

2009 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB181)

Received: **05/04/2009**

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:

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:

Pre Topic:

No specific pre topic given

Topic:

Changes in outdoor provisions, penalties, other changes

Instructions:

incorporate LRB a0294 and a0293 and 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>
/?							
/1	mglass 05/04/2009	kfollett 05/04/2009	phenry 05/04/2009	_____	mbarman 05/04/2009	mbarman 05/04/2009	
/2	mglass 05/06/2009	kfollett 05/06/2009	phenry 05/06/2009	_____	cduerst 05/06/2009	cduerst 05/06/2009	
/3	mglass 05/07/2009	kfollett 05/07/2009	jfrantze 05/07/2009	_____	lparisi 05/07/2009	lparisi 05/07/2009	

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/4	mglass 05/07/2009	kfollett 05/07/2009	mduchek 05/07/2009	_____	lparisi 05/07/2009	lparisi 05/07/2009	

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14/6/09
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FE Sent For:

12/14/09
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/1	mglass 05/04/2009	kfollett 05/04/2009	phenry 05/04/2009	_____	mbarman 05/04/2009	mbarman 05/04/2009	

FE Sent For:

Handwritten notes and signatures:

- 12kf
- 5/6
- 5/6 ph
- 5/6 ph
- 5/6 ph
- 1/mo
- <END>

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*Eff date of 7/5/200 no violation
for compliance under 2m(b) to (d)
no smoking in hotels*

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/?	mglass	1/15/09 5/4	5/4 ph	5/4 ph/mb			

FE Sent For:

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BILL

1 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform
 2 dimensions and other characteristics of the signs used to designate smoking areas
 3 required under sub. (2m). These rules may not require the use of signs that are more
 4 expensive than is necessary to accomplish their purpose.

5 **SECTION 71.** 101.123 (7) of the statutes is amended to read:

6 101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the
 7 department of administration to have the signs prepared and made available to state
 8 agencies for use in state facilities that set forth the prohibition against smoking.

9 **SECTION 72.** 101.123 (8) (a) of the statutes is repealed and recreated to read:

10 101.123 (8) (a) Any person who violates sub. (2) shall be subject to a forfeiture
 11 as follows: *\$ 100 \$ 250*

- 12 1. Not less than \$25 nor more than \$50 for the first violation.
- 13 2. Not less than \$50 nor more than \$100 for the 2nd violation.
- 14 3. Not less than \$100 nor more than \$250 for the 3rd or any subsequent
 15 violation.

16 **SECTION 73.** 101.123 (8) (b) of the statutes is repealed.

17 **SECTION 74.** 101.123 (8) (c) of the statutes is repealed.

18 **SECTION 75.** 101.123 (8) (d) of the statutes is created to read:

19 101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to
 20 a forfeiture as follows: *1, warning (?) excused if do every thing*

- 21 1. Not less than \$50 nor more than \$100 for the first violation.
- 22 2. Not less than \$100 nor more than \$200 for the 2nd violation.
- 23 3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent
 24 violation.

25 **SECTION 76.** 101.123 (8) (e) of the statutes is created to read:

*\$100 every time
 2nd or subsequent
 [Liquor license]
 renewed even
 if have record
 of smoking
 violations*



State of Wisconsin
2009 - 2010 LEGISLATURE

50054/1
LRB-0086/1 RMR
MGG:kjf:md

SSA to

Now

2009 SENATE BILL 181

May 4, 2009 - Introduced by Senators RISSER, ELLIS, ROBSON, JAUCH, MILLER, DARLING and COGGS, cosponsored by Representatives RICHARDS, A. OTT, SEIDEL, ZIGMUNT, MILROY, BENEDICT, PARISI, BERCEAU, BLACK, ROYS, SOLETSKI, GOTTLIEB, CLARK, BERNARD SCHABER, MURSAU, TOLES, HILGENBERG, CULLEN, SINICKI, TOWNSEND, POPE-ROBERTS, SMITH, PASCH, HINTZ, SPANBAUER and MONTGOMERY. Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

