



State of Wisconsin
2005 - 2006 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 2,
TO 2005 ASSEMBLY BILL 414**

May 3, 2006 - Offered by Senator ROESSLER.

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

1 (4m) (title) of the statutes; **relating to:** prohibiting smoking in places of
2 employment, restaurants, taverns, and other indoor areas and requiring a
3 referendum.

Analysis by the Legislative Reference Bureau

Current law prohibits smoking in most enclosed, indoor locations that are accessible to the public unless there has been a specific area that has been designated a smoking area. Under this substitute amendment, 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 substitute amendment defines “a place of employment” to be any indoor area that employees normally frequent during the course of employment such as a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. Other locations where designated smoking areas may no longer be permitted under the substitute amendment, 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. Inpatient health care facilities, such as community-based residential facilities and nursing homes.
5. Prisons, jails, and juvenile correction facilities.
6. Mental health institutions and hospitals where the primary purpose is the treatment of mental illness, alcoholism, or drug abuse.
7. Centers for the developmentally disabled.
8. Restaurants and taverns, as described below.
9. Retail establishments.
10. Public waiting rooms.
11. 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 substitute amendment 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 substitute amendment 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 beverage license, issued by a municipality

(liquor license). This substitute amendment prohibits smoking in any restaurant or tavern.

The substitute amendment, however, requires that the contents of this legislation be presented as a question to the voters in a referendum in the November 2006 general election. The provisions of this legislation will not take effect unless the referendum question is approved by a majority of all votes cast on the question at the election. If approved, the legislation will take effect on June 1, 2008.

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

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

2 101.123 (1) (am) “Hospital” has the meaning given in s. 50.33 (2), except that
3 “hospital” does not include a nursing home licensed under s. 50.03 that is operated
4 in connection with a hospital ~~or a retirement home that is operated in connection~~
5 ~~with a hospital.~~

6 **SECTION 2.** 101.123 (1) (b) of the statutes is amended to read:

7 101.123 (1) (b) “Inpatient health care facility” means a hospital, a county home
8 established under s. 49.70, a county infirmary established under s. 49.72 ~~or~~, a
9 community-based residential facility or a nursing home licensed under s. 50.03.

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

11 101.123 (1) (bn) “Lodging establishment” means any of the following:

- 12 1. A bed and breakfast establishment, as defined in s. 254.61 (1).
13 2. A hotel, as defined in s. 254.61 (3).
14 3. A tourist rooming house, as defined in s. 254.61 (6).

15 **SECTION 4.** 101.123 (1) (br) of the statutes is repealed.

16 **SECTION 5.** 101.123 (1) (c) of the statutes is repealed.

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

1 101.123 (1) (d) “Person in charge” means the person who ultimately controls,
2 governs or directs the activities aboard a public conveyance or within a place where
3 smoking is prohibited or regulated under this section, regardless of the person’s
4 status as owner or lessee.

5 **SECTION 7.** 101.123 (1) (dg) of the statutes is repealed.

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

7 101.123 (1) (dj) “Place of employment” means any indoor area that employees
8 normally frequent during the course of employment, including a work area, an
9 employee lounge, a restroom, a conference room, a meeting room, a classroom, a
10 hallway, a vehicle, or a cafeteria that is provided by the employer. “Place of
11 employment” does not include any of the following:

- 12 1. A private residence.
- 13 2. A room used by a person in a retirement home as his or her residence.
- 14 3. A hotel room in which smoking is permitted under sub. (3m).

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

16 101.123 (1) (dm) “Prison” means a prison described in s. 302.01, ~~except it does~~
17 ~~not include the correctional institution under s. 301.046 (1) if the institution is the~~
18 ~~prisoner’s place of residence and does not include a Type 2 prison, as defined in s.~~
19 ~~301.01 (6).~~

20 **SECTION 10.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and
21 amended to read:

22 101.123 (1) (cm) ~~“Public conveyance”~~ “Passenger vehicle” means a mass transit
23 vehicles vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01
24 (31), and a school buses bus as defined by in s. 340.01 (56).

