

## 2009 DRAFTING REQUEST

### Bill

Received: **01/20/2009**

Received By: **mglass**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 63420**

By/Representing: **Willing**

This file may be shown to any legislator: **NO**

Drafter: **mglass**

May Contact: **Risser**

Addl. Drafters:

Subject: **Buildings/Safety - clean ind air**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

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### Pre Topic:

DOA:.....Willing, BB0505 -

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### Topic:

Restrictions on smoking

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### Instructions:

Same as Risser's 09-0086, Risser's office gave permission, may share DOA's drafts with Risser

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/P1	mglass 01/20/2009	wjackson 01/21/2009	rschluet 01/21/2009	_____	lparisi 01/21/2009		S&L
/1	mglass 01/30/2009	kfollett 01/30/2009	jfrantze 01/30/2009	_____	cduerst 01/31/2009		

FE Sent For:

<END>

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Pre Topic: willing

DOA:.....Gauger -

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/?							S&L
/P1	mglass 01/20/2009	wjackson 01/21/2009	rschluet 01/21/2009		lparisi 01/21/2009		

FE Sent For:

1/1/30      1/30      1/30      1/30

<END>

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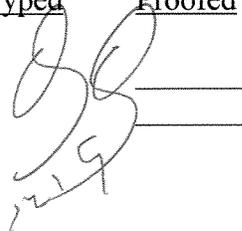
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mglass

pl wly 1/21

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FE Sent For:

<END>

S-Note

DOA:.....Gauger - Restrictions on smoking

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Today

Do Not Gen

the budget

1

AN ACT ...; relating to: ???

*Analysis by the Legislative Reference Bureau*

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

2

(END)



01/16/11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

do not generate

1 **AN ACT to repeal** 101.123 (1) (am), 101.123 (1) (bg), 101.123 (1) (bm), 101.123 (1)  
2 (br), 101.123 (1) (c), 101.123 (1) (dg), 101.123 (1) (gm), 101.123 (2) (a) 1., 101.123  
3 (2) (a) 5., 101.123 (2) (a) 6., 101.123 (2) (am), 101.123 (2) (b), 101.123 (3) (a) to  
4 (gr), 101.123 (4), 101.123 (5), 101.123 (8) (b) and 101.123 (8) (c); **to renumber**  
5 101.123 (1) (a), 101.123 (1) (dm) and 101.123 (2) (c); **to renumber and amend**  
6 101.123 (1) (h), 101.123 (2) (a) 10., 101.123 (2) (ar), 101.123 (2) (bm), 101.123  
7 (2) (br) and 101.123 (2) (bv); **to amend** 77.52 (2) (ag) 39. (intro.), 101.123 (1) (ar),  
8 101.123 (1) (b), 101.123 (1) (d), 101.123 (1) (e), 101.123 (1) (f), 101.123 (1) (g),  
9 101.123 (1) (i), 101.123 (2) (a) (intro.), 101.123 (3) (intro.), 101.123 (6), 101.123  
10 (7), 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a) and 814.63  
11 (1) (c); **to repeal and recreate** 101.123 (2) (title), 101.123 (2) (a) 4., 101.123 (2)  
12 (a) 9. and 101.123 (8) (a); and **to create** 101.123 (1) (ab), 101.123 (1) (ac),  
13 101.123 (1) (aj), 101.123 (1) (ak), 101.123 (1) (bn), 101.123 (1) (dj), 101.123 (1)  
14 (dn), 101.123 (1) (eg), 101.123 (1) (h) 2., 101.123 (1) (hm), 101.123 (1) (id),  
15 101.123 (1) (im), 101.123 (1) (ip), 101.123 (2) (a) 1g., 101.123 (2) (a) 1m., 101.123

