

2001 DRAFTING REQUEST

Bill

Received: **11/11/2001**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Luther Olsen (608) 266-8077**

By/Representing: **aide**

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

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **RNK**

Submit via email: **YES**

Requester's email: **Rep.Olsen@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Authorize restaurants and retailers to refuse service to customer who enters without shoes or shirt

Instructions:

See Attached

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>
/P1	kenneda 12/13/2001	chanaman 12/17/2001 rschluet 12/19/2001	kfollet 12/19/2001	_____	lrb_docadmin 12/19/2001		
/1	kenneda 01/13/2002	rschluet 01/14/2002	jfrantze 01/14/2002	_____	lrb_docadmin 01/14/2002	lrb_docadmin 01/14/2002	

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FE Sent For: *none needed*

<END>

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Handwritten signatures and dates: 1-14, 1/14, 1/14

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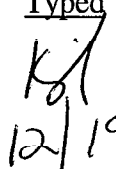
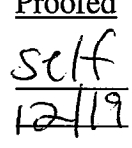
Topic:

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See Attached

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/?	kenneda		 12/19	 12/19			

FE Sent For:

<END>

No Shoes, No Shirt, No Service

Proposed Language:

Business owners have the right to set a policy to not serve or prohibit customers from entering an establishment without shoes or shirt.

Talking Points:

- Currently, there is no state law or administrative rule that prohibits shoeless or shirtless entry in a business.
- A customer recently questioned a business operator who had “no shoes, no shirt, no service” signage by contacting the Department of Health & Family Services. An employee of DHFS responded to the customer stating that there is no specific law or rule related to this and concluded by telling the customer he should “challenge an operator who uses the health department in vain in signage”.
- Although this language is not included administratively in the retail food establishment license code or restaurant license code, many believe that there is a public safety element to bare feet in a food establishment.
- The proposed language prevents customers from entering an establishment without shoes or shirt, but also allows businesses with less or more restrictive policies to do so.
- There would be no penalties included with this language, but the language allows an operator to remove customers who are intentionally ignoring this law.



Tommy G. Thompson
Governor

State of Wisconsin

Department of Health and Family Services

Joe Leean
Secretary

(608) 266-1251
FAX: (608) 284-6078
www.dhfs.state.wi.us

June 2, 2000

SCOTT SALLSTROM
5170 ANTON DRIVE
MADISON, WI 53719-8381

Dear Mr. Sallstrom:

Thank you for your letter of May 5th requesting information about bare-footed patrons of restaurants and grocery stores.

Nothing in WI Adm. Codes HFS 196 or ATCP 75 prohibits bare-footed patrons from entering these businesses.

"By order of the Health Department" may be a local requirement of a local health department ordinance. This is different from one health department to another and not based on a state statutory or administrative code requirement. If you see this written sign, there should be an ordinance reference beneath it, beside it or on the notice somewhere. If one does not see this reference, chances are that, the business operator is falsely using the name of health department to enforce his own in-house policy. That really is illegal. Business operators may not want bare-footed customers in their store/establishment for reasons related to injury, liability or just appearances. Insurance may be a big concern. In this case, it should say "by order of the Management".

"No shirt, no shoes, no service" is a similar sign that one often sees, but again has no relation to a requirement of law unless a local ordinance is specifically quoted.

A bare-footed employee of these businesses is another matter. Enclosed is the OSHA standard that discusses foot protection in hazardous workplaces. When grease, knives, water, heavy equipment, etc are involved, this Federal OSHA standard pertains.

Hope that this helps you. Challenge an operator, when you do not observe a specific reference and he "uses the health department in vain" in signage!

Thanks for your question.

Sincerely,

Elizabeth A. Temple, R.S.
Evaluation and Training Officer
Environmental Sanitation Section

COPY

Enclosure

11/7 Mtg. re proposal: RJK, DAK, Dick Sweet, aide, etc.

① Use def. of retail "establishment" under s. 101.125;
add restaurant

② No draft: Bs. owners have rt. to set a policy

③ Exclude statutory penalty

④ Place in ch. 141



d
cmh

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; relating to: authorizing a retail establishment to adopt a policy
2 requiring exclusion of a customer who is not properly attired.

Analysis by the Legislative Reference Bureau

This bill authorizes the owner or operator of a retail establishment to adopt a policy that requires that a customer be excluded from the establishment if the customer is not properly attired, unless the owner or operator specifically waives the policy for a particular customer.

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

3 SECTION 1. 146.10 of the statutes is created to read:

4 146.10 Policy of a retail establishment concerning proper attire. (1)

5 In this section, "retail establishment" means any store or shop in which retail sales
6 is the principal business conducted and includes a restaurant, as defined in s. 254.61
7 (5).

8 (2) The owner or operator of a retail establishment may adopt a policy for the
9 retail establishment under which a customer shall be excluded from the retail

1 establishment if the customer is not properly attired, including by wearing shoes and
2 a shirt, unless the owner or operator specifically waives the policy for a particular
3 customer.

4 (3) Section 939.61 does not apply to a violation of a policy adopted under sub.
5 (2).

6 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4236/P1dn

DAK:.....

☐

Date

10.12.23

Please review this draft carefully. I have drafted the bill in preliminary form to permit you the opportunity to review it before it is introducible. The following are questions or comments I have about the draft:

1. I have used as the basis for the definition of "retail establishment" the definition given in s. ~~101.125~~ (1) (g), stats., except that part of the definition that excludes taverns operating under a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license and bowling alleys. Is this what you want? I also included in this definition a restaurant, as defined in s. 254.61 (5), stats.; please review the exceptions in s. 254.61 (5), stats., to ensure that the definition of restaurant is what you want.

