

2009 DRAFTING REQUEST

Bill

Received: **09/03/2008**

Received By: **mglass**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Sarah Briganti**

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

Drafter: **mglass**

May Contact: **DOA**

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Risser@legis.wisconsin.gov**

Carbon copy (CC:) to: **Robin.Kite@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Clean indoor air law, no exemptions for smoking in workplaces, restaurants, or taverns

Instructions:

See Attached, may share drafts with DOA

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>
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/P4	mglass 01/21/2009	kfollett 01/21/2009	jfrantze 01/21/2009 _____		cduerst 01/21/2009		S&L
/1	mglass 02/10/2009	kfollett 02/10/2009	mduchek 02/10/2009 _____		mbarman 02/10/2009	sbasford 04/24/2009	

FE Sent For: "/1" @ intro. 5/4/09

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Carbon copy (CC:) to:

for IP 4

Pre Topic:

name bus shelters

No specific pre topic given

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Handwritten notes:
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11/13/2008 _____

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GMM
CMH**

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FE Sent For:

Gibson-Glass, Mary

From: Briganti, Sarah
Sent: Wednesday, July 30, 2008 4:37 PM
To: Gibson-Glass, Mary
Subject: Drafting request
Attachments: 07-00776.pdf

Mary,

Senator Risser has requested that 2007 Senate Bill 150 be redrafted for introduction during the 2009 Legislative Session.

This legislation relates to prohibiting smoking in places of employment. Please draft the bill in its original form, without the amendments adopted by the Public Health Committee.

Thank you.

Sarah



07-00776.pdf (53
KB)

Sarah Briganti
Legislative Assistant
Office of State Senator Fred Risser
220 South, State Capitol
PO Box 7882
Madison, WI 53707
(608)266-1627

buoyance

note w/ Sarah Buggardi

✓ private clubs

✓ sports areas

parking ramps public place

local control

restaurants

open air malls NO

impossible to envision every circumstance

✓ place of employment

specific language re: smoking in theatre

add less than 25%

smoking tobacco products

DN
analy

23.05 SMOKING PROHIBITED IN CERTAIN AREAS.**(1) Definitions.**

"Bed and breakfast establishment " has the meaning set forth in sec. 254.61(3), Wis. Stats. This definition shall become effective July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Childcare facility" means any state licensed or county certified child care facility including, but not limited to licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs and Head Start programs.

"Chewing tobacco" means plug and twist tobacco; fine cut and other chewing tobaccos; snuff, snuff flour, cavendish, plug and twist tobacco; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing. (Cr. by ORD-06-00033, 4-7-06)

"Cigarette" means any roll of tobacco wrapped in paper or any substance other than chewing tobacco or tobacco products. (Cr. by ORD-06-00033, 4-7-06)

"City buildings" means all City-owned and operated buildings and those portions of buildings leased and operated by the City. (Cr. by Ord. 12,832, 6-6-01)

"Common areas of buildings" means all areas not part of a tenant's leased premises, including but not limited to lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas, and restrooms contiguous thereto. This definition shall become effective July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Common areas of malls" means those areas within a mall customarily accessible to patrons. (Cr. by Ord. 12,571, 5-3-00)

"Educational Facility" means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board. (Cr. by Ord. 11,091, 12-22-94)

"Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit, including those full time, part-time, temporary or contracted for from a third party; employee also means any person who serves as a volunteer for a business or nonprofit entity.

"Employer" means any person, partnership, limited liability company, corporation, or other entity, including a public or non-profit entity who employs the services of one (1) or more individual persons.

"Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, 'other landscaping' or similar structures. (Cr. by Ord. 12,571, 5-3-00)

"Entrance" means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot. (Cr. by Ord. 12,832, 6-6-01)

"Food" means a raw, cooked, or processed edible substance or ingredient used or intended for use or for sale in whole or in part for human consumption. It does not include ice, beverage or chewing gum. (Cr. by ORD-06-00033, 4-7-06)

"Health Care Facility" has the meaning set forth in Sec. 155.01(6), Wis. Stats. (Cr. by Ord. 12,571, 5-3-00)

"Hotel and motel" has the meaning set forth in sec. 254.61(3), Wis. Stats.

"Mall" means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services. (Cr. by Ord. 12,571, 5-3-00)

"Medical Services" has the meaning set forth in Sec. 647.01(6), Wis. Stats. (Cr. by Ord. 12,571, 5-3-00)

"NonSmoking" means smoking is prohibited. (Cr. by Ord. 12,571, 5-3-00)

"Person in Charge" means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within or at a place where smoking is regulated under this section, regardless of the person's status as owner or lessee. (Cr. by Ord. 12,571, 5-3-00)

"Place of employment" means an enclosed area controlled by the employer, which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a 'place of employment' within the meaning of this ordinance unless used as a childcare facility.

"Private Club" means an organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation. The affairs and management of the private club are conducted by a board of directors, executive committee or similar body chosen by the members at an annual meeting. The private club has established bylaws and/or a constitution to govern the club's activities. The private club has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C.A. section 501. This definition shall become effective July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Private residence" means premises owned, rented or leased for temporary or permanent habitation. (Cr. by Ord. 12,571, 5-3-00) *regardless of whether a fee is charged*

"Public place" means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place. (Cr. by Ord. 12,571, 5-3-00)

"Restaurant" means an establishment defined in Sec. 254.61(5), Wis. Stats., whose sale of alcohol beverages accounts for fifty percent (50%) or less of the establishment's gross receipts of the most recent alcohol licensing year, but does not mean churches, religious, fraternal, youth or patriotic organizations, service clubs and civic organizations which prepare and serve or sell meals to members and guests only. This includes restaurants within a mall and adjacent seating. This definition is effective January 2, 2003. (Am. by Ord. 11,558, 3-29-96, 4-4-96; Ord. 13,195, 12-10-02)

"Retail tobacco store" means a business whose primary purpose is the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Room" means a space within a building completely enclosed with walls, partitions, floor and ceiling, except for openings for light, ventilation, ingress and egress.