1 (2) (a) 1r., 101.123 (2) (a) 5m., 101.123 (2) (a) 5t., 101.123 (2) (a) 7m., 101.123  
 2 (2) (a) 7r., 101.123 (2) (a) 8d., 101.123 (2) (a) 8g., 101.123 (2) (d) (intro.), 101.123  
 3 (2) (d) 5., 101.123 (2) (dm), 101.123 (2) (e), 101.123 (2) (f), 101.123 (2m), 101.123  
 4 (3) (h), 101.123 (3) (i), 101.123 (3) (j), 101.123 (3) (k), 101.123 (3) (L), 101.123  
 5 (3m), 101.123 (4m) (title), 101.123 (8) (d) and 101.123 (8) (e) of the statutes;  
 6 **relating to:** prohibiting smoking in indoor areas, in sports arenas, in public  
 7 conveyances, and at certain outdoor locations and providing a penalty.

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*Analysis by the Legislative Reference Bureau*

*Prohibition against smoking indoors*

HEALTH AND HUMAN SERVICES  
 subhead → HEALTH

Current law prohibits smoking in mass transit vehicles and specific enclosed, indoor locations, including the following:

1. Inpatient health care facilities, such as community based-residential facilities and nursing homes.
2. Prisons and jails.
3. Retail establishments.
4. Restaurants.
5. Governmental buildings.

Except for hospitals, school buses, day care centers where children are present, and a few other places, a smoking area may be designated by the person who is in charge of that location. For example, the person in charge of a business is the owner of the business and the person in charge of a prison is the state secretary of corrections.

Under the bill, smoking areas at indoor locations may no longer be designated resulting in a complete ban on indoor smoking at those locations with exceptions for private residences, a limited number of designated rooms in lodging establishments, and certain residence rooms in assisted living facilities. In addition to the specific indoor locations listed under current law, the bill prohibits smoking in any public place or place of employment. The bill defines “a place of employment” to be any indoor place 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. The bill also defines a “public place” to be a place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited. In addition, the bill defines an “enclosed place” for purposes of determining at what locations smoking is prohibited. An enclosed place must have a roof and at least two walls.

Current law provides exemptions from the prohibition against smoking for bowling centers, taverns, halls used for private functions, rooms in which the main

occupants are smokers, and areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exemptions.

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 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. This bill prohibits smoking in any tavern. The bill also specifically prohibits smoking in private clubs.

### *Outdoor smoking*

Under current law, smoking is prohibited outside in limited instances. These include within a certain distance of the state capitol building, dormitories that are owned or operated by the University of Wisconsin, and day care centers where children are present. This bill makes no changes to these specific prohibitions, and adds a general prohibition against smoking outside within less than a reasonable distance from any entrance into a building, an openable window, or a ventilation opening that draws air inside.

### *Local ordinances and enforcement*

Current law does not limit the authority of any county, city, village, or town to enact smoking ordinances that protect the public's health and comfort. This bill makes no change in this provision.

This bill requires that persons in charge of places where smoking is prohibited enforce the prohibitions by taking certain steps to ensure 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 forfeitures on persons in charge who fail to take these measures.

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

***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 institutes, as defined in s.

⌘ The bill also specifically prohibits smoking in sports arenas and bus shelters, regardless of whether they meet the definition of "enclosed place."

1 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type  
2 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities  
3 including, by way of illustration but not of limitation, all of the following:

4 **SECTION 2.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ae).

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

6 101.123 (1) (ab) “Assisted living facility” means a community-based  
7 residential facility, as defined in s. 50.01 (1g), a residential care apartment complex,  
8 as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

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

10 101.123 (1) (ac) “Correctional facility” means any of the following:

11 1. A state prison, as defined or named in s. 302.01, except a correctional  
12 institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner’s  
13 place of residence and no one is employed there to ensure the prisoner’s  
14 incarceration.

15 2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile  
16 correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional  
17 facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility  
18 is a private residence in which the juvenile is placed and no one is employed there  
19 to ensure that the juvenile remains in custody.

20 3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work  
21 camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under  
22 s. 302.30.

