123 (2) (d) (intro.) of the statutes is created to read:

17 101.123 (2) (d) (intro.) No person may engage in using tobacco products at any
 18 of the following outdoor locations:

19 ~~**SECTION 42.** 101.123 (3) of the statutes is repealed.~~

20 **SECTION 43.** 101.123 (3m) of the statutes is created to read:

21 101.123 (3m) **LODGING.** A lodging establishment may not designate more than
 22 25 percent of its rooms as rooms in which using tobacco products is permitted.

23 **SECTION 44.** 101.123 (4) of the statutes is repealed.

24 **SECTION 45.** 101.123 (4m) (title) of the statutes is created to read:

25 101.123 (4m) (title) **LOCAL REGULATION.**

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1 **SECTION 46.** 101.123 (5) (title) of the statutes is repealed and recreated to read:

2 101.123 (5) (title) SIGNS.

3 **SECTION 47.** 101.123 (5) (intro.) and (a) of the statutes are consolidated,
4 renumbered 101.123 (5) (am) and amended to read:

using tobacco products

5 101.123 (5) (am) The person in charge of a place in which smoking is prohibited
6 or his or her agent shall: ~~(a) Post post signs identifying designated smoking areas;~~
7 and outlining the prohibitions against using tobacco products, as specified in this
8 section.

9 **SECTION 48.** 101.123 (5) (b) of the statutes is repealed.

10 **SECTION 49.** 101.123 (6) (title) of the statutes is repealed.

11 **SECTION 50.** 101.123 (6) of the statutes is renumbered 101.123 (5) (bn) and
12 amended to read:

13 101.123 (5) (bn) The department shall, by rule, specify uniform dimensions and
14 other characteristics of the signs used to designate smoking areas required under
15 par. (am). These rules may not require the use of signs that are more expensive than
16 is necessary to accomplish their purpose.

17 **SECTION 51.** 101.123 (7) (title) of the statutes is repealed.

18 **SECTION 52.** 101.123 (7) of the statutes is renumbered 101.123 (5) (c) and
19 amended to read:

20 101.123 (5) (c) The department shall arrange with the department of
21 administration to have the signs that are required under par. (am) prepared and
22 made available to state agencies for use in state facilities.

23 **SECTION 53.** 101.123 (8) (a) of the statutes is amended to read:

24 101.123 (8) (a) Any Except as provided in par. (b), any person who willfully
25 violates sub. (2) (a), (am) 1., (bm), (br), or (bv) after being advised by an employee of

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1 the facility that ~~smoking using tobacco products~~ in the area is prohibited or any
2 person in charge or his or her agent who willfully fails to comply with sub. (5) (am)
3 shall forfeit not more than \$10.

4 **SECTION 54.** 101.123 (8) (b) of the statutes is amended to read:

5 101.123 ~~(8)~~ (b) Any person who willfully violates sub. (2) ~~(a)~~ (a) 10. or (d) 1.
6 by using tobacco products in the state capitol or in the vicinity of the state capitol
7 after being advised by an employee of the facility state capitol that ~~smoking in the~~
8 area using tobacco products is prohibited shall forfeit not more than \$50.

9 **SECTION 55.** 165.60 of the statutes is amended to read:

10 **165.60 Law enforcement.** The department of justice is authorized to enforce
11 ss. 101.123 (2), (5) (am), and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
12 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
13 upon sheriffs and municipal police officers in the performance of those duties. This
14 section does not deprive or relieve sheriffs, constables, and other local police officers
15 of the power and duty to enforce those sections, and those officers shall likewise
16 enforce those sections.

17 **SECTION 56.** 165.755 (1) (b) of the statutes is amended to read:

18 165.755 (1) (b) A court may not impose the crime laboratories and drug law
19 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar),~~
20 ~~(bm), (br), or (bv) or (5) (b),~~ for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,
21 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood
22 alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,
23 or for a violation of a state law or municipal or county ordinance involving a
24 nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
25 violation under s. 347.48 (2m).