"School Board" means the school board in charge of the public schools, grades K-12, of a school district. (Cr. by Ord. 11,091, 12-22-94)

"Separately ventilated" means that the area is ventilated to a standard specified in the state building code, ch. Comm. 64, Wis. Adm. Code, and that the ventilation system for the smoking area is separate and distinct from the ventilation system for the nonsmoking area or areas. The smoking area ventilation system must have negative air pressure to ensure that there is no mixing of air from the smoking area to the nonsmoking areas. Particulate air cleaners or filtration systems are not considered a ventilation system. This definition is effective January 2, 2003. (Am. by Ord. 13,195, 12-10-02)

"Smokefree" means absence from the ambient air of the smoke by-product from the burning, inhaling, exhaling, or carrying of a lighted cigarette, cigar, pipe, weed, plant, or other combustible substance in any manner in any form.

"Smoking" means to smoke or carry a lighted pipe, cigar, cigarette or tobacco-related products in any form.

"Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and indoor ice rinks, and bowling centers. This definition shall become effective on July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Tavern" means any establishment with a full service bar in which fermented malt beverages or intoxicating liquors are sold for consumption upon said premises and whose sale of alcohol beverages accounts for more than fifty percent (50%) of the establishment's gross receipts of the most recent licensing year as specified in Chapter 38 of these ordinances. This definition is effective January 2, 2003. (Am. by Ord. 11,558, 3-29-96, 4-4-96; Ord. 13,195, 12-10-02)

“Tobacco bar” means a tavern, which generates ten percent (10%) or more of its total annual gross income from the on-site sale of tobacco products, not including any sales from vending machines. (Cr by ORD-06-00033, 4-7-06)

“Tobacco Product” means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such a manner, as to be suitable for smoking in a pipe or otherwise smoking; but “tobacco product” does not include cigarettes or chewing tobacco. (Cr. by Ord. 12,571, 5-3-00; Am. by ORD-06-00033, 4-7-06)

“Use Tobacco Products” means to consume by means other than smoking including, but not limited to, the chewing, spitting, swallowing, snorting, inhaling or ingesting of any tobacco product. (Cr. by Ord. 10,679, 6-11-93)

(Sec. 23.05(1) Am. by Ord. 10,531, 12-30-92; Ord. 12,571, 5-3-00; Ord. 12,938, 12-11-01)

(2) Intent and Purpose.

(a) The Common Council of the City of Madison hereby finds that:

1. It is recognized that smoking of cigarettes and tobacco products is hazardous to an individual's health and may affect the health of nonsmokers when they are involuntarily in the presence of smoking.
2. Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution.
3. Reliable scientific studies, including studies conducted by the Surgeon General of the United States, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.
4. Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm.
5. Reliable scientific studies assessed by the California Environmental Protection Agency have found that sidestream and secondhand tobacco smoke is a leading cause of premature death and disability among non-smokers.
6. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers.

(b) This ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Madison, especially recognizing the rights of nonsmokers who constitute a majority of the population; educating citizens affected by this ordinance; and assisting owners, operators; and managers in maintaining compliance.

(Sec. 23.05(2) Am. by Ord. 12,571, 5-3-00)

(3) Prohibition of Smoking in Public Places. Except as otherwise provided, it shall be unlawful for any person to smoke or use tobacco products in public places, including but not limited to the following:

- (a) Elevators and enclosed stairwells of City parking ramps. (Am. by Ord. 11,327, 8-11-95)
- (b) Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles. (Am. by Ord. 10,983, 9-14-94)
- (c) Theatres, libraries, museums, auditoriums, and convention halls, which are used by or open to the public. (Am. by Ord. 13,604, 5-11-04)
- (d) Any childcare facility. Incorporated herein by reference are the following Wisconsin statutory and administrative code sections and any amendments or renumbering thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats; Secs. HFS 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h), and 46.08(2)(c), Wis. Admin. Code. (Am. by Ord. 11,091, 12-22-94)
- (e) Retail stores.
- (f) Health care facilities. (Am. by Ord. 6208, 3-29-78; Ord. 12,571, 5-3-00)
- (g) Waiting rooms, hallways, rooms of health care laboratories.

- (h) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.
 - (i) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes. (Am. by Ord. 5694, 12-28-76; Ord. 12,571, 5-3-00)
 - (j) Polling places. (Am. by Ord. 12,571, 5-3-00)
 - (k) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities. (Cr. by Ord. 5694, 12-28-76)
 - (l) Self-service laundry facilities. (Cr. by Ord. 5694, 12-28-76)
 - (m) Enclosed, indoor areas of restaurants. (Am. by Ord. 11,558, 3-29-96, 4-4-96; Ord. 12,571, 5-3-00; Ord. 13,195, 12-10-02; Ord. 13,604, 5-11-04)
 - (n) Common areas of malls. (Cr. by Ord. 10,199, 2-14-91; Am. by Ord. 12,571, 5-3-00)
 - (o) Public bus and transfer point shelters. (Cr. by Ord. 10,615, 3-31-93; Am. by Ord. 12,571, 5-3-00)
 - (p) Common areas of buildings which contain three or more rental units. Written Rental Agreements shall include reference to this subdivision. Subsection (9)(b) shall not apply to this subdivision. (Cr. by Ord. 10,237, 4-12-91; Am. by Ord. 12,923, 11-23-01; Ord. 13,604, 5-11-04)
 - (q) City buildings. (Am. by Ords. 10,633 & 10,634, 4-16-93; Ord. 10,656, 5-29-93; Ord. 10,895, 5-2-94; Ord. 12,571, 5-3-00; Ord. 12,794, 4-9-01; Ord. 12,832, 6-6-01)
 - (r) City-owned or leased motor vehicles. (Cr. by Ord. 10,247, 4-26-91; Am. by Ord. 12,571, 5-3-00)
 - (s) Sports arenas. (Cr. by Ord. 13,195, 12-10-02; R. by Ord. 13,604, 5-11-04)
 - (t) Taverns. (Cr. by Ord. 13,604, 5-11-04)
 - (u) Common areas in bed and breakfast establishments, hotels and motels. (Cr. by Ord. 13,604, 5-11-04)
- (Sec. 23.05(3) Am. by Ord. 10,679, 6-11-93; Am. by Ord. 12,571, 5-3-00; Am. by Ord. 12,938, 12-11-01)
- (4) Prohibition of Smoking in Outdoor Areas. It shall be unlawful for any person to smoke or use tobacco products in the following outdoor areas.
- (a) Outside the City-County Building:
 - 1. Between the public sidewalk and the Martin Luther King, Jr. Boulevard side of the building including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building;
 - 2. Between the public sidewalk and the West Wilson Street side of the building, including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building.