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

1           101.123 (1) (aj) Notwithstanding s. 101.01 (5), “employment” means any trade,  
2           occupation, or process of manufacture or any method of carrying on such trade,  
3           occupation, or process of manufacture in which any person may be engaged.

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

5           101.123 (1) (ak) “Enclosed place” means a structure or area that has all of the  
6           following:

- 7           1. A roof or overhead covering.
- 8           2. Two or more substantial walls, regardless of whether the walls are removed  
9           and replaced on a temporary basis.

10          **SECTION 7.** 101.123 (1) (am) of the statutes is repealed.

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

12          101.123 (1) (ar) “Immediate vicinity of the state capitol” means the area  
13          directly adjacent to the state capitol building, as determined by rule of the  
14          department of administration. “Immediate vicinity of the state capitol” does not  
15          include any location that is more than ~~one fathom~~ six feet from the state capitol  
16          building.

17          **SECTION 9.** 101.123 (1) (b) of the statutes is amended to read:

18          101.123 (1) (b) “Inpatient health care facility” means a hospital, as defined in  
19          s. 50.33 (2), a county home established under s. 49.70, a county infirmary established  
20          under s. 49.72 or a community-based residential facility or, a nursing home licensed  
21          under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a  
22          Wisconsin veteran’s home under s. 45.50, or a treatment facility.

23          **SECTION 10.** 101.123 (1) (bg) of the statutes is repealed.

24          **SECTION 11.** 101.123 (1) (bm) of the statutes is repealed.

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

1           101.123 (1) (bn) “Lodging establishment” means any of the following:

2           1. A bed and breakfast establishment, as defined in s. 254.61 (1).

3           2. A hotel, as defined in s. 254.61 (3).

4           3. A tourist rooming house, as defined in s. 254.61 (6).

5           **SECTION 13.** 101.123 (1) (br) of the statutes is repealed.

6           **SECTION 14.** 101.123 (1) (c) of the statutes is repealed.

7           **SECTION 15.** 101.123 (1) (d) of the statutes is amended to read:

8           101.123 (1) (d) “Person in charge” means the person, or his or her agent, who  
9 ultimately controls, governs or directs the activities aboard a public conveyance or  
10 ~~within a place at a location~~ where smoking is prohibited or regulated under this  
11 section, ~~regardless of the person’s status as owner or lessee.~~

12           **SECTION 16.** 101.123 (1) (dg) of the statutes is repealed.

13           **SECTION 17.** 101.123 (1) (dj) of the statutes is created to read:

14           101.123 (1) (dj) Notwithstanding s. 101.01 (11), “place of employment” means  
15 any enclosed place that employees normally frequent during the course of  
16 employment, including an office, a work area, an elevator, an employee lounge, a  
17 restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a  
18 lobby, a common area, a vehicle, or an employee cafeteria.

19           **SECTION 18.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m).

20           **SECTION 19.** 101.123 (1) (dn) of the statutes is created to read:

21           101.123 (1) (dn) “Private club” means a facility used by an organization that  
22 limits its membership and is organized for a recreational, fraternal, social, patriotic,  
23 political, benevolent, or athletic purpose.

24           **SECTION 20.** 101.123 (1) (e) of the statutes is amended to read:

1           101.123 (1) (e) “Public conveyance” means a mass transit vehicles vehicle as  
2 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),  
3 or any other device by which persons are transported, for hire, on a highway or by  
4 rail, water, air, or guidewire within this state, but does not include such a device  
5 while providing transportation in interstate commerce.

6           **SECTION 21.** 101.123 (1) (eg) of the statutes is created to read:

7           101.123 (1) (eg) “Public place” means any enclosed place that is open to the  
8 public, regardless of whether a fee is charged or a place to which the public has lawful  
9 access or may be invited.