Regen

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

SENATE BILL 181

1 (1) (ip), 101.123 (2) (a) 1g., 101.123 (2) (a) 1m., 101.123 (2) (a) 1r., 101.123 (2)
2 (a) 5m., 101.123 (2) (a) 5t., 101.123 (2) (a) 7m., 101.123 (2) (a) 7r., 101.123 (2)
3 (a) 8d., 101.123 (2) (a) 8g., 101.123 (2) (d) (intro.), 101.123 (2) (d) 5., 101.123 (2)
4 (dm), 101.123 (2) (e), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i), 101.123 (3)
5 (j), 101.123 (3) (k), 101.123 (3m), 101.123 (4m) (title), 101.123 (8) (d) and
6 101.123 (8) (e) of the statutes; **relating to:** prohibiting smoking in indoor areas,
7 in sports arenas, in public conveyances, and at certain outdoor locations and
8 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits smoking in mass transit vehicles and specific enclosed, indoor locations, including the following:

1. Inpatient health care facilities, such as community based-residential facilities and nursing homes.
2. Prisons and jails.
3. Retail establishments.
4. Restaurants.
5. Governmental buildings.

Except for hospitals, school buses, day care centers where children are present, and a few other places, a smoking area at an indoor location may be designated by the person who is in charge of that location. For example, the person in charge of a business is the owner of the business and the person in charge of a prison is the state secretary of corrections.

substitute amendment

Under the bill, smoking areas at indoor locations may no longer be designated resulting in a complete ban on indoor smoking at those locations with exceptions for private residences, a limited number of designated rooms in lodging establishments, and certain residence rooms in assisted living facilities. In addition to the specified indoor locations listed under current law, the bill prohibits smoking in any public place or place of employment. The bill defines "a place of employment" to be any indoor place 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. The bill also defines a "public place" to be a place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited. In addition, the bill defines an "enclosed place" for purposes of determining at what locations smoking is prohibited. An enclosed place must have a roof and at least two walls.

Current law provides exemptions from the prohibition against smoking for bowling centers, taverns, halls used for private functions, rooms in which the main

SENATE BILL 181

Substitute amendment

occupants are smokers, and areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exemptions.

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 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. This bill prohibits smoking in any tavern. The bill also specifically prohibits smoking in private clubs.

Under current law, smoking is prohibited outside in limited instances. These include within a certain distance of the state capitol building, dormitories that are owned or operated by the University of Wisconsin, and day care centers where children are present. This bill makes no changes to these specific prohibitions, but adds a general prohibition against smoking outside within less than a reasonable distance from any entrance into a building, an openable window, or a ventilation opening that draws air inside.

The bill also specifically prohibits smoking in sports arenas and bus shelters, regardless of whether they meet the definition of "enclosed place."

Current law does not limit the authority of any county, city, village, or town to enact smoking ordinances that protect the public's health and comfort. This bill makes no change in this provision.

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 a person who is smoking to leave and refusing to serve the person if the place is a restaurant, tavern, or private club. 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.

Substitute amendment

(municipality) substitute a modification

insert AML a

for the second and subsequent violation

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

- 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 institutes, as defined in s.
- 6 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type

SENATE BILL 181**SECTION 1**

1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities including, by way of illustration but not of limitation, all of the following:

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

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

5 101.123 (1) (ab) “Assisted living facility” means a community-based residential facility, as defined in s. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

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

9 101.123 (1) (ac) “Correctional facility” means any of the following:

10 1. A state prison, as defined or named in s. 302.01, except a correctional institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner’s place of residence and no one is employed there to ensure the prisoner’s incarceration.

14 2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility is a private residence in which the juvenile is placed and no one is employed there to ensure that the juvenile remains in custody.

19 3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under s. 302.30.

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

23 101.123 (1) (aj) Notwithstanding s. 101.01 (5), “employment” means any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged.

SENATE BILL 181

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

2 101.123 (1) (ak) “Enclosed place” means a structure or area that has all of the
3 following:

4 1. A roof or overhead covering.

5 2. Two or more substantial walls, regardless of whether the walls are removed
6 and replaced on a temporary basis.

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

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

9 101.123 (1) (ar) “Immediate vicinity of the state capitol” means the area
10 directly adjacent to the state capitol building, as determined by rule of the
11 department of administration. “Immediate vicinity of the state capitol” does not
12 include any location that is more than ~~one fathom~~ six feet from the state capitol
13 building.

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

15 101.123 (1) (b) “Inpatient health care facility” means a hospital, as defined in
16 s. 50.33 (2), a county home established under s. 49.70, a county infirmary established
17 under s. 49.72 ~~or a community-based residential facility or~~, a nursing home licensed
18 under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a
19 Wisconsin veteran’s home under s. 45.50, or a treatment facility.

20 **SECTION 10.** 101.123 (1) (bg) of the statutes is repealed.

