

2003 SENATE BILL 411

January 28, 2004 – Introduced by Senator RISSER, cosponsored by Representatives BERCEAU, AINSWORTH, J. LEHMAN, TAYLOR, HINES, MILLER, GIELOW and MORRIS. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT to repeal** 101.123 (1) (dm), 101.123 (1) (i), 101.123 (3) (gg) to (gr) and
2 101.123 (4) (am) 1.; **to amend** 77.52 (2) (a) 10., 101.123 (1) (am), 101.123 (2) (a)
3 10., 101.123 (2) (ar), 101.123 (2) (b), 101.123 (2) (br), 101.123 (4) (a) 2., 101.123
4 (4) (am) 3., 101.123 (4) (bm), 101.123 (8) (b), 165.755 (1) (b), 302.46 (1) (a), 757.05
5 (1) (a) and 814.63 (1) (c); and **to create** 101.123 (2) (af) and 101.123 (4) (af) of
6 the statutes; **relating to:** prohibiting smoking in buildings that are owned or
7 leased by this state and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law, with some exceptions, prohibits smoking in the state capitol, the immediate vicinity of the state capitol, public conveyances, inpatient health care facilities, indoor movie theaters, offices, and passenger elevators, retail establishments, public waiting rooms, enclosed indoor areas of buildings owned by local or state units of government, motor buses, hospitals, physicians' offices, day care centers, certain secured correctional facilities (and on their grounds), educational facilities that offer state-approved or state-licensed instruction for training, and any restaurant whose seating capacity exceeds 50 persons and whose receipts from the sale of beer or liquor, or both, amount to 50 percent or less of the restaurant's receipts. One of the major exceptions in current law permits smoking in any room in which the main occupant is a smoker. In addition, in some instances,

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a person in charge of an area in which smoking is prohibited, or his or her agent, may designate smoking areas within the area over which the person has charge.

This bill prohibits smoking in any building that is owned or leased by this state, with one exception. Under this bill, a person in charge of any building that is owned or leased by this state where individuals reside, other than certain secured correctional facilities, may designate as a smoking area any room within the building that is used primarily as an individual's living quarters, if all individuals who use the room primarily as living quarters consent. A person who violates this bill after being advised that smoking in the area is prohibited must forfeit up to \$50, which is the same penalty that currently applies to a person who violates the ban on smoking in the state capitol.

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

1 **SECTION 1.** 77.52 (2) (a) 10. of the statutes is amended to read:

2 77.52 **(2)** (a) 10. Except for installing or applying tangible personal property
3 which, when installed or applied, will constitute an addition or capital improvement
4 of real property, the repair, service, alteration, fitting, cleaning, painting, coating,
5 towing, inspection, and maintenance of all items of tangible personal property
6 unless, at the time of such repair, service, alteration, fitting, cleaning, painting,
7 coating, towing, inspection, or maintenance, a sale in this state of the type of property
8 repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or
9 maintained would have been exempt to the customer from sales taxation under this
10 subchapter, other than the exempt sale of a motor vehicle or truck body to a
11 nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.51
12 (14r). For purposes of this paragraph, the following items shall be considered to have
13 retained their character as tangible personal property, regardless of the extent to
14 which any such item is fastened to, connected with, or built into real property:
15 furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems,
16 heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers,

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1 water pumps, water heaters, water conditioners and softeners, clothes washers,
2 clothes dryers, dishwashers, garbage disposal units, radios and radio antennas,
3 incinerators, television receivers and antennas, record players, tape players,
4 jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs,
5 bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps,
6 electronic dust collectors, grills and rotisseries, bar equipment, intercoms,
7 recreational, sporting, gymnasium and athletic goods and equipment including by
8 way of illustration but not of limitation bowling alleys, golf practice equipment, pool
9 tables, punching bags, ski tows, and swimming pools; equipment in offices, business
10 facilities, schools, and hospitals but not in residential facilities including personal
11 residences, apartments, long-term care facilities, as defined under s. 16.009 (1) (em),
12 ~~state institutions, as defined under s. 101.123 (1) (i) prisons, mental health~~
13 institutes, as defined under s. 51.01 (12), centers for the developmentally disabled,
14 as defined under s. 51.01 (3), Type 1 secured correctional facilities, as defined in s.
15 938.02 (19), or similar facilities including, by way of illustration but not of limitation,
16 lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business
17 machines, ice and milk dispensers, beverage-making equipment, vending machines,
18 soda fountains, steam warmers and tables, compressors, condensing units and
19 evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and
20 pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks
21 and electric signs. “Service” does not include services performed by veterinarians.
22 The tax imposed under this subsection applies to the repair, service, alteration,
23 fitting, cleaning, painting, coating, towing, inspection, or maintenance of items listed
24 in this subdivision, regardless of whether the installation or application of tangible
25 personal property related to the items is an addition to or a capital improvement of

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1 real property, except that the tax imposed under this subsection does not apply to the
2 original installation or the complete replacement of an item listed in this subdivision,
3 if such installation or replacement is a real property construction activity under s.
4 77.51 (2).

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

6 101.123 (1) (am) “Hospital” has the meaning given in s. 50.33 (2), except that
7 “hospital” does not include a nursing home licensed under s. 50.03 that is operated
8 in connection with a hospital ~~or~~, a retirement home that is operated in connection
9 with a hospital, or a facility that is operated by this state.

10 **SECTION 3.** 101.123 (1) (dm) of the statutes is repealed.

11 **SECTION 4.** 101.123 (1) (i) of the statutes is repealed.

12 **SECTION 5.** 101.123 (2) (a) 10. of the statutes is amended to read:

13 101.123 (2) (a) 10. Any enclosed, indoor area of a ~~state~~, county, city, village, or
14 town building.