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

11          101.123 (1) (f) “Restaurant” means an establishment as defined in s. 254.61 (5)  
12 ~~with a seating capacity of more than 50 persons.~~

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

14          101.123 (1) (g) “Retail establishment” means any store or shop in which retail  
15 sales is the principal business conducted, ~~except a tavern operating under a “Class~~  
16 ~~B” intoxicating liquor license or Class “B” fermented malt beverages license, and~~  
17 ~~except bowling centers.~~

18          **SECTION 24.** 101.123 (1) (gm) of the statutes is repealed.

19          **SECTION 25.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)  
20 and amended to read:

21          101.123 (1) (h) (intro.) “Smoking” means carrying any of the following:

22          1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted  
23 smoking equipment containing tobacco products.

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

1           101.123 (1) (h) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,  
2 pipe, or other lighted smoking equipment containing tobacco products.

3           **SECTION 27.** 101.123 (1) (hm) of the statutes is created to read:

4           101.123 (1) (hm) “Sports arena” means any stadium, pavilion, gymnasium,  
5 swimming pool, skating rink, bowling center, or other building where spectator  
6 sporting events are held.

7           **SECTION 28.** 101.123 (1) (i) of the statutes is amended to read:

8           101.123 (1) (i) “State institution” means ~~a prison~~, a mental health institute,  
9 as defined in s. 51.01 (12) ~~or~~, a center for the developmentally disabled, as defined  
10 in s. 51.01 (3), or a secure mental health facility at which persons are committed  
11 under s. 980.06.

12           **SECTION 29.** 101.123 (1) (id) of the statutes is created to read:

13           101.123 (1) (id) “Substantial wall” means a wall where at least 25 percent of  
14 the surface area of the wall is not part of an opening that may be used to allow air  
15 in from the outside.

16           **SECTION 30.** 101.123 (1) (im) of the statutes is created to read:

17           101.123 (1) (im) “Tavern” means an establishment, other than a restaurant,  
18 that holds a “Class B” intoxicating liquor license or Class “B” fermented malt  
19 beverages license.

20           **SECTION 31.** 101.123 (1) (ip) of the statutes is created to read:

21           101.123 (1) (ip) “Treatment facility” means a publicly or private operated  
22 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,  
23 or developmentally disabled persons.

24           **SECTION 32.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

25           101.123 (2) (title) PROHIBITION AGAINST SMOKING.

1           **SECTION 33.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

2           101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in  
3           any of the following enclosed places:

4           **SECTION 34.** 101.123 (2) (a) 1. of the statutes is repealed.

5           **SECTION 35.** 101.123 (2) (a) 1g. of the statutes is created to read:

6           101.123 (2) (a) 1g. The state capitol.

7           **SECTION 36.** 101.123 (2) (a) 1m. of the statutes is created to read:

8           101.123 (2) (a) 1m. Residence halls or dormitories owned or operated by a  
9           college or university.

10          **SECTION 37.** 101.123 (2) (a) 1r. of the statutes is created to read:

11          101.123 (2) (a) 1r. Day care centers.

12          **SECTION 38.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

13          101.123 (2) (a) 4. Theaters except as provided in sub. (3) (L).

14          **SECTION 39.** 101.123 (2) (a) 5. of the statutes is repealed.

15          **SECTION 40.** 101.123 (2) (a) 5m. of the statutes is created to read:

16          101.123 (2) (a) 5m. Correctional facilities.

17          **SECTION 41.** 101.123 (2) (a) 5t. of the statutes is created to read:

18          101.123 (2) (a) 5t. State institutions.

19          **SECTION 42.** 101.123 (2) (a) 6. of the statutes is repealed.

20          **SECTION 43.** 101.123 (2) (a) 7m. of the statutes is created to read:

21          101.123 (2) (a) 7m. Taverns.

22          **SECTION 44.** 101.123 (2) (a) 7r. of the statutes is created to read:

23          101.123 (2) (a) 7r. Private clubs.