21 **SECTION 11.** 101.123 (1) (bm) of the statutes is repealed.

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

23 101.123 (1) (bn) “Lodging establishment” means any of the following:

24 1. A bed and breakfast establishment, as defined in s. 254.61 (1).

25 2. A hotel, as defined in s. 254.61 (3).

SENATE BILL 181**SECTION 12**

1 3. A tourist rooming house, as defined in s. 254.61 (6).

2 **SECTION 13.** 101.123 (1) (br) of the statutes is repealed.

3 **SECTION 14.** 101.123 (1) (c) of the statutes is repealed.

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

5 101.123 (1) (d) “Person in charge” means the person, or his or her agent, who
6 ultimately controls, governs or directs the activities aboard a public conveyance or
7 ~~within a place at a location~~ where smoking is prohibited or regulated under this
8 section, ~~regardless of the person’s status as owner or lessee.~~

9 **SECTION 16.** 101.123 (1) (dg) of the statutes is repealed.

10 **SECTION 17.** 101.123 (1) (dj) of the statutes is created to read:

11 101.123 (1) (dj) Notwithstanding s. 101.01 (11), “place of employment” means
12 any enclosed place that employees normally frequent during the course of
13 employment, including an office, a work area, an elevator, an employee lounge, a
14 restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a
15 lobby, a common area, a vehicle, or an employee cafeteria.

16 **SECTION 18.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m).

17 **SECTION 19.** 101.123 (1) (dn) of the statutes is created to read:

18 101.123 (1) (dn) “Private club” means a facility used by an organization that
19 limits its membership and is organized for a recreational, fraternal, social, patriotic,
20 political, benevolent, or athletic purpose.

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

22 101.123 (1) (e) “Public conveyance” means a mass transit vehicles vehicle as
23 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),
24 or any other device by which persons are transported, for hire, on a highway or by

SENATE BILL 181

1 rail, water, air, or guidewire within this state, but does not include such a device
2 while providing transportation in interstate commerce.

3 **SECTION 21.** 101.123 (1) (eg) of the statutes is created to read:

4 101.123 (1) (eg) “Public place” means any enclosed place that is open to the
5 public, regardless of whether a fee is charged or a place to which the public has lawful
6 access or may be invited.

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

8 101.123 (1) (f) “Restaurant” means an establishment as defined in s. 254.61 (5)
9 ~~with a seating capacity of more than 50 persons.~~

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

11 101.123 (1) (g) “Retail establishment” means any store or shop in which retail
12 sales is the principal business conducted, ~~except a tavern operating under a “Class~~
13 ~~B” intoxicating liquor license or Class “B” fermented malt beverages license, and~~
14 ~~except bowling centers.~~

15 **SECTION 24.** 101.123 (1) (gm) of the statutes is repealed.

16 **SECTION 25.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)
17 and amended to read:

18 101.123 (1) (h) (intro.) “Smoking” means carrying a lighted burning or holding,
19 or inhaling or exhaling smoke from, any of the following items containing tobacco:

20 1. A lighted cigar,

21 2. A lighted cigarette,

22 3. A lighted pipe ~~or any.~~

23 4. Any other lighted smoking equipment.

24 **SECTION 26.** 101.123 (1) (hm) of the statutes is created to read:

SENATE BILL 181

1 101.123 (1) (hm) "Sports arena" means any stadium, pavilion, gymnasium,
2 swimming pool, skating rink, bowling center, or other building where spectator
3 sporting events are held.

4 **SECTION 27.** 101.123 (1) (i) of the statutes is amended to read:

5 101.123 (1) (i) "State institution" means ~~a prison,~~ a mental health institute,
6 as defined in s. 51.01 (12) ~~or,~~ a center for the developmentally disabled, as defined
7 in s. 51.01 (3), or a secure mental health facility at which persons are committed
8 under s. 980.06.

9 **SECTION 28.** 101.123 (1) (id) of the statutes is created to read:

10 101.123 (1) (id) "Substantial wall" means a wall where at least 25 percent of
11 the surface area of the wall is not part of an opening that may be used to allow air
12 in from the outside.

13 **SECTION 29.** 101.123 (1) (im) of the statutes is created to read:

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

17 **SECTION 30.** 101.123 (1) (ip) of the statutes is created to read:

privately

18 101.123 (1) (ip) "Treatment facility" means a publicly or ~~private~~ operated
19 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,
20 or developmentally disabled persons.