(Cr. by Ord. 11,023, 10-31-94; Am. by Ord. 12,794, 4-9-01)
 - (b) Outside the Bernard Schwab Building of the Madison Public Library, known as the Central Library, between the front entrance of the library and the public sidewalks on the Fairchild Street and the Mifflin Street sides of the building including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building. (Cr. by Ord. 12,167, 7-20-98)
 - (c) In addition to Subdivisions (a) and (b), outside at least one entrance to all City buildings.
 - 1. Within forty-five (45) days of adoption of this subdivision, all current employees of each City building shall designate, by majority vote, which entrance(s) shall be smokefree.
 - 2. No more than one entrance may be designated as a smoking area.
 - 3. This subsection shall be effective sixty (60) days after publication.

(Cr. by Ord. 12,832, 6-6-01)
 - (d) City parks and beaches as posted and so designated by the Park Commission. (Cr. by Ord. 12,784, 3-28-01; Renumbered by Ord. 12,832, 6-6-01)
- (Former Sec. 23.05(3)(s) Am. and Renum. to Sec. 23.05(4) by Ord. 12,571, 5-3-00)

(5) Prohibition of Smoking in Educational Facilities. It shall be unlawful for any person to smoke or otherwise use any tobacco products:

- (a) In all educational facilities and in or upon all other premises owned, rented by or under the control of a school board.
- (b) In or upon all premises of the Madison Area Technical College, including all buildings owned or operated by the district for the primary purpose of vocational, technical or adult education. This includes outdoor areas between the public sidewalks and buildings.

(Am. by Ord. 11,091, 12-22-94; Am. and Renum. by Ord. 12,571, 5-3-00; Am. by Ord. 12,938, 12-11-01; Ord. 13,510, 2-10-04)

(6) Prohibition of Smoking in Places of Employment

- (a) It shall be unlawful for any person to smoke or otherwise use any tobacco products in all places of employment.
- (b) Every building which is a place of employment shall have at least one entrance which is smokefree. For buildings with fewer than four (4) entrances, no more than one entrance may be designated as a smoking entrance. For buildings with four (4) or more entrances, no more than 25% of all entrances may be designated as a smoking entrance.
- (c) Each employer, operator, manager, lessee or other person having control of the place of employment shall make reasonable efforts to ensure a smokefree workplace for all employees and frequenters.
- (d) Within ninety (90) days of the effective date of this ordinance, each employer having a place of employment located within the City of Madison shall adopt, implement and communicate written notice of the provisions of this ordinance to each employee.
- (e) For each building, an employer or person in charge may designate a room for employee smoking that is separately ventilated. Such designated areas shall be located so that employees do not have to pass through the area in the normal course of employment and is not frequented by the public. An employer or person in charge may designate an entire place of employment as nonsmoking. (Am. by Ord. 13,195, 12-10-02)
- (f) The effective date of this subsection shall be March 1, 2002.

(New Sec. 23.05(6) Cr. by Ord. 12,938, 12-11-01)

(7) Exceptions. The following areas shall not be subject to the smoking restrictions of this section:

- (a) A smoking room in a restaurant which is separately ventilated from each and every other area of the restaurant.
 1. The restaurant must provide the Madison Public Health Department and the Building Inspection Department with plans of the ventilation system and a certification from a certified HVAC engineer that the system meets the requirements specified in the State Building Code and Wisconsin Administrative Code ch. Comm 64. The plans will be reviewed by the Madison Public Health Department and Madison Building Inspection Department. The smoking room must be completely separated from the rest of the restaurant by solid walls of rigid construction that run from floor to ceiling with a separate entrance that has a solid door that effectively closes. This door is to remain closed at all times except when patrons or employees enter or leave the room.
 2. This subsection is applicable only to separately ventilated rooms in existence as of the effective date of this ordinance. Any restaurant which has made a good-faith effort, as evidenced by plans and specifications and work performed, to provide a separately ventilated smoking room and that room does not currently meet the standards specified in the State Building Code and Wisconsin Administrative Code ch. Comm 64, will have thirty (30) days after this ordinance is adopted to bring the existing ventilation system into compliance with the requirements of this subsection. It will be the Public Health Department's determination, based upon the work performed and plans and specifications, whether a good faith effort was made to provide a separately ventilated smoking room for purposes of this subsection.