24          **SECTION 45.** 101.123 (2) (a) 8d. of the statutes is created to read:

25          101.123 (2) (a) 8d. Common areas of multiple-unit residential properties.

1           **SECTION 46.** 101.123 (2) (a) 8g. of the statutes is created to read:

2           101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3) (k).

3           **SECTION 47.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

4           101.123 (2) (a) 9. All enclosed places, other than those listed in subds. 1. to 8r.,  
5 that are places of employment or that are public places.

6           **SECTION 48.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.  
7 and amended to read:

8           101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State, county, city,~~  
9 ~~village, or town building buildings.~~

10          **SECTION 49.** 101.123 (2) (am) of the statutes is repealed.

11          **SECTION 50.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and  
12 amended to read:

13          101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~  
14 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

15          **SECTION 51.** 101.123 (2) (b) of the statutes is repealed.

16          **SECTION 52.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.  
17 and amended to read:

18          101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~  
19 ~~on~~ Anywhere on the premises, ~~indoors or outdoors,~~ of a day care center when children  
20 who are receiving day care services are present. When such children are not present,  
21 the prohibition under subd. 5. applies.

22          **SECTION 53.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and  
23 amended to read:

1           101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~  
2 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on Anywhere~~  
3 ~~on the grounds of a Type 1 juvenile correctional facility.~~

4           **SECTION 54.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and  
5 amended to read:

6           101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~  
7 ~~in A location that is 25 feet or less from a residence hall or dormitory that is owned~~  
8 ~~or operated by the Board of Regents of the University of Wisconsin System or in any~~  
9 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

10          **SECTION 55.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

11          **SECTION 56.** 101.123 (2) (d) (intro.) of the statutes is created to read:

12          101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor  
13 locations:

14          **SECTION 57.** 101.123 (2) (d) 5. of the statutes is created to read:

15          101.123 (2) (d) 5. At a location that is less than a reasonable distance from any  
16 of the following:

17           a. An operable entrance to or from an enclosed place listed in sub. (2) (a) 3. to  
18 9. or a sports arena.

19           b. An openable window that is part of an enclosed place listed in sub. (2) (a) 3.  
20 to 9. or a sports arena.

21           c. An opening through which air enters, for the purpose of ventilation into an  
22 enclosed place listed in sub. (2) (a) 3. to 9., or a sports arena.

23          **SECTION 58.** 101.123 (2) (dm) of the statutes is created to read:

24          101.123 (2) (dm) Paragraph (d) 3. applies in lieu of par. (d) 5. to smoking outside  
25 of a Type 1 juvenile correctional facility.

1 SECTION 59. 101.123 (2) (e) of the statutes is created to read:

2 101.123 (2) (e) No person may smoke in <sup>any of the</sup> a sports arena.

following: \$  
1. A sports arena. \$  
2. A bus shelter. \$  
3. A public conveyance.

3 ~~SECTION 60. 101.123 (2) (f) of the statutes is created to read:~~

4 ~~101.123 (2) (f) No person may smoke in a public conveyance.~~

5 SECTION 61. 101.123 (2m) of the statutes is created to read:

6 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge  
7 may allow any person to smoke in violation of sub. (2) at a location that is under the  
8 control or direction of the person in charge.

9 (b) No person in charge may provide matches, ashtrays, or other equipment for  
10 smoking at the location where smoking is prohibited.

11 (c) A person in charge shall make reasonable efforts to prohibit persons from  
12 smoking at a location where smoking is prohibited by doing all of the following:

13 1. Posting signs setting forth the prohibition and providing other appropriate  
14 notification and information concerning the prohibition.

15 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern,  
16 or private club.

17 3. Asking a person who is smoking to refrain from smoking and, if the person  
18 refuses to do so, asking the person to leave the location.

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

22 (e) A person in charge may take measures in addition to those listed in pars.  
23 (b) and (c) to prevent persons from being exposed to others who are smoking or to  
24 further ensure compliance with this section.