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1 **SECTION 57.** 302.46 (1) (a) of the statutes is amended to read:

2 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
3 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
4 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or (5) (am), or for a first violation of s. 23.33 (4c)
5 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
6 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
7 the time of the violation, or for a violation of state laws or municipal or county
8 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
9 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
10 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
11 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
12 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
13 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
14 surcharge in proportion to the suspension.

15 **SECTION 58.** 460.01 (5) of the statutes is amended to read:

16 460.01 (5) "Physician's office" ~~has the meaning given in s. 101.123 (1) (dg)~~
17 means a place, other than a residence or a hospital, that is used primarily to provide
18 medical care and treatment.

19 **SECTION 59.** 757.05 (1) (a) of the statutes is amended to read:

20 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
21 state law or for a violation of a municipal or county ordinance except for a violation
22 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or (5) (am), or for a first violation
23 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
24 who committed the violation had a blood alcohol concentration of 0.08 or more but
25 less than 0.1 at the time of the violation, or for a violation of state laws or municipal

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1 or county ordinances involving nonmoving traffic violations, violations under s.
2 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
3 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
4 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
5 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
6 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
7 in proportion to the suspension.

8 **SECTION 60.** 814.63 (1) (c) of the statutes is amended to read:

9 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
10 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (am)~~, for a first violation of s. 23.33
11 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
12 committed the violation had a blood alcohol concentration of 0.08 or more but less
13 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
14 safety belt use violation under s. 347.48 (2m).

15 **SECTION 61. Effective date.**

16 (1) This act takes effect on the first day of the 7th month beginning after
17 publication.

18

(END)

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0077/5inspen
MGG:.....

*This insert
crashed - it will
need to be
put into
the draft "manually".*

*INSERT
CA*

1 **Insert ANL**

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

2 **Insert 3-11**

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

4 101.123 (1) (ab) "Business operator" means the owner or lessee of a business,
5 as defined in s. 84.072 (1) (a).

6 **Insert 4-6**

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

8 101.123 (1) (ad) "At-home day care site" means a site licensed by the state
9 operated for profit by any person in a private residence to provide care and
10 supervision for 4 to 8 children who are under the age of 7 for less than 24 hours per
11 day. **check with GMM**

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

13 101.123 (1) (aj) Notwithstanding s. 101.01 (5), "employment" means any trade,
14 occupation, or process of manufacture, or any method of carrying on such trade,
15 occupation, or process of manufacture in which any person may be engaged.

History: 1971 c. 185 ss. 1, 5; 1971 c. 228 ss. 15, 44; 1975 c. 413, 421; 1977 c. 29; 1983 a. 189 ss. 142, 143, 329 (4); 1985 a. 135 s. 83 (3); 1987 a. 161; 1993 a. 27, 184, 327; 1995 a. 27 ss. 3611 to 3629, 9116 (5); 1997 a. 237; 1999 a. 9; 2001 a. 16.

16 **Insert 6-7**

17 **SECTION 4.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (k) ^(intro.) and
18 amended to read: ^(intro.)

19 101.123 (1) (k) "Smoking" "Using tobacco products" means carrying any of the
20 following:

1 1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted
2 smoking equipment.

3 **SECTION 5.** 101.123 (1) (k) 2. of the statutes is created to read:

4 101.123 (1) (k) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,
5 pipe, or other lighted smoking equipment.

6 **SECTION 6.** 101.123 (1) (k) 3. of the statutes is created to read:

7 101.123 (1) (k) 3. Using chewing tobacco.

8 **Insert 7-10**

9 **SECTION 7.** 101.123 (2) (a) 6. of the statutes is repealed and recreated to read:

10 101.123 (2) (a) 6. Elevators.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268; 2005 a. 344.

11 **Insert 7-12**

12 **SECTION 8.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

13 101.123 (2) (a) 9. Any indoor place, other than the places listed in subd. 1. to

14 that is a place of employment or that is open to the public or to which the public
15 is invited or has lawful access.