3. After the effective date of this ordinance no separately ventilated rooms may be created. This exception is repealed on January 2, 2006.
 4. Plan Review Fee. At the time a restaurant submits ventilation plans to the Madison Public Health Department for review, the restaurant shall submit a \$75.00 (seventy-five dollar) plan review fee payable to the City of Madison Treasurer.
- (b) Retail tobacco stores.
 - (c) Private clubs. Private clubs shall provide a nonsmoking section for customers and otherwise comply with Sec. 101.123, Wis. Stats., the Clean Indoor Air Act. This exception shall not apply to any organization established to avoid compliance with this ordinance.
 - (d) Any stage of any theater when used in connection with any theatrical performance and so noticed in the program.
 - (e) Bed and breakfast, hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, that not more than twenty-five percent (25%) of rooms rented to guests are designated as smoking.
 - (f) Tobacco bar, subject to the following:
 1. Smoking of tobacco products is permitted;
 2. Smoking of cigarettes and service of food are not permitted;
 3. Ten percent (10%) or more of the tobacco bar's total gross income from the previous fiscal year was from the on-site sale of tobacco products, not including any sales from vending machines;
 4. To qualify for this exemption the owner must file written proof subscribed and sworn to by a Certified Public Accountant certifying the tobacco bar's total gross income and the percentage of tobacco product sales from the tobacco bar. The City Clerk or City Attorney may request further information, including an audit of the tobacco bar's records, if there is reason to believe the financial data may not be accurate;
 5. This exemption is only in effect from the date of initial application until June 30, and then from July 1 to June 30, of each year. An application for this exemption must be made annually by April 15th of the application year. To qualify for an annual exemption the tobacco bar must provide written proof subscribed to and sworn by a Certified Public Accountant certifying that ten percent (10%) or more of the tobacco bar's total gross income from the preceding year was from the on-site sale of tobacco products, not including any sales from vending machines;
 6. If the tobacco bar provides written proof subscribed to and sworn by a Certified Public Accountant certifying that ten percent (10%) or more of the tobacco bar's total gross income from the 2004 fiscal year was from the on-site sale of tobacco products, not including any sales from vending machines, then the tobacco bar qualifies for an exemption. This exemption will be in effect through June 30, 2007. After June 30, 2007, the tobacco bar must qualify on a yearly basis for this exemption;
 7. A tobacco bar that has not previously qualified under this subdivision, may qualify for an exemption if it provides written proof subscribed to and sworn by a Certified Public Accountant certifying that during the previous six (6) months, ten percent (10%) or more of the tobacco bar's total gross income was from the on-site sale of tobacco products, not including any sales from vending machines. To qualify under this paragraph, the required certification must be filed no later than ninety (90) days after the above-mentioned six (6) months. This exemption will be in effect through the next full licensing year. After that point in time, the tobacco bar must qualify on a yearly basis for the above-mentioned exemption.

8. Tobacco bars shall display signs, in accordance with the standards in Subsection (8), that state that cigars and pipes may be smoked in the tobacco bar, that cigarettes may not be smoked in the tobacco bar, and warning of the dangers of secondhand smoke, in language and form as approved by the Director of Public Health.

(Am. by ORD-06-00033, 4-7-06)

(Sec. 23.05(7) Am. by Ord. 12,571, 5-3-00; Renum. from 23.05(6) & Am. by Ord. 12,938, 12-11-01; Am. by Ord. 13,195, 12-10-02; Ord. 13,604, 5-11-04)

(8) Signage.

- (a) Signs prohibiting, prohibiting except in designated areas, or permitting smoking, as the case may be, shall be posted conspicuously at every building, structure, or public place entrance and in prominent locations throughout the premises by the proprietor, employer or other person in charge of each building, structure or public place specified in Subsections (3), (4), (5) and (6). Signs in outdoor areas designated as nonsmoking shall be placed so that the public has reasonable notice of the prohibition. (Am. by Ord. 12,938, 12-11-01)
- (b) Restaurants and taverns shall post, in a conspicuous place at each entrance normally used by the public, a sign not smaller than eleven by eight and one-half inches (11" x 8 1/2") indicating whether they permit smoking or whether they are smokefree. Each sign and the language contained therein shall be clearly visible from a distance of at least ten (10) feet. The signage lettering shall be in bold and the lettering shall be a minimum of two (2) inches in height. Each sign shall contain the phone number for the City health department and the non-emergency number for the City police department. (Renumbered by Ord. 12,796, 4-9-01; Am. by Ord. 13,604, 5-11-04)
- (c) It shall be unlawful for any person to remove, deface, or destroy any sign required by this Section, or to smoke in any place where any such sign is posted. (Renumbered by Ord. 12,796, 4-9-01)
(Am. and Renumbered by Ord. 12,571, 5-3-00; Am. and Renumbered by Ord. 12,938, 12-11-01)

(9) Enforcement.

- (a) The Director of Public Health or designee and the Chief of Police or designee, shall have the power, whenever they may deem it necessary, to enter upon the premises named in this section to ascertain whether the premises are in compliance with this ordinance. A compliance time of not less than one week shall be granted. Enforcement may be by citation, as permitted by Sec. 1.08, M.G.O., or through issuance of a summons and complaint. (Renum. and Am. by Ord. 10,163, 12-28-90; Renumbered and Am. by Ord. 12,571, 5-3-00)
- (b) The proprietor, employer or other person in charge of premises regulated hereunder, upon either observing or being advised of a violation, shall make reasonable efforts to prevent smoking in prohibited areas by:
1. Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarette or tobacco product and refrain from smoking, or
 2. Refusing service to anyone smoking in a prohibited area.
(Cr. by Ord. 12,796, 4-9-01)
- (c) Any person who desires to register a complaint under this section may contact the Department of Public Health or the Police Department
- (d) Ashtrays, cigarette vending machines and other smoking paraphernalia shall not be located in areas where smoking is prohibited.

(Am. and Renum. by Ord. 12,571, 5-3-00; Am. and Renum. by Ord. 12,938, 12-11-01)

- (10) Retaliation Prohibited. No person shall discharge, refuse to hire, refuse to serve or in any other manner retaliate against any employee, applicant for employment, customer, service user, business patron or any other person because that person exercises any rights afforded by this section. (Cr. by Ord. 12,938, 12-11-01)

(11) Violations and Penalties.

- (a) General. Any person who violates any of the provisions of this section may be subject to a forfeiture of no more than one hundred and twenty-five dollars (\$125) for the first offense and no more than five hundred dollars (\$500) for the second and subsequent offenses. Each day that a violation occurs shall be considered a separate offense.

(Sec. 23.05(8) Renumbered to (9) and Am. by Ord. 12,571, 5-3-00; Ord. 12,795, 4-9-01; Renumbered to (11) by Ord. 12,938, 12-11-01; Ord. 13.604, 5-11-04)]

(12) Clean Indoor Air.

- (a) Intent and Construction. The City of Madison finds that it is in the interests of the health, safety and welfare of the community to adopt by reference Sec. 101.123, Wis. Stats., and subsequent amendments, additions and recodifications. It is the intent of the Common Council that where there may be conflict between sec. 101.123, Wis. Stats. and Sec. 23.05, M.G.O., that the most restrictive section shall apply. This ordinance shall not be construed to mean that progressive discipline of City employees for violations of laws, rules, and regulations is only authorized where explicitly provided by ordinance.