25 SECTION 62. 101.123 (3) (intro.) of the statutes is amended to read:

1           101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against~~ smoking  
2 in sub. (2) (a) does not apply to the following places:

3           **SECTION 63.** 101.123 (3) (a) to (gr) of the statutes are repealed.

4           **SECTION 64.** 101.123 (3) (h) of the statutes is created to read:

5           101.123 (3) (h) A private residence.

6           **SECTION 65.** 101.123 (3) (i) of the statutes is created to read:

7           101.123 (3) (i) A room used by <sup>one only one</sup> a person in an assisted living facility as his or  
8 her residence.

9           **SECTION 66.** 101.123 (3) (j) of the statutes is created to read:

10           101.123 (3) (j) A room in an assisted living facility in which 2 or more persons  
11 reside if every person who lives in that room smokes and each of those persons has  
12 made a written request to the person in charge of the assisted living facility to be  
13 placed in a room where smoking is allowed.

14           **SECTION 67.** 101.123 (3) (k) of the statutes is created to read:

15           101.123 (3) (k) A room in a lodging establishment that has been designated as  
16 a room where smoking is allowed, as provided under sub. (3m).

17           **SECTION 68.** 101.123 (3) (L) of the statutes is created to read:

18           101.123 (3) (L) Any stage of a theater when the stage is being used for a  
19 theatrical performance and the smoking is part of the performance.

20           **SECTION 69.** 101.123 (3m) of the statutes is created to read:

21           101.123 (3m) LODGING. (a) Except as provided in par. (b), the owner of a lodging  
22 establishment may designate not more than 25 percent of the guest rooms in the  
23 lodging establishment as guest rooms in which smoking is permitted.

1 (b) If a lodging establishment has less than 4 rooms, the owner of the lodging  
2 establishment may designate one guest room as a guest room in which smoking is  
3 permitted.

4 **SECTION 70.** 101.123 (4) of the statutes is repealed.

5 **SECTION 71.** 101.123 (4m) (title) of the statutes is created to read:

6 101.123 (4m) (title) LOCAL AUTHORITY.

7 **SECTION 72.** 101.123 (5) of the statutes is repealed.

8 **SECTION 73.** 101.123 (6) of the statutes is amended to read:

9 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform  
10 dimensions and other characteristics of the signs used to designate smoking areas  
11 required under sub. (2m). These rules may not require the use of signs that are more  
12 expensive than is necessary to accomplish their purpose.

13 **SECTION 74.** 101.123 (7) of the statutes is amended to read:

14 101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the  
15 department of administration to have ~~the~~ signs prepared and made available to state  
16 agencies for use in state facilities that set forth the prohibition against smoking.

17 **SECTION 75.** 101.123 (8) (a) of the statutes is repealed and recreated to read:

18 101.123 (8) (a) Any person in charge who violates sub. (2) shall be subject to  
19 a forfeiture as follows:

20 1. Not less than \$25 nor more than \$50 for the first violation.

21 2. Not less than \$50 nor more than \$100 for the 2nd violation.

22 3. Not less than \$100 nor more than \$250 for the 3rd or any subsequent  
23 violation.

24 **SECTION 76.** 101.123 (8) (b) of the statutes is repealed.

25 **SECTION 77.** 101.123 (8) (c) of the statutes is repealed.

1           **SECTION 78.** 101.123 (8) (d) of the statutes is created to read:

2           101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to  
3 a forfeiture as follows:

4           1. Not less than \$50 nor more than \$100 for the first violation.

5           2. Not less than \$100 nor more than \$200 for the 2nd violation.

6           3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent  
7 violation.

8           **SECTION 79.** 101.123 (8) (e) of the statutes is created to read:

9           101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

10          **SECTION 80.** 165.60 of the statutes is amended to read:

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

18          **SECTION 81.** 165.755 (1) (b) of the statutes is amended to read:

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

1 a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use  
2 violation under s. 347.48 (2m).

