

Clearinghouse Rule 10-024

The Wisconsin Department of Commerce adopts an order to create chapter Comm 6, relating to smoking in places of employment and public buildings.

Analysis of Rule

1. Statutes Interpreted

Statutes Interpreted: ss. 101.02 (1) and (15) (a) and (i), 101.11 (1), Stats.

2. Statutory Authority

Statutes Interpreted: ss. 101.02 (1) and (15) (a) and (i), and 101.123 (6), Stats.

3. Related Statute or Rule

Section 101.123, Stats.

4. Explanation of Agency Authority

Under the statutes cited, the Department of Commerce has the broad authority to protect the health of employees and frequenters of places of employment and public buildings.

5. Summary of Proposed Rules

The proposed rules prohibit smoking in enclosed indoor areas of places of employment and public buildings existing on or after July 1, 2010.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations

An internet search on U.S. federal regulations and U.S. federal register yielded no results regarding a general prohibition of smoking in places of employment and public buildings.

7. Comparison with Rules in Adjacent States

The following is a comparison of smoking prohibitions enacted in adjacent states.

Illinois The Smoke Free Illinois Act, 410 ILCS 82, as of January 1, 2008 prohibits smoking in a public place or in any place of employment or within 15 feet of any entrance to a public place or place of employment.

Iowa Effective July 1, 2008, Iowa under the Smokefree Air Act no longer allows smoking in almost all public places and enclosed areas within places of employment, as well as some outdoor areas. The law applies to: restaurants, bars, outdoor entertainment events and amphitheaters. It also covers places of employment such as office buildings, health care facilities, and child care

facilities. Smoking is allowed on the gaming floor of a licensed casino, as well as designated hotel and motel rooms.

Michigan Michigan has yet to enact a general statewide smoking prohibition.

Minnesota As of October 1, 2007 Minnesota under the Clean Indoor Air Act prohibits smoking in bars, restaurants, private clubs such as VFWs and American Legion halls, bowling alleys, country club lounges, lobbies of hotels and motels, public transportation, taxis, home offices where employees work or customers visit, home day cares when children are present, and smaller commercial vehicles carrying more than one person.

8. Summary of Factual Data and Analytical Methodologies

The proposed rules were developed as a result of an analysis of 2009 Wisconsin Act 12. Under the Act, the statutory definitions for “enclosed place” in conjunction with “substantial wall” could be construed to permit smoking in many indoor spaces of public buildings and places of employment that would be inconsistent with the publicized objectives of the Act.

9. Effect on Small Business including an Analysis and Supporting Documents Used to Determine the Effect or in Preparation of Economic Impact Report.

The proposed rules implement a statewide smoking ban in enclosed areas of public buildings and places of employment similar to the publicized objectives of 2009 Wisconsin Act 12. The rules would apply to all existing and future public buildings and places of employment. The department does not believe that the proposed rules will increase the effect on small businesses over the publicized objectives of the Act.

An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

11. Public Hearing Comments.

The hearing record on this proposed rulemaking will remain open until April 16, 2010. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

SECTION 1. Chapter Comm 6 is created to read:

Comm 6.01 Definitions. In this chapter:

(1) “Assisted living facility” has the meaning given under s. 101.123 (1) (ab), Stats.

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

(2) “Enclosed indoor area”, means all space between a floor and a ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge screen with an 18 by 16 mesh count is not a wall.

(3) “Immediate vicinity of the state capitol” has the meaning given under s. 101.123 (1) (ar), Stats.

Note: Section 101.123 (1) (ar) reads: “Immediate vicinity of the state capitol” means the area directly adjacent to the state capitol building, as determined by rule of the department of administration. “Immediate vicinity of the state capitol” does not include any that is more than 6 feet from the state capitol building.

(4) “Place of employment” has the meaning given under s. 101.01 (11), Stats.

Note: Under s. 101.01 (11), Stats., “place of employment” includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in private domestic service which does not involve the use of mechanical power or in farming. “Farming” includes those activities specified in s. 102.04 (3), and also includes the transportation of farm products, supplies or equipment directly to the farm by the operator of said farm or employees for use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production. When used with relation to building codes, “place of employment” does not include an adult family home, as defined in s. 50.01 (1), or, except for the purposes of s. 101.11, a previously constructed building used as a community-based residential facility, as defined in s. 50.01 (1g), which serves 20 or fewer residents who are not related to the operator or administrator.

(5) “Public building” has the meaning given under s. 101.01 (12), Stats.

Note: Under s. 101.01 (12), Stats., “public building” means any structure, including exterior parts of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants. When used in relation to building codes, “public building” does not include a previously constructed building used as a community-based residential facility as defined in s. 50.01 (1g) which serves 20 or fewer residents who are not related to the operator or administrator or an adult family home, as defined in s. 50.01 (1).

(6) “Smoking” has the meaning given under s. 101.123 (1) (h), Stats.

Note: Under s. 101.123 (1) (h), Stats., “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.

(7) “Type 1 juvenile correctional facility” has the meaning given in s. 938.02 (19), Stats.

Note: Under s. 938.02 (19), Stats., “Type 1 juvenile correctional facility” means a juvenile correctional facility, but excludes any correctional institution that meets the criteria under sub. (10p) solely because of its status under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

Note: Under s. 938.02 (10p), Stats., “Juvenile correctional facility” means a correctional institution operated or contracted for by the department of corrections or operated by the department of health services for holding in secure custody persons adjudged delinquent. “Juvenile correctional facility” includes the Mendota juvenile treatment center under s. 46.057 and a facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

Comm 6.10 No smoking. (1) Except as provided in sub. (2), no person may smoke in any of the following spaces:

- (a) Any enclosed indoor area of a public building or place of employment.
- (b) Within the immediate vicinity of the state capitol.
- (c) Within the outdoor premises of a day care center when children who are receiving day care services are present.
- (d) Within the outdoor premises of a Type 1 juvenile correctional facility.
- (e) Within 25 feet of a residence hall or dormitory owned or operated by the Board of Regents of the University of Wisconsin System.

(2) The prohibition of smoking under sub. (1) does not apply to any of the following places:

- (a) Dwelling units.
- (b) A room in an assisted living facility as provided for under s. 101.123 (3) (i) or (j), Stats.
- (c) A retail tobacco store as provided for under s. 101.123 (3) (L), Stats.
- (d) A tobacco bar as provided for under s. 101.123 (3) (m), Stats.

(3) The prohibition of smoking under sub. (1) applies to places of employment and public places existing on or after July 1, 2010.

Comm 6.11 No smoking signs. No smoking signs shall include the international “No Smoking” symbol, consisting of a pictorial burning cigarette enclosed in a red circle with a red bar across the cigarette.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (b), Stats., these rules shall take effect on July 1, 2010.