- (b) Penalty. The penalties provided by Sec. 101.123 Wis. Stats. shall be in addition to the penalties provided for violation of Sec. 23.05 when a person has violated both laws. In addition to the penalties provided by Sec. 23.05 and Sec. 101.123 Wis. Stats., any City employee who violates any provision of Sec. 23.05 or Sec. 101.123 Wis. Stats., may also be subject to progressive discipline by his or her employer.

(Sec. 23.05(9) Renumbered to (10) by Ord. 10,163, 12-28-90; Renumbered to (12) and Am. by Ord. 12,938, 12-11-01)

- (13) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein. (Cr. by Ord. 11,558, 3-29-96, 4-4-96; Renumbered to (13) by Ord. 12,938, 12-11-01)

23.06 DAMAGE TO PROPERTY.(1) Definitions. In this section:

- (a) "Intentionally" shall mean that the actor either has a purpose to do the thing or cause the result specified, or is aware that her or his conduct is practically certain to cause that result. In addition, the actor must have knowledge of those facts which are necessary to make their conduct unlawful and which are set forth after the word "intentionally".

- (b) "Graffiti" shall mean any writing, printing, marks, signs, symbols, figures, designs, inscriptions, or other drawings which are scrawled, painted, drawn or otherwise placed on any surface of a building, wall, fence, sidewalk, curb or other structure on public or private property which have the effect of defacing the property, but shall not include scratchiti as defined in Section 23.065. (Am. by ORD-06-00032, 4-7-06)

- (2) It shall be unlawful for any person to intentionally cause damage to any physical property of another without the person's consent.
- (3) If more than one item of property is damaged under a single intent and design, the damage to all of the property may be prosecuted as a single offense.
- (4) In any case of unlawful damage involving more than one act of unlawful damage, but prosecuted as a single offense, it is sufficient to allege generally that unlawful damage to property was committed between certain dates. At the trial, evidence may be given of any such unlawful damage that was committed on or between the dates alleged.
- (5) It shall be unlawful for any person to intentionally place graffiti on any surface located on public or private property.

Inpatient health care facility =

Health care or assisted living facility:

- Hospital, as defined under s. 50.033 (2)
- Nursing home, as defined under s. s. 50.01 (3)
- Hospice, as defined under s. 50.90

Maybe "treatment facility," as defined under s. 51.01 (19) (this would cover "mental health institute" and "center for developmentally disabled," which are currently listed under state institution)

Assisted living facility:

- Community-based residential facility, s. 50.01 (1g)
- Residential care apartment complex, s. 50.05 (1d)
- Adult family home, s. 50.01 (1) (b)

facility or a unit of a facility

These could be either health facility or assisted living:

- County home, established under s. 49.71
- County infirmary, established under s. 49.72
- Veteran's Home, under s. 45.50

State institution:

- Prison
- Mental Health Institute, as defined under s. 51.01 (12)
- Center for Developmentally Disabled, as defined under s. 51.01 (3)
- Secure mental health facility under 46.055; Wisconsin Resource Center under 46.056; or a secure mental health unit or facility under 980.065 (2)

Physician's office: as under current law

Use "Assisted living facility" instead of "retirement home" for exception.

10/07/2008

Residential facility definitions for smoking ban bill

Inpatient health care facility:

Hospital, as defined under s. 50.033 (2)

Nursing home, as defined under s. s. 50.01 (3)

Hospice, as defined under s. 50.90

County home, established under s. ~~40.71~~ 49.70

County infirmary, established under s. 49.72

Veteran's Home, under s. 45.50

Treatment facility, based on 51.01 (19): any publicly or privately operated inpatient facility providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons

Assisted living facility:

Community-based residential facility, s. 50.01 (1g)

Residential care apartment complex, s. 50.05 (1d)

Adult family home, s. 50.01 (1) (b)

State institution:

Prison

Mental Health Institute, as defined under s. 51.01 (12)

Center for Developmentally Disabled, as defined under s. 51.01 (3)

Secure mental health facility under 46.055; Wisconsin Resource Center under 46.056; or a secure mental health unit or facility under 980.065 (2)

Physician's office: as under current law

Use "Assisted living facility" instead of "retirement home" for exception.

inpatient

51.01 (19) "Treatment facility" means any publicly or privately operated facility or ~~unit~~ ^{inpatient} thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs.

exception

assisted living facility



State of Wisconsin
2007 - 2008 LEGISLATURE

2009-2010

RMR
0086/P1
LRB-007716
MGG/PJF

10/28

Copy soon

gf

PWF

2009

2008

2007 SENATE BILL 150

11/3

April 18, 2007 - Introduced by Senators RISSER, ROESSLER, COGGS, MILLER and DARLING, cosponsored by Representatives WIECKERT, RICHARDS, GOTTLIEB, BOYLE, PARISI, BLACK, BENEDICT, A. OPT, BERCEAU, WASSERMAN, YOUNG, POPE-ROBERTS and TOLES. Referred to Committee on Public Health, Senior Issues, Long Term Care and Privacy.

Regen

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

SENATE BILL 150

and sports areas

1 101.123 (2) (d) (intro.), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i), 101.123 (3)
2 (j), 101.123 (3) (k), 101.123 (3m), 101.123 (4m) (title), 101.123 (8) (d) and
3 101.123 (8) (e) of the statutes; **relating to:** prohibiting smoking in places of
4 employment, restaurants, taverns, and other indoor areas and providing a
5 penalty.

Analysis by the Legislative Reference Bureau

prelim →

This is a preliminary draft. An analysis will be

Prohibition against smoking

provided in a later version

Current law prohibits smoking in most indoor areas that are accessible to the public unless there has been a specific area that has been designated a smoking area. Under this bill, designated smoking areas may no longer be permitted in any public place or place of employment with exceptions for private residences, designated rooms in lodging establishments, and certain retirement homes. The bill defines “a place of employment” to be any indoor area 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. Other locations where smoking areas may no longer be permitted under the bill, 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. Day care centers.
5. Inpatient health care facilities, such as community-based residential facilities and nursing homes.
6. Prisons, jails, and juvenile correctional facilities.
7. Mental health institutions and hospitals where the primary purpose is the treatment of mental illness, alcoholism, or drug abuse.
8. Centers for the developmentally disabled.
9. Restaurants and taverns, as described below.
10. Retail establishments.
11. Public waiting rooms.
12. 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 bill 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 bill prohibits

SENATE BILL 150

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 (liquor license). This bill prohibits smoking in any tavern.