3 **SECTION 82.** 302.46 (1) (a) of the statutes is amended to read:

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

17 **SECTION 83.** 460.01 (5) of the statutes is amended to read:

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

21 **SECTION 84.** 757.05 (1) (a) of the statutes is amended to read:

22 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of  
23 state law or for a violation of a municipal or county ordinance except for a violation  
24 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, or for a first violation  
25 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person

1 who committed the violation had a blood alcohol concentration of 0.08 or more but  
 2 less than 0.1 at the time of the violation, or for a violation of state laws or municipal  
 3 or county ordinances involving nonmoving traffic violations, violations under s.  
 4 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be  
 5 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent  
 6 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty  
 7 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine  
 8 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced  
 9 in proportion to the suspension.

10 **SECTION 85.** 814.63 (1) (c) of the statutes is amended to read:

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

17 **SECTION 86. Initial applicability.**

18 (1) This act first applies to violations occurring on the effective date of this  
 19 subsection.

20 **SECTION 87. Effective date.**

21 (1) This act takes effect on the first day of the 3rd month beginning after  
 22 publication.

23 (END)

*change component* → <sup>ⓑ 9310</sup> SECTION 86. Initial applicability. <sup>ⓑ Commerce</sup>

*change component* → <sup>ⓑ 9410</sup> SECTION 87. Effective date. <sup>ⓑ Commerce</sup>

*INS 17-18*  
*USE 2X*

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1646/?ins

INS 17-18

Not

1 The treatment of sections 77.52 (2) (ag) 39. (intro.), 101.123 (1) (a), (ab), (ac),  
2 (aj), (ak), (am), (ar), (b), (bg), (bm), (bn), (br), (c), (d), (dg), (dj), (dm) (dn), (e), (eg), (f),  
3 (g), (gm), (h) 2., (hm), (i), (id), (im), and (ip), (2) (title), (a) (intro.), 1., 1g., 1m., 1r., 4.,  
4 5., 5m., 5t., 6., 7m., 7r., 8d., 8g., 9., and 10., (am), (ar), (b), (bm), (br), (bv), (c), (d)  
5 (intro.) and 5., (dm), (e), and (f), (2m), (3) (intro.), (a) to (gr), (h), (i), (j), (k), (L), (3m),  
6 (4), (4m) (title), (5), (6), (7), and (8) (a), (b), (c), (d), and (e), 165.60, 165.755 (1) (b),  
7 302.46 (1) (a), 460.01 (5), 757.05 (1) (a), and 814.63 (1) (c) of the statutes and the  
8 renumbering of section 101.123 (1) (h) of the statutes, and the creation of

and amendment

of the statutes  
section 101.123 (1) (h) 2.

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

1646/P1 DN  
LRB-0086/P3dn  
MGG:kj/nd  
WJ

January 20, 2009

Date

Attention: Sarah Briganti

1. The provision regarding outdoor smoking "within less than a reasonable distance" may be unconstitutionally vague. Due process requires that a law be reasonably definite as to what persons and conduct are covered as well as the punishment for any violation and should not be susceptible to arbitrary and discriminatory enforcement. Due to the priority being given this draft, I have not had time to research this in depth. However, if you would like me to look into this further as you review the draft, please let me know. Also, how is a person outside to know where a ventilation duct is or whether the nearby window is openable? STET

2. If your intent is to ban smoking in bus shelters, I think the draft should include that specific prohibition. There may be some shelters that do not fit the definition of "enclosed place."

3. In reviewing this draft during the redrafting process, I note that no smoking will be allowed anywhere in the entities that are included in the definition in this draft under "inpatient health care <sup>facility</sup> facilities." These include county homes, county infirmaries, nursing homes, and mental health and AODA treatment facilities. See s. 101.123 (1) (b) and (ip). In other words, to be able to smoke in one's room, it must be an "assisted living facility" instead of an "inpatient health care facility." OK?