21 **SECTION 31.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

22 101.123 (2) (title) PROHIBITION AGAINST SMOKING.

23 **SECTION 32.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

24 101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in
25 any of the following enclosed places:

SENATE BILL 181

1 **SECTION 33.** 101.123 (2) (a) 1. of the statutes is repealed.

2 **SECTION 34.** 101.123 (2) (a) 1g. of the statutes is created to read:

3 101.123 (2) (a) 1g. The state capitol.

4 **SECTION 35.** 101.123 (2) (a) 1m. of the statutes is created to read:

5 101.123 (2) (a) 1m. Residence halls or dormitories owned or operated by a
6 college or university.

7 **SECTION 36.** 101.123 (2) (a) 1r. of the statutes is created to read:

8 101.123 (2) (a) 1r. Day care centers.

9 **SECTION 37.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

10 101.123 (2) (a) 4. Theaters.

11 **SECTION 38.** 101.123 (2) (a) 5. of the statutes is repealed.

12 **SECTION 39.** 101.123 (2) (a) 5m. of the statutes is created to read:

13 101.123 (2) (a) 5m. Correctional facilities.

14 **SECTION 40.** 101.123 (2) (a) 5t. of the statutes is created to read:

15 101.123 (2) (a) 5t. State institutions.

16 **SECTION 41.** 101.123 (2) (a) 6. of the statutes is repealed.

17 **SECTION 42.** 101.123 (2) (a) 7m. of the statutes is created to read:

18 101.123 (2) (a) 7m. Taverns.

19 **SECTION 43.** 101.123 (2) (a) 7r. of the statutes is created to read:

20 101.123 (2) (a) 7r. Private clubs.

21 **SECTION 44.** 101.123 (2) (a) 8d. of the statutes is created to read:

22 101.123 (2) (a) 8d. Common areas of multiple-unit residential properties.

23 **SECTION 45.** 101.123 (2) (a) 8g. of the statutes is created to read:

24 101.123 (2) (a) 8g. Lodging establishments ~~except as provided in sub. (3) (k).~~

25 **SECTION 46.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

SENATE BILL 181

1 101.123 (2) (a) 9. All enclosed places, other than those listed in subds. 1. to 8r.,
2 that are places of employment or that are public places.

3 **SECTION 47.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.
4 and amended to read:

5 101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State,~~ county, city,
6 village, or town ~~building buildings.~~

7 **SECTION 48.** 101.123 (2) (am) of the statutes is repealed.

8 **SECTION 49.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
9 amended to read:

10 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
11 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

12 **SECTION 50.** 101.123 (2) (b) of the statutes is repealed.

13 **SECTION 51.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
14 and amended to read:

15 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
16 ~~on~~ Anywhere on the premises, ~~indoors or outdoors,~~ of a day care center when children
17 who are receiving day care services are present. ~~When such children are not present,~~
18 ~~the prohibition under subd. 5. applies.~~

19 **SECTION 52.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
20 amended to read:

21 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
22 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ Anywhere
23 on the grounds of a Type 1 juvenile correctional facility.

24 **SECTION 53.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
25 amended to read:

SENATE BILL 181

1 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
2 in A location that is 25 feet or less from a residence hall or dormitory that is owned
3 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
4 location that is ~~25 feet or less from such a residence hall or dormitory.~~

5 ~~SECTION 54. 101.123 (2) (e) of the statutes is renumbered 101.123 (4m).~~

INSERT
11-5

6 **SECTION 55.** 101.123 (2) (d) (intro.) of the statutes is created to read:

7 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
8 locations:

9 ~~SECTION 56. 101.123 (2) (d) 5. of the statutes is created to read:~~

10 101.123 (2) (d) 5. A location that is less than a reasonable distance from any
11 of the following:

12 a. An operable entrance to or from an enclosed place listed in sub. (2) (a) 3. to
13 9. or a sports arena.

14 b. An openable window that is part of an enclosed place listed in sub. (2) (a) 3.
15 to 9. or a sports arena.

16 c. An opening through which air enters, for the purpose of ventilation into an
17 enclosed place listed in sub. (2) (a) 3. to 9., or a sports arena.

18 **SECTION 57.** 101.123 (2) (dm) of the statutes is created to read:

19 101.123 (2) (dm) Paragraph (d) 3. applies in lieu of par. (d) 5. to smoking outside
20 of a Type 1 juvenile correctional facility.