Enforcement

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.

This is a preliminary draft. An analysis will be prepared in a

stays →

as defined in s. 101.123(1)(dm)

later version

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

institutes

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 institutions, as defined in s.
6 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type
7 1 secured juvenile correctional facilities, as defined in s. 938.02 (19), or similar
8 facilities including, by way of illustration but not of limitation, all of the following:

9 **SECTION 2.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag)

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

11 101.123 (1) (ac) "Correctional facility" means any prison, juvenile correctional
12 facility, or any other correctional facility that is used to incarcerate persons convicted
13 of crimes or adjudged delinquent but does not include a facility that is the private

USE (ae)
INSERT 3-10

SENATE BILL 150

is placed and at

in which

1 residence of the incarcerated person at which no one is employed to insure the
2 person's incarceration. *(ask GMM)*

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

4 101.123 (1) (aj) Notwithstanding s. 101.01 (5), "employment" means any trade,
5 occupation, or process of manufacture or any method of carrying on such trade,
6 occupation, or process of manufacture in which any person may be engaged.

7 **SECTION 5.** 101.123 (1) (am) of the statutes is ~~amended~~ *repealed,* to read:

8 ~~101.123 (1) (am) "Hospital" has the meaning given in s. 50.33 (2), except that
9 "hospital" does not include a nursing home licensed under s. 50.03 that is operated
10 in connection with a hospital or a retirement home that is operated in connection
11 with a hospital.~~

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

13 ~~101.123 (1) (b) "Inpatient health care facility" means a hospital, a county home
14 established under s. 49.70, a county infirmary established under s. 49.72 or, a
15 community-based residential facility or a nursing home licensed under s. 50.03.~~

16 **SECTION 7.** 101.123 (1) (bn) of the statutes is created to read:

17 101.123 (1) (bn) "Lodging establishment" means any of the following:

- 18 1. A bed and breakfast establishment, as defined in s. 254.61 (1).
- 19 2. A hotel, as defined in s. 254.61 (3).
- 20 3. A tourist rooming house, as defined in s. 254.61 (6).

21 **SECTION 8.** 101.123 (1) (br) of the statutes is repealed.

22 **SECTION 9.** 101.123 (1) (c) of the statutes is repealed.

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

24 101.123 (1) (d) "Person in charge" means the person, or his or her agent, who
25 ultimately controls, governs or directs the activities aboard a public conveyance or

change component

INSERT 4-15

INSERT 4-21

??

SENATE BILL 150

1 ~~within a place~~ at a location where smoking is prohibited or regulated under this
2 section, regardless of the person's status as owner or lessee.

3 **SECTION 11.** 101.123 (1) (dg) of the statutes is repealed.

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

5 101.123 (1) (dj) Notwithstanding s. 101.01 (11), "place of employment" means
6 any indoor area that employees normally frequent during the course of employment,
7 including an office, a work area, an employee lounge, a restroom, a conference room,
8 a meeting room, a classroom, a hallway, a stairway, ^{a lobby, a common area,} a vehicle, or a cafeteria that is
9 provided by the employer.

10 ~~**SECTION 13.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m)~~ ??

11 **SECTION 14.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and
12 amended to read:

13 101.123 (1) (cm) "~~Public conveyance~~" "Passenger vehicle" means a mass transit
14 vehicles vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01
15 (31), and a school buses bus as defined by in s. 340.01 (56).

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

INSEKT
5-15

17 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)
18 ~~with a seating capacity of more than 50 persons.~~

19 **SECTION 16.** 101.123 (1) (g) of the statutes is amended to read:

20 101.123 (1) (g) "Retail establishment" means any store or shop in which retail
21 sales is the principal business conducted, ~~except a tavern operating under a "Class~~
22 ~~B" intoxicating liquor license or Class "B" fermented malt beverages license, and~~
23 ~~except bowling centers.~~

24 **SECTION 17.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)

25 and amended to read:

SECTION 17. RP; 101.123(1)(gm)

SENATE BILL 150

1 101.123 (1) (h) (intro.) "Smoking" means ~~carrying~~ any of the following:

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

4 **SECTION 18.** 101.123 (1) (h) 2. of the statutes is created to read:

5 101.123 (1) (h) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,
6 pipe, or other lighted smoking equipment. containing tobacco products

7 **SECTION 19.** 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 as
9 defined in s. 51.01 (12) or a center for the developmentally disabled as defined in s.
10 51.01 (3).

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

12 101.123 (1) (im) "Tavern" means an establishment, other than a restaurant,
13 that holds a "Class B" intoxicating liquor license or Class "B" fermented malt
14 beverages license.

15 **SECTION 21.** 101.123 (1) (j) of the statutes is repealed.

16 **SECTION 22.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

17 101.123 (2) (title) PROHIBITION AGAINST SMOKING.

18 **SECTION 23.** 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 person may smoke in
20 any of the following indoor places:

21 **SECTION 24.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

22 101.123 (2) (a) 1. Public conveyances ~~Passenger vehicles.~~ educational facilities

23 **SECTION 25.** 101.123 (2) (a) 2m. of the statutes is created to read:

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

25 **SECTION 26.** 101.123 (2) (a) 2r. of the statutes is created to read:

SENATE BILL 150

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

2 SECTION 27. 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

3 101.123 (2) (a) 4. Theaters.

except as provided in sub. (3)(L)
INSERT 7-3

4 SECTION 28. 101.123 (2) (a) 5. of the statutes is repealed.

5 SECTION 29. 101.123 (2) (a) 5m. of the statutes is created to read:

6 101.123 (2) (a) 5m. Lockup facilities, jails, or correctional facilities.