2. I have drafted s. 146.10 (2) essentially as proposed, but the provision may be vulnerable to a finding of unconstitutionality on grounds of vagueness. The breadth of the language poses at least the following problems:

a. The provision assumes that "proper attire" includes a shirt; must a woman who wears a dress but not a shirt receive specific waiver from the owner or operator if the owner or operator has adopted the policy? Must an infant who is wearing only a diaper, or a person who is wearing shorts and a sports bra, be specifically waived or else excluded?

b. Is a sales person considered to be an "operator"?

3. Instead of requiring exclusion (shall be excluded), would you prefer to authorize it ("may be excluded")?

Please let me know if I can provide you with additional assistance with respect to this draft.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4236/P1dn
DAK:rs:kjf

December 19, 2001

Please review this draft carefully. I have drafted the bill in preliminary form to permit you the opportunity to review it before it is introducible. The following are questions or comments I have about the draft:

1. I have used as the basis for the definition of "retail establishment" the definition given in s. 101.123 (1) (g), stats., except that part of the definition that excludes taverns operating under a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license and bowling alleys. Is this what you want? I also included in this definition a restaurant, as defined in s. 254.61 (5), stats.; please review the exceptions in s. 254.61 (5), stats., to ensure that the definition of restaurant is what you want.
2. I have drafted s. 146.10 (2) essentially as proposed, but the provision may be vulnerable to a finding of unconstitutionality on grounds of vagueness. The breadth of the language poses at least the following problems:
 - a. The provision assumes that "proper attire" includes a shirt; must a woman who wears a dress but not a shirt receive specific waiver from the owner or operator if the owner or operator has adopted the policy? Must an infant who is wearing only a diaper, or a person who is wearing shorts and a sports bra, be specifically waived or else excluded?
 - b. Is a sales person considered to be an "operator"?
3. Instead of requiring exclusion ("shall be excluded"), would you prefer to authorize it ("may be excluded")?

Please let me know if I can provide you with additional assistance with respect to this draft.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Lee, Cari
Sent: Friday, January 11, 2002 3:54 PM
To: Kennedy, Debora
Subject: RE:

Hi Debora,

Here are the changes we would like to LHB 4236. In statute 146.10 (2) we would like it to say the following:

The owner or operator of a retail establishment may adopt a policy for the retail establishment under which a customer MAY be excluded from the retail establishment if the customer is not properly attired. DELETE "including by wearing shoes and a shirt, unless the owner or operator specifically waives the policy for a particular customer." In addition change this language in the analysis of the bill.

In addition the definition of restaurant as defined by 254.61 (5) is ok with us as well as the definition of retail establishment under s.101.123 (1) (g)

I would appreciate it if you make these changes to this draft. Please let me know if you see any other potential problems with this draft.

THANK YOU

Cari Lee
Legislative Aide
Office of Representative Luther S. Olsen
41st Assembly District

608-266-8077

-----Original Message-----

From: Kennedy, Debora
Sent: Wednesday, December 19, 2001 1:37 PM
To: Lee, Cari
Subject:

<< File: 01-4236/P1dn >>

Debora A. Kennedy
Managing Attorney
Legislative Reference Bureau
(608) 266-0137
debora.kennedy@legis.state.wi.us



D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

permitted

1 AN ACT to create 146.10 of the statutes; relating to: authorizing a retail
2 establishment to adopt a policy requiring exclusion of a customer who is not
3 properly attired.

may

Analysis by the Legislative Reference Bureau

This bill authorizes the owner or operator of a retail establishment to adopt a policy that requires that a customer be excluded from the establishment if the customer is not properly attired, unless the owner or operator specifically waives the policy for a particular customer.

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

4 SECTION 1. 146.10 of the statutes is created to read:
5 **146.10 Policy of a retail establishment concerning proper attire. (1)**
6 In this section, "retail establishment" means any store or shop in which retail sales
7 is the principal business conducted and includes a restaurant, as defined in s. 254.61
8 (5).

Date

LRB-4236/1

DAK cs

ink

To Cari Lee :

Because "proper attire" is not defined,

S. 146.10 (2) may be vulnerable to a finding of
unconstitutionality on ^{grounds} grounds of ^{vagueness} vagueness.

In addition, may the "operator" of a retail
establishment adopt a policy on the spur

of the moment? (There is no requirement
that the policy be ^{posted} posted.)

DAK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4236/1dn
DAK:rs&cmh:jf

January 14, 2002

To Cari Lee:

Because "proper attire" is not defined, s. 146.10 (2) may be vulnerable to a finding of unconstitutionality on grounds of vagueness. In addition, may the "operator" of a retail establishment adopt a policy on the spur of the moment? (There is no requirement that the policy be posted.)

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Emery, Lynn

From: Lee, Cari
Sent: Monday, January 14, 2002 4:16 PM
To: LRB.Legal
Subject: Draft review: LRB-4236/1 Topic: Authorize restaurants and retailers to refuse service to customer who enters without shoes or shirt

It has been requested by <Lee, Cari> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-4236/1 Topic: Authorize restaurants and retailers to refuse service to customer who enters without shoes or shirt

Basford, Sarah

From: Basford, Sarah
Sent: Thursday, January 31, 2002 2:12 PM
To: Rep.Olsen
Subject: LRB -4236/1 (attached)



01-4236/1

Sarah Basford
Program Assistant
State of Wisconsin
Legislative Reference Bureau
PH: (608) 266-3561/FAX: (608) 264-6948
sarah.basford@legis.state.wi.us