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

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

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

4 101.123 (1) (g) “Retail establishment” means any store or shop in which retail
5 sales is the principal business conducted, ~~except a tavern operating under a “Class~~
6 ~~B” intoxicating liquor license or Class “B” fermented malt beverages license, and~~
7 ~~except bowling centers.~~

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

9 101.123 (1) (im) “Tavern” means an establishment operating under a “Class B”
10 intoxicating liquor license or Class “B” fermented malt beverages license.

11 **SECTION 14.** 101.123 (1) (j) of the statutes, as affected by 2005 Wisconsin Act
12 344, is renumbered 101.123 (1) (bj) and amended to read:

13 101.123 (1) (bj) ~~“Type 1 juvenile Juvenile secured correctional facility” has the~~
14 ~~meaning given in means a Type 1 juvenile correctional facility, as defined in s. 938.02~~
15 ~~(19) or a Type 2 juvenile correctional facility, as defined in s. 938.02 (20).~~

16 **SECTION 15.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

17 101.123 (2) (title) PROHIBITION OF SMOKING IN INDOOR AREAS.

18 **SECTION 16.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

19 101.123 (2) (a) (intro.) ~~Except as provided in sub. (3), no No person may smoke~~
20 ~~in the following enclosed, indoor places:~~

21 **SECTION 17.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

22 101.123 (2) (a) 1. Passenger vehicles.

23 **SECTION 18.** 101.123 (2) (a) 2m. of the statutes is created to read:

24 101.123 (2) (a) 2m. Residence halls and dormitories of universities and
25 colleges.

1 **SECTION 19.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

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

3 **SECTION 20.** 101.123 (2) (a) 5. of the statutes is repealed and recreated to read:

4 101.123 (2) (a) 5. Places of employment.

5 **SECTION 21.** 101.123 (2) (a) 5m. of the statutes is created to read:

6 101.123 (2) (a) 5m. Lockup facilities, jails, juvenile secured correctional
7 facilities, and prisons.

8 **SECTION 22.** 101.123 (2) (a) 5t. of the statutes is created to read:

9 101.123 (2) (a) 5t. State institutions.

10 **SECTION 23.** 101.123 (2) (a) 7m. of the statutes is created to read:

11 101.123 (2) (a) 7m. Taverns.

12 **SECTION 24.** 101.123 (2) (a) 9m. of the statutes is created to read:

13 101.123 (2) (a) 9m. Lodging establishments except as provided in sub. (3m).

14 **SECTION 25.** 101.123 (2) (a) 10. of the statutes is amended to read:

15 101.123 (2) (a) 10. ~~Any enclosed, indoor area of a state~~ State, county, city,
16 village ~~or~~ and town building buildings.

17 **SECTION 26.** 101.123 (2) (am) of the statutes is repealed.

18 **SECTION 27.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
19 amended to read:

20 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
21 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

22 **SECTION 28.** 101.123 (2) (b) of the statutes is repealed.

23 **SECTION 29.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
24 and amended to read:

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 when children who
3 ~~are receiving day care services are present.~~

4 **SECTION 30.** 101.123 (2) (br) of the statutes, as affected by 2005 Wisconsin Act
5 344, is renumbered 101.123 (2) (d) 3. and 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.

9 **SECTION 31.** 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 32.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

16 **SECTION 33.** 101.123 (2) (d) (intro.) of the statutes is created to read:

17 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
18 locations:

19 **SECTION 34.** 101.123 (3) of the statutes is repealed.

20 **SECTION 35.** 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 smoking is permitted.

23 **SECTION 36.** 101.123 (4) of the statutes is repealed.

24 **SECTION 37.** 101.123 (4m) (title) of the statutes is created to read:

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

1 **SECTION 38.** 101.123 (5) (title) of the statutes is repealed and recreated to read:
2 101.123 (5) (title) SIGNS.

3 **SECTION 39.** 101.123 (5) (intro.) and (a) of the statutes are consolidated,
4 renumbered 101.123 (5) (am) and amended to read:

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 smoking, as specified in this section.~~

8 **SECTION 40.** 101.123 (5) (b) of the statutes is repealed.

9 **SECTION 41.** 101.123 (6) (title) of the statutes is repealed.