7 SECTION 30. 101.123 (2) (a) 5t. of the statutes is created to read:

8 101.123 (2) (a) 5t. State institutions.

9 SECTION 31. 101.123 (2) (a) 6. of the statutes is repealed and recreated to read:

10 101.123 (2) (a) 6. Elevators.

11 SECTION 32. 101.123 (2) (a) 7m. of the statutes is created to read:

12 101.123 (2) (a) 7m. Taverns.

13 SECTION 33. 101.123 (2) (a) 8g. of the statutes is created to read:

14 101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3m).

INSERT
7-12
(3)(K)

15 SECTION 34. 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

16 101.123 (2) (a) 9. Any indoor place, other than the places listed in subd. 1. to

17 8r., that is a place of employment or that is open to the public or to which members

18 of the public may be invited or have lawful access or may be invited

19 SECTION 35. 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.

20 and amended to read:

21 101.123 (2) (a) 8r. Any enclosed, indoor area of a state, State, county, city,

22 village, or and town building buildings.

23 SECTION 36. 101.123 (2) (am) of the statutes is repealed.

24 SECTION 37. 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and

25 amended to read:

SENATE BILL 150

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

3 **SECTION 38.** 101.123 (2) (b) of the statutes is repealed.

4 **SECTION 39.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
5 and amended to read:

6 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
7 Outside on the premises, ~~indoors or outdoors~~, of a day care center when children who
8 are receiving day care services are present.

9 **SECTION 40.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
10 amended to read:

11 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
12 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ On the
13 grounds of a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

14 **SECTION 41.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
15 amended to read:

16 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
17 ~~in~~ A location that is 25 feet or less from a residence hall or dormitory that is owned
18 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
19 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

20 **SECTION 42.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

21 **SECTION 43.** 101.123 (2) (d) (intro.) of the statutes is created to read:

22 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
23 locations:

24 **SECTION 44.** 101.123 (2m) of the statutes is created to read:

← INSERT
8 →
93

SENATE BILL 150

1 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
2 may allow any person to smoke in violation of sub. (2) at a location that is under the
3 control or direction of the person in charge.

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

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

8 1. Posting signs setting forth the prohibition and providing other appropriate
9 notification and information concerning the prohibition.

10 2. Refusing to serve a person, if the person is smoking in a restaurant or tavern.

for private club

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

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

par.

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

19 **SECTION 45.** 101.123 (3) (intro.) of the statutes is amended to read:

20 101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against smoking~~
21 in sub. (2) (a) does not apply to the following ~~places:~~

strike

22 **SECTION 46.** 101.123 (3) (a) to (gr) of the statutes are repealed.

23 **SECTION 47.** 101.123 (3) (h) of the statutes is created to read:

24 101.123 (3) (h) A private residence.

25 **SECTION 48.** 101.123 (3) (i) of the statutes is created to read:

SENATE BILL 150

SECTION 48

an assisted living facility

1 101.123 (3) (i) A room used by a person in a retirement home as his or her
2 residence.

3 SECTION 49. 101.123 (3) (j) of the statutes is created to read:

4 101.123 (3) (j) A room in a retirement home in which 2 or more persons reside
5 if every person ^{who} lives in that room smokes and each of those persons has made
6 a written request to the person in charge of the retirement home to be placed in a
7 room where smoking is allowed.

an assisted living facility

assisted living facility

8 SECTION 50. 101.123 (3) (k) of the statutes is created to read:

9 101.123 (3) (k) A room in a lodging establishment that has been designated as
10 a room where smoking is allowed, as provided under sub. (3m).

INS 10-11 (apt. house) there's

INSERT 10-12

11 SECTION 51. 101.123 (3m) of the statutes is created to read:

12 101.123 (3m) LODGING. The owner of a lodging establishment may designate
13 not more than 25 percent of the guest rooms in the lodging establishment as guest
14 rooms in which smoking is permitted.

INS 10-14

15 SECTION 52. 101.123 (4) of the statutes is repealed.

16 SECTION 53. 101.123 (4m) (title) of the statutes is created to read:

17 101.123 (4m) (title) LOCAL REGULATION.

18 SECTION 54. 101.123 (5) of the statutes is repealed.

19 SECTION 55. 101.123 (6) (title) of the statutes is repealed.

20 SECTION 56. 101.123 (6) of the statutes is amended to read:

21 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform
22 dimensions and other characteristics of the signs used to designate smoking areas
23 required under sub. (2m). These rules may not require the use of signs that are more
24 expensive than is necessary to accomplish their purpose.

25 SECTION 57. 101.123 (7) of the statutes is amended to read:

SENATE BILL 150

1 101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the
2 department of administration to have the signs prepared and made available to state
3 agencies for use in state facilities that set forth the prohibition against smoking.

4 **SECTION 58.** 101.123 (8) (a) of the statutes is amended to read:

5 101.123 (8) (a) Any person who ~~willfully~~ violates sub. (2) (a), ~~(am) 1., (bm), (br),~~
6 ~~or (bv) after being advised by an employee of the facility that smoking in the area is~~
7 ~~prohibited or any person in charge or his or her agent who willfully fails to comply~~
8 ~~with sub. (5) shall forfeit not less than \$10 and not more than \$10 \$100 per violation.~~

9 **SECTION 59.** 101.123 (8) (b) of the statutes is repealed.

10 **SECTION 60.** 101.123 (8) (c) of the statutes is repealed.

11 **SECTION 61.** 101.123 (8) (d) of the statutes is created to read:

12 101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to
13 a forfeiture as follows:

- 14 1. Not less than \$50 nor more than \$100 for the first violation.
- 15 2. Not less than \$100 nor more than \$200 for the 2nd violation.
- 16 3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent
17 violation.

18 **SECTION 62.** 101.123 (8) (e) of the statutes is created to read:

19 101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

20 **SECTION 63.** 165.60 of the statutes is amended to read:

21 **165.60 Law enforcement.** The department of justice is authorized to enforce
22 ss. 101.123 (2), ~~(5),~~ (2m), and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
23 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
24 upon sheriffs and municipal police officers in the performance of those duties. This
25 section does not deprive or relieve sheriffs, constables, and other local police officers

SENATE BILL 150

1 of the power and duty to enforce those sections, and those officers shall likewise
2 enforce those sections.