15 **SECTION 6.** 101.123 (2) (af) of the statutes is created to read:

16 101.123 (2) (af) Notwithstanding par. (a) and sub. (3), and except as provided
17 in sub. (4) (af), no person may smoke in a building that is owned or leased by this
18 state.

19 **SECTION 7.** 101.123 (2) (ar) of the statutes is amended to read:

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

22 **SECTION 8.** 101.123 (2) (b) of the statutes is amended to read:

23 101.123 (2) (b) ~~The prohibition prohibitions~~ in pars. (a), ~~(af)~~, and (am) 1. ~~applies~~
24 apply only to enclosed, indoor areas.

25 **SECTION 9.** 101.123 (2) (br) of the statutes is amended to read:

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

4 **SECTION 10.** 101.123 (3) (gg) to (gr) of the statutes are repealed.

5 **SECTION 11.** 101.123 (4) (a) 2. of the statutes is amended to read:

6 101.123 (4) (a) 2. A person in charge, or his or her agent, may not designate an
7 entire building as a smoking area ~~or, may not~~ designate any smoking areas in the
8 ~~state capitol building, buildings that are owned or leased by this state, except as~~
9 provided in par. (af), and may not designate any smoking areas in the immediate
10 vicinity of the state capitol, ~~in a Type 1 secured correctional facility,~~ on the grounds
11 of a Type 1 secured correctional facility, in a motor bus, hospital, or physician's office,
12 or on the premises, indoors or outdoors, of a day care center when children who are
13 receiving day care services are present, except that in a hospital or a unit of a hospital
14 that has as its primary purpose the care and treatment of mental illness, alcoholism,
15 or drug abuse a person in charge or his or her agent may designate one or more
16 enclosed rooms with outside ventilation as smoking areas for the use of adult
17 patients who have the written permission of a physician. Subject to this subdivision,
18 par. (af), and sub. (3) (b), a person in charge or his or her agent may not designate
19 an entire room as a smoking area.

20 **SECTION 12.** 101.123 (4) (af) of the statutes is created to read:

21 101.123 (4) (af) A person in charge of any building that is owned or leased by
22 this state where individuals reside, other than a Type 1 secured correctional facility,
23 may designate as a smoking area any room within the building that is used primarily
24 as an individual's living quarters, if all individuals who use the room primarily as

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1 living quarters consent. Subsection (2) (af) does not apply to any smoking area
2 designated under this paragraph.

3 **SECTION 13.** 101.123 (4) (am) 1. of the statutes is repealed.

4 **SECTION 14.** 101.123 (4) (am) 3. of the statutes is amended to read:

5 101.123 (4) (am) 3. Except in a ~~prison~~, jail or lockup facility, an entire building
6 may not be designated as a smoking area.

7 **SECTION 15.** 101.123 (4) (bm) of the statutes is amended to read:

8 101.123 (4) (bm) The person in charge of a ~~state institution~~, jail or lockup
9 facility, or his or her agent, shall post notice of the designation of a smoking area
10 under par. (am) in or near the area designated. If an entire room is designated a
11 smoking area, the person in charge, or his or her agent, shall post notice of the
12 designation conspicuously on or near all normally used entrances to the room. If an
13 entire building in a ~~prison~~, jail or lockup facility is designated a smoking area, the
14 person in charge, or his or her agent, shall post notice of the designation on or near
15 all normally used entrances to the building, but need not post notice of the
16 designation on or near entrances to rooms within the building.

17 **SECTION 16.** 101.123 (8) (b) of the statutes is amended to read:

18 101.123 (8) (b) Any person who wilfully willfully violates sub. (2) (af) or (ar)
19 after being advised by an employee of the facility that smoking in the area is
20 prohibited shall forfeit not more than \$50.

21 **SECTION 17.** 165.755 (1) (b) of the statutes, as affected by 2003 Wisconsin Act
22 30, is amended to read:

23 165.755 (1) (b) A court may not impose the crime laboratories and drug law
24 enforcement assessment under par. (a) for a violation of s. 101.123 (2) (a), (af), (am)
25 1., (ar), (bm), or (br) or (5) (b), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b)

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1 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a
2 blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
3 violation, or for a violation of a state law or municipal or county ordinance involving
4 a nonmoving traffic violation or a safety belt use violation under s. 347.48 (2m).

5 **SECTION 18.** 302.46 (1) (a) of the statutes, as affected by 2003 Wisconsin Act 30,
6 is amended to read:

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

20 **SECTION 19.** 757.05 (1) (a) of the statutes, as affected by 2003 Wisconsin Act 30,
21 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), (af), (am) 1., (ar), (bm), or (br) or (5), or for a first violation of s.
25 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who

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1 committed the violation had a blood alcohol concentration of 0.08 or more but less
2 than 0.1 at the time of the violation, or for a violation of state laws or municipal or
3 county ordinances involving nonmoving traffic violations or safety belt use violations
4 under s. 347.48 (2m), there shall be imposed in addition a penalty assessment in an
5 amount of 24% of the fine or forfeiture imposed. If multiple offenses are involved,
6 the penalty assessment shall be based upon the total fine or forfeiture for all offenses.
7 When a fine or forfeiture is suspended in whole or in part, the penalty assessment
8 shall be reduced in proportion to the suspension.

9 **SECTION 20.** 814.63 (1) (c) of the statutes, as affected by 2003 Wisconsin Act 30,
10 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), (af), (am) 1., (ar), (bm), or (br) or (5), for a first violation of s. 23.33 (4c)
13 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
14 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
15 the time of the violation, or for a violation of a safety belt use violation under s. 347.48
16 (2m).

17 (END)