21 **SECTION 58.** 101.123 (2) (e) of the statutes is created to read:

22 101.123 (2) (e) No person may smoke in any of the following:

- 23 1. A sports arena.
- 24 2. A bus shelter.
- 25 3. A public conveyance.

SENATE BILL 181

SECTION 59

1 SECTION 59. 101.123 (2m) of the statutes is created to read:

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

5 ~~not~~ (b) ~~No~~ person in charge may provide matches, ashtrays, or other equipment for
6 smoking at the location where smoking is prohibited.

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

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

11 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern,
12 or private club.

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

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

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

21 SECTION 60. 101.123 (3) (intro.) of the statutes is amended to read:

22 101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against smoking~~
23 in sub. (2) (a) does not apply to the following places:

24 SECTION 61. 101.123 (3) (a) to (gr) of the statutes are repealed.

25 SECTION 62. 101.123 (3) (h) of the statutes is created to read:

SENATE BILL 181

1 101.123 (3) (h) A private residence.

2 **SECTION 63.** 101.123 (3) (i) of the statutes is created to read:

3 101.123 (3) (i) A room used by only one person in an assisted living facility as
4 his or her residence.

5 **SECTION 64.** 101.123 (3) (j) of the statutes is created to read:

6 101.123 (3) (j) A room in an assisted living facility in which 2 or more persons
7 reside if every person who lives in that room smokes and each of those persons has
8 made a written request to the person in charge of the assisted living facility to be
9 placed in a room where smoking is allowed.

10 **SECTION 65.** 101.123 (3) (k) of the statutes is created to read:

11 101.123 (3) (k) A room in a lodging establishment that has been designated as
12 a room where smoking is allowed, as provided under sub. (3m).

13 **SECTION 66.** 101.123 (3m) of the statutes is created to read:

14 101.123 (3m) LODGING. (a) Except as provided in par. (b), the owner of a lodging
15 establishment may designate not more than 25 percent of the guest rooms in the
16 lodging establishment as guest rooms in which smoking is permitted.

17 (b) If a lodging establishment has ^{fewer} less than 4 rooms, the owner of the lodging
18 establishment may designate one guest room as a guest room in which smoking is
19 permitted.

20 **SECTION 67.** 101.123 (4) of the statutes is repealed.

21 **SECTION 68.** 101.123 (4m) (title) of the statutes is created to read:

22 101.123 (4m) (title) LOCAL AUTHORITY.

23 **SECTION 69.** 101.123 (5) of the statutes is repealed.

24 **SECTION 70.** 101.123 (6) of the statutes is amended to read:

SENATE BILL 181

1 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform
2 dimensions and other characteristics of the signs used to designate smoking areas
3 required under sub. (2m). These rules may not require the use of signs that are more
4 expensive than is necessary to accomplish their purpose.

5 SECTION 71. 101.123 (7) of the statutes is amended to read:

6 101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the
7 department of administration to have ~~the~~ signs prepared and made available to state
8 agencies for use in state facilities that set forth the prohibition against smoking.

9 SECTION 72. 101.123 (8) (a) of the statutes is repealed and recreated to read:

10 101.123 (8) (a) Any person who violates sub. (2) shall be subject to a forfeiture

11 *as follows: of \$100 \$250 for each violation*
12 ~~Not less than \$25 nor more than \$50 for the first violation.~~

13 2. Not less than \$50 nor more than \$100 for the 2nd violation.

14 3. Not less than \$100 nor more than \$250 for the 3rd or any subsequent
15 violation.

16 SECTION 73. 101.123 (8) (b) of the statutes is repealed.

17 SECTION 74. 101.123 (8) (c) of the statutes is repealed.

18 SECTION 75. 101.123 (8) (d) of the statutes is created to read: *(b) to (d)*

19 101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to
20 a forfeiture *as follows: of \$100 for each violation.*

21 ~~1. Not less than \$50 nor more than \$100 for the first violation.~~

22 2. Not less than \$100 nor more than \$200 for the 2nd violation.

23 3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent
24 violation.

25 SECTION 76. 101.123 (8) (e) of the statutes is created to read:

1WS 14-24

Except as provided in par. (d) major (em)

SENATE BILL 181

1 101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

2 SECTION 77. 165.60 of the statutes is amended to read:

3 165.60 Law enforcement. The department of justice is authorized to enforce
4 ss. 101.123 (2), (5), (2m), and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
5 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
6 upon sheriffs and municipal police officers in the performance of those duties. This
7 section does not deprive or relieve sheriffs, constables, and other local police officers
8 of the power and duty to enforce those sections, and those officers shall likewise
9 enforce those sections.