3 **SECTION 64.** 165.755 (1) (b) of the statutes is amended to read:

4 165.755 (1) (b) A court may not impose the crime laboratories and drug law
5 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),
6 (bm), (br), or (bv) or (5) (b) or (2m), for a first violation of s. 23.33 (4c) (a) 2., 30.681
7 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
8 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
9 violation, or for a violation of a state law or municipal or county ordinance involving
10 a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
11 violation under s. 347.48 (2m).

12 **SECTION 65.** 302.46 (1) (a) of the statutes is amended to read:

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

SENATE BILL 150

1 **SECTION 66.** 460.01 (5) of the statutes is amended to read:

2 460.01 (5) “Physician’s office” has the meaning given in s. ~~101.123 (1) (dg)~~
3 means a place, other than a residence or a hospital, that is used primarily to provide
4 medical care and treatment.

5 **SECTION 67.** 757.05 (1) (a) of the statutes is amended to read:

6 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
7 state law or for a violation of a municipal or county ordinance except for a violation
8 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, or for a first violation
9 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
10 who committed the violation had a blood alcohol concentration of 0.08 or more but
11 less than 0.1 at the time of the violation, or for a violation of state laws or municipal
12 or county ordinances involving nonmoving traffic violations, violations under s.
13 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
14 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
15 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
16 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
17 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
18 in proportion to the suspension.

19 **SECTION 68.** 814.63 (1) (c) of the statutes is amended to read:

20 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
21 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, for a first violation of s. 23.33
22 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
23 committed the violation had a blood alcohol concentration of 0.08 or more but less
24 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
25 safety belt use violation under s. 347.48 (2m).

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0086/?ins
MGG:.....

1 **Insert 3-10**

2 **SECTION 1.** 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:

3 77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and
4 hospitals but not in residential facilities including personal residences, apartments,
5 long-term care facilities, as defined under s. 16.009 (1) (em), state institutions
6 prisons, as defined under s. 101.123 (1) (i) ^(dm) mental health institutes, as defined
7 in s. 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3),
8 Type 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities
9 including, by way of illustration but not of limitation, all of the following:

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109; 2003 a. 33, 321; 2005 a. 149, 327, 344; 2007 a. 11, 20, 42, 97.

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

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

12 101.123 (1) (ab) "Assisted living facility" means means a community-based
13 residential facility as defined in s. 50.01 (1g), a residential care apartment complex
14 under s. 50.01 (1d), or an adult family home under s. 50.01 (1) (b).

15 **Insert 4-15**

16 **SECTION 4.** 101.123 (1) (ar) of the statutes is amended to read:

17 101.123 (1) (ar) "Immediate vicinity of the state capitol" means the area
18 directly adjacent to the state capitol building, as determined by rule of the
19 department of administration. "Immediate vicinity of the state capitol" does not
20 include any location that is more than one fathom six feet from the state capitol
21 building.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268; 2005 a. 344; 2007 a. 20 s. 9121 (6) (a).

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

1 101.123 (1) (b) "Inpatient health care facility" means a hospital, as defined in
 2 s. 50.33 (2), a county home established under s. 49.70, a county infirmary established
 3 under s. 49.72 or a community-based residential facility or, a nursing home licensed
 4 under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a
 5 Wisconsin Veteran's home under s. 45.50, or a treatment facility.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268; 2005 a. 344; 2007 a. 20 s. 9121 (6) (a).

6 **Insert 4-21**

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

8 101.123 (1) (bv) "Multifamily dwellings" means groups of apartments or
 9 condominiums, rowhouses, or town houses.

10 **Insert 5-15**

11 **SECTION 7.** 101.123 (1) (dn) of the statutes is created to read:

12 101.123 (1) (dn) "Private club" means an organization that limits its
 13 membership and is organized for a recreational, fraternal, social, patriotic, political,
 14 benevolent, or athletic purpose.

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

16 101.123 (1) (e) "Public conveyance" means a mass transit vehicles vehicle as
 17 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),
 18 and any other devices by which persons are transported, for hire, on a highway or by
 19 rail, water, air, or guidewire within this state, but does not include such a device
 20 while providing transportation in interstate commerce.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268; 2005 a. 344; 2007 a. 20 s. 9121 (6) (a).

21 **Insert 6-7**

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

1 101.123 (1) (hm) "Sports arena" means any enclosed stadium, pavilion,
2 gymnasium, swimming pool, skating rink, bowling center, or other building where
3 athletic events are held regardless of whether the area has a permanent or
4 retractable roof.

5 **Insert 6-14**

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

7 101.123 (1) (ip) "Treatment facility" means an publicly or private operated
8 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,
9 or developmentally disabled persons.

10 **Insert 7-12**

11 **SECTION 11.** 101.123 (2) (a) 7r. of the statutes is created to read:

12 101.123 (2) (a) 7r. Private clubs.

13 **SECTION 12.** 101.123 (2) (a) 8d. of the statutes is created to read:

14 101.123 (2) (a) 8d. Common areas of multifamily dwellings.

15 **Insert 8-23**

16 **SECTION 13.** 101.123 (2) (e) of the statutes is created to read:

17 101.123 (2) (e) No person may smoke in a sports arena.

18 **Insert 10-12**

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

20 101.123 (3) (L) Any stage of a theater when the stage is being used for a
21 theatrical performance and the smoking is part of the performance.

**SENATE AMENDMENT 6,
TO 2007 SENATE BILL 150**

January 11, 2008 - Offered by COMMITTEE ON PUBLIC HEALTH, SENIOR ISSUES, LONG
TERM CARE AND PRIVACY.

Insert 10-14

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 10, line 12: delete lines 12 to 14 and substitute:

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

6 (b) If a lodging establishment has less than 4 rooms, the owner of the lodging
7 establishment may designate one guest room as a guest room in which smoking is
8 permitted. ~~10~~

9

(END)