10 **SECTION 42.** 101.123 (6) of the statutes is renumbered 101.123 (5) (bn) and
11 amended to read:

12 101.123 (5) (bn) The department shall, by rule, specify uniform dimensions and
13 other characteristics of the signs used to designate smoking areas required under
14 par. (am). These rules may not require the use of signs that are more expensive than
15 is necessary to accomplish their purpose.

16 **SECTION 43.** 101.123 (7) (title) of the statutes is repealed.

17 **SECTION 44.** 101.123 (7) of the statutes is renumbered 101.123 (5) (c) and
18 amended to read:

19 101.123 (5) (c) The department shall arrange with the department of
20 administration to have the signs that are required under par. (am) prepared and
21 made available to state agencies for use in state facilities.

22 **SECTION 45.** 101.123 (8) (a) of the statutes is amended to read:

23 101.123 (8) (a) ~~Any~~ Except as provided in par. (b), any person who willfully
24 violates sub. (2) ~~(a), (am) 1., (bm), (br), or (bv)~~ after being advised by an employee of
25 the facility that smoking in the area is prohibited or any person in charge or his or

1 her agent who willfully fails to comply with sub. (5) (am) shall forfeit not more than
2 \$10.

3 **SECTION 46.** 101.123 (8) (b) of the statutes is amended to read:

4 101.123 (8) (b) Any person who willfully violates sub. (2) ~~(ar)~~ (a) 10. or (d) 1.
5 by smoking in the state capitol building or in the vicinity of the state capitol building
6 after being advised by an employee of the ~~facility~~ state capitol building that smoking
7 ~~in the area~~ is prohibited shall forfeit not more than \$50.

8 **SECTION 47.** 165.60 of the statutes, as affected by 2005 Wisconsin Act 86, is
9 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 48.** 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 or a safety belt use violation under s. 347.48 (2m).

25 **SECTION 49.** 302.46 (1) (a) of the statutes is amended to read:

1 302.46 (1) (a) On or after October 1, 1987, if a court imposes a fine or forfeiture
2 for a violation of state law or for a violation of a municipal or county ordinance except
3 for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv)~~ or (5) (am), or for
4 a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)
5 (b), if the person who committed the violation had a blood alcohol concentration of
6 0.08 or more but less than 0.1 at the time of the violation, or for a violation of state
7 laws or municipal or county ordinances involving nonmoving traffic violations or
8 safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose
9 a jail surcharge under ch. 814 in an amount of 1% of the fine or forfeiture imposed
10 or \$10, whichever is greater. If multiple offenses are involved, the court shall
11 determine the jail surcharge on the basis of each fine or forfeiture. If a fine or
12 forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge
13 in proportion to the suspension.

14 **SECTION 50.** 460.01 (5) of the statutes is amended to read:

15 460.01 (5) “Physician’s office” ~~has the meaning given in s. 101.123 (1) (dg)~~
16 means a place, other than a residence or a hospital, that is used primarily to provide
17 medical care and treatment.

18 **SECTION 51.** 757.05 (1) (a) of the statutes, as affected by 2005 Wisconsin Act 60,
19 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

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

7 **SECTION 52.** 814.63 (1) (c) of the statutes is amended to read:

8 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
9 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or (5) (am), for a first violation of s. 23.33
10 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
11 committed the violation had a blood alcohol concentration of 0.08 or more but less
12 than 0.1 at the time of the violation, or for a violation of a safety belt use violation
13 under s. 347.48 (2m).

14 **SECTION 53. Nonstatutory provisions.**

15 (1) REFERENDUM. There shall be submitted to the vote of the electors at the
16 general election in November 2006 the following question: "Shall sections 1 to 52 of
17 2005 Wisconsin Act (this act) become law effective June 1, 2008, thus changing
18 current state law in the following ways:

19 (a) Increases the closed indoor areas where smoking is prohibited in this state
20 to include all restaurants, regardless of size, and all taverns.

21 (b) Prohibits smoking, or eliminates the authority to designate smoking areas,
22 in all public transit vehicles and all buildings and other closed, indoor areas that
23 employees normally frequent except for private residences, private rooms in
24 retirement homes, and up to 25 percent of the rooms in lodging establishments?"