16 **Insert 8-22**

17 **SECTION 9.** 101.123 (2m) of the statutes is created to read:

18 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
19 may allow any person to engage in using tobacco products in violation of sub. (2) at
20 a location that is under the control or direction of the person in charge.

21 (b) A person in charge may not provide matches, ashtrays, or other smoking
22 equipment at the location where using tobacco products is prohibited.

1 (c) A person in charge shall make reasonable efforts to prohibit persons from
2 using tobacco products ^{at a} location where using tobacco products is prohibited by doing
3 all of the following:

4 1. Posting signs or providing other appropriate notification of the prohibition.

5 3. ~~2~~ Asking a person who is using tobacco products to refrain from using tobacco
6 products and ^{if} the person refuses to do so, asking the person to leave the location.

7 ~~trespassing language:~~

8 2. ~~1A~~ Refusing to serve a person, if the person is using tobacco products in a
9 restaurant or tavern.

10 (d) A person in charge may take measures in addition to those listed in par. (d)
11 to insure compliance with this section. ^{and present}

12 SECTION 10. 101.123 (3) (intro.) of the statutes is amended to read: ^{Insert B}

13 101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of smoking prohibition against~~
14 ~~using tobacco products in sub. (2) (a) does not apply to the following places:~~

15 ~~SECTION 11. RP, 101.123 (3) (a) to (g)~~
History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268; 2005 a. 344.

16 SECTION 11. 101.123 (3) (h) of the statutes is created to read:

17 101.123 (3) (h) ~~is~~ A private residence.

18 SECTION 12. 101.123 (3) (i) of the statutes is created to read:

19 101.123 (3) (i) A room used by a person in a retirement home as his or her
20 residence.

21 Section ~~#~~ ^B 101.123 (3) (j) of the statutes is created to read:

22 101.123 (3) (j) A room in a retirement home in which ² two or more persons reside

23 if every person that lives in that room uses tobacco products and each of those persons

24 has made a written request to the person in charge ^{of} the retirement home to be

placed in a room ^{where} using tobacco products is allowed.

change
action
create

34
B

SECTION 13. 101.123 (3) (k) of the statutes is created to read:

101.123 (3) (k) A room in a lodging establishment that has been designated as a room where using tobacco products is allowed, as provided under sub. (3m).

SECTION 14. 101.123 (3m) of the statutes is created to read:

101.123 (3m) LODGING. The owner of a lodging establishment may designate not more than 25 percent of the rooms in the lodging establishment as rooms in which using tobacco products is permitted.

Insert 10-8

SECTION 15. 101.123 (8) of the statutes is renumbered 101.123 (8) (a) and amended to read:

101.123 (8) (a) Any person who willfully violates sub. (2) (a), (am) 1., (bm), (br), or (bv) after being advised by an employee of the facility that smoking in the area is prohibited or any person in charge or his or her agent who willfully fails to comply with sub. (5) shall forfeit be fined not less than \$10 and not more than \$10 \$100 per offense.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268; 2005 a. 344.

SECTION 16. 101.123 (8) (b) of the statutes is repealed.

SECTION 17. 101.123 (8) (d) of the statutes is created to read:

101.123 (8) (d) A business operator ^{who violates} ~~means~~ of sub. (2m) ^{occurs} shall be fined as follows:

1. Not less than \$50 nor ~~more~~ more than \$100 for the first offense.
2. Not less than \$100 nor more than \$200 for the ^{2nd} ~~second~~ offense.
3. Not less than \$200 nor ~~more~~ more than \$500 for the ^{3rd} ~~third~~ or any subsequent offense.

SECTION 18. 101.123 (8) (e) of the statutes is created to read:

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0077/5ins
MGG:.....

Enforcement

Insert A

This bill requires persons in charge of places where the use of tobacco products is prohibited to not enforce the prohibitions by taking certain steps to insurance compliance, such as asking the person to leave or refusing to serve the person if the place is a restaurant or tavern. This bill imposes fines on persons in charge who are business operators and who fail to take these measures. The bill also imposes fines on persons using tobacco products in violation of the law.

ensure

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2
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~~Insert 3.11~~ *Insert B*

(d) If a person refuses to leave a location after being requested to do so as provided in par. (c) 3., the person in charge shall immediately notify an appropriate law enforcement agency of the violation.