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

→ INSERT  
(ON)

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

LRB-0086/P2dn  
MGG:kjf:ph

November 13, 2008

INSERT  
D-N

Attention: Sarah Briganti

1. I have restructured this draft for this coming session. There seemed to be some indoor areas that were overlooked in earlier drafts. I also had drafters in the education, health, and correctional fields rework some of the definitions in current law because they were awkward or overlapped.

4. ~~4~~ The authority for "locals" to enact ordinances remains the same as in current law. See the renumbering of s. 101.123 (2) (c) to s. 101.123 (4m).

5. ~~5~~ In this draft, smoking is prohibited in any sports arena, whether ~~or not~~ it has a stationary roof, retractable roof, or no roof. See s. 101.123 (1) (hm) and (2) (e).

6. ~~6~~ In this draft, smoking is prohibited in any open or closed conveyance that is used by the public for free or for a fee. This will include ferries, taxis, limousines, and open carriages. See s. 101.123 (1) (e) and (2) (f).

5. The term "retirement home" has been changed to "assisted living facility" and is now defined. This changes the exemption in the real world. Please review the definition in the draft at s. 101.123 (1) (ab) and call me if you have any questions.

6. In the prior bill and in this draft, smoking is prohibited at any inside location of any prison, jail, or lock up. Please review the new definition of "correctional" facility found in s. 101.123 (1) (ac), and call if you have any questions.

7. Section 101.123 (2) (a) 2m. does not cover all student residence halls or dormitories. Examples of those that are excluded are fraternity and sororities and dorms or residence halls not owned by the college or university. There are such dorms and residence halls in Madison and probably elsewhere. Do you want to include all such student residential facilities? Also, it is unclear whether the rooms and suites in dorms and residence halls are covered or are exempt as private residences. Please let me know what your intent is to the actual rooms so that I can make sure this draft achieves your intent.

8. I have added to the listing of places where smoking is specifically prohibited common areas of multiunit residential complexes since these may not be public places and may not be "frequented" by employees. See s.101.123 (2) (a) 8d.

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

LRB-1646/P1dn  
MGG:wj:rs

January 21, 2009

1. The provision regarding outdoor smoking "within less than a reasonable distance" may be unconstitutionally vague. Due process requires that a law be reasonably definite as to what persons and conduct are covered as well as the punishment for any violation and should not be susceptible to arbitrary and discriminatory enforcement. Due to the priority being given this draft, I have not had time to research this in depth. However, if you would like me to look into this further as you review the draft, please let me know. Also, how is a person outside to know where a ventilation duct is or whether the nearby window is openable?
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Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

**Gibson-Glass, Mary**

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**From:** Willing, Krista - DOA [Krista.Willing@wisconsin.gov]  
**Sent:** Friday, January 30, 2009 4:22 PM  
**To:** Gibson-Glass, Mary  
**Cc:** Hanaman, Cathlene; Kraus, Jennifer - DOA  
**Subject:** Changes to the Smoking Ban Draft

Hi Mary,

I was asked to forward you several changes for the budget draft for the smoking ban. I apologize for the late changes. We need to eliminate the specific exemption for theatrical performances. (Item number 1, below) and change slightly the definition of smoking (Item number 2, below).

The changes are:

*1 and 2*

- 1) Please delete lines ~~14 and 15~~ on page 13 (LRB 0086/4)
- 2) Please replace lines 18 to 20 on page 7 with the following:  
101.123(1)(h) "Smoking" means burning or holding, or inhaling or exhaling smoke from, any of the following items containing tobacco:
  1. A lighted cigar.
  2. A lighted cigarette.
  3. A lighted pipe.
  4. Any other lighted smoking equipment.

Thanks,  
Krista

**Krista Willing**  
Health and Insurance Team  
Division of Executive Budget and Finance  
(608) 267-7980  
[Krista.Willing@wisconsin.gov](mailto:Krista.Willing@wisconsin.gov)