(e) A person in charge may take measures in addition to those listed in par. (b) and (c) to prevent persons from being exposed to others using tobacco products or to further ensure compliance with this section.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0077/5dn

MGG:...

Date

kgf
↓
GMM

Sarah Briganti:

1. As I reviewed the redraft instructions, I realized that the definition of "public place" that you requested comes from Georgia legislation. It is very difficult just to superimpose another state's legislation on existing Wisconsin legislation. I have included the concept of a public place in this redraft. See the repeal and recreation of s. 101.123 (2) (a) 9. I did not include any of the places listed in the Georgia definition because none of them seemed to be a place that would not either be a "place of employment" or a "place that is open to the public or to which the public is invited or has lawful access." Frankly it seems to me that every item listed under s. 101.123 (2) (a) under current law and in this draft is either a public place or a place of employment, or both, with the exception of passenger vehicles (because they are not indoor places) and some elevators. However, I have left the list because I am sure that interested parties would not want the entire list eliminated.

If you believe that any of these places listed in the definition of "public place" in the Georgia legislation are not indoor public places or indoor places of employment and that they should, therefore, be specifically listed in the draft as places where the use of tobacco products is prohibited, please let me know and we can discuss a different approach to this issue.

2. Under current law "indoor" and "enclosed" are not defined but may mean different things. I think an area can be "enclosed" without being "indoor." *eg.*, a bus shelter, but I do not think an area can be "indoor" without being "enclosed." The issue of whether a place is "indoor" or "enclosed" presents certain problems. For example, do you wish to include such places as the portion of parking ramps that are above ground, portions that are below ground, bus shelters, stadiums with retractable roofs, or "shopping malls" that have open areas?

We can try to define "enclosed" or "indoor" or both or include or exclude these items as "public places" or "places of employment." However, because I think that it is extremely difficult to either describe or list every place as either covered or not covered by a tobacco prohibition, you may wish to direct that the Department of Commerce promulgate rules on this issue. Otherwise, it seems likely that a place that was not contemplated will unintentionally be either covered or not covered by the prohibition.

X 3. Please note that I included a definition of "employment" in this redraft because I discovered that "employment" and "place of employment" were already defined for purposes of all of ch. 101. See s. 101.01 (5) and (11). Please review these definitions in current law as well as s. 101.123 (1) (aj) and (dj) in this draft.

4. I left in the provision that allows a certain percentage of hotel and other lodging rooms to be designated as allowing tobacco products. OK?

5. The added language concerning exhaling and inhaling in the definition of "using tobacco products" seemed redundant to me. I have included it but it should be taken out unless there is a scenario where a person can inhale and exhale from a lighted cigarette or other smoking equipment and without carrying it.

6. I repealed s. 101.123 (8) (c) because I really don't think tort liability is at issue under this statute. If any of the interested parties disagree, please let me know.

X 7. I have drafted it so only persons in charge of ^{es} businesses are subject to the penalties. Persons in charge of places that are not businesses would not be subject to these penalties. I also have exempted them from the default forfeiture under s. 939.61.

CPS:
Switch
around

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215



D Note continued



NOTE

~~Senator Basser:~~

This redraft does not include a separate definition

of "at-home day care site" because your proposed definition,

(i.e.) "a site licensed by the state and operated for profit by any person in a private residence to provide care and supervision for 4 to 8 children under the age of 7 for less than

24 hours a day," is already included in the broader definition

of "day care center" under current law. Specifically, "day care center," as currently defined, includes a facility operated by

and a state-licensed provider that provides care and supervision for 4

or more children under 7 years of age for less than 24 hours

a day. See ss. 48.65 (1) and 49.136 (1) (b) and (d), Stats.

~~Accordingly, the~~ As such, the current definition already includes

a day care center operated in a private residence for 4 to 8

children. Accordingly, the proposed definition is duplicative and

unnecessary.

GMM