10 SECTION 78. 165.755 (1) (b) of the statutes is amended to read:

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

19 SECTION 79. 302.46 (1) (a) of the statutes is amended to read:

20 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
21 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
22 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv) or (5) (2m)~~, or for a first violation of s. 23.33 (4c)
23 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
24 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
25 the time of the violation, or for a violation of state laws or municipal or county

SENATE BILL 181

1 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
2 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
3 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
4 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
5 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
6 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
7 surcharge in proportion to the suspension.

8 **SECTION 80.** 460.01 (5) of the statutes is amended to read:

9 460.01 (5) “Physician’s office” ~~has the meaning given in s. 101.123 (1) (dg)~~
10 means a place, other than a residence or a hospital, that is used primarily to provide
11 medical care and treatment.

12 **SECTION 81.** 757.05 (1) (a) of the statutes is amended to read:

13 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
14 state law or for a violation of a municipal or county ordinance except for a violation
15 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, or for a first violation
16 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
17 who committed the violation had a blood alcohol concentration of 0.08 or more but
18 less than 0.1 at the time of the violation, or for a violation of state laws or municipal
19 or county ordinances involving nonmoving traffic violations, violations under s.
20 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
21 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
22 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
23 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
24 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
25 in proportion to the suspension.

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0054/?insMG
MGG:...

1
2
3
4
5
6

Insert 14-24

SECTION 1. 101.123 (8) (dm) of the statutes ^{and (em)} is created to read:

101.123 (8) (dm) For violations subject to the forfeiture under par. (d), if the person in charge has not previously received a warning notice for a violation of sub. (2m) (b) to (d), the law enforcement officer shall issue the person in charge a warning notice and may not issue a citation. ^{under par. (d)}

(em) No person ^{in charge} may be required ^{under par. (d)} to forfeit more than \$100, in total, for all violations of sub. (2m) (b) to (d) occurring on a single day.

INS 14-24
(end)



SENATE AMENDMENT ,
TO 2009 SENATE BILL (LRB-0086/1)

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

2 **1.** Page 10, line 17: delete material beginning with "When" and ending with
3 "applies." on line 18.

4 **2.** Page 11, line 5: delete that line and substitute:

5 "~~SECTION 56m.~~ 101.123 (2) (c) of the statutes is renumbered 101.123 (4m) and
6 amended to read:

7 101.123 (4m) LOCAL AUTHORITY. This section does not limit the authority of any
8 county, city, village or town to enact ordinances or of any school district to adopt
9 policies that, complying with the purpose of this section, protect the health and
10 comfort of the public. If a county, city, village, or town enacts an ordinance, or if a
11 school district adopts a policy, regulating or prohibiting outside smoking in certain
12 areas as authorized under this subsection, the ordinance may apply only to public
13 property under the jurisdiction of the county, city, village, town, or school district.

INS 11-5

1 Such ordinance shall provide that the person in charge of a restaurant, tavern,
2 private club, or retail establishment located in an area subject to the ordinance may
3 designate an outside area that is within a reasonable distance from any entrance to
4 the restaurant, tavern, private club, or retail establishment where customers,
5 employees, or persons associated with the restaurant, tavern, private club, or retail
6 establishment may smoke. Such ordinance may not define the term “reasonable
7 distance” or set any specified measured distance as being a “reasonable distance.”

8 **3.** Page 11, line 9: delete lines 9 to 20.

9 **4.** Page 13, line 21: delete lines 21 and 22.

10 (END)

1

Insert ANL

no # except that if a municipality enacts an ordinance prohibiting smoking on public property, the ordinance must provide that an owner of a restaurant, tavern, private club, or retail establishment (establishment) may allow smoking within a reasonable distance from any entrance to the establishment *or*

2

Insert 14-24

✓ and (2m) are

3

SECTION 1. 101.123 (8) (dm) of the statutes ~~is~~ created to read: *✓*

4

101.123 (8) (dm) For violations subject to the forfeiture under par. (d), if the

5

person in charge has not previously received a warning notice for a violation of sub.

6

(2m) (b) to (d), the law enforcement officer shall issue the person in charge a warning

7

notice and may not issue a citation.

*insert cont.
14-24*

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0054/linsAG
ARG:.....

15-2

(8)(d)

INSERT ??-??:

SECTION 1. 125.12 (1) (c) of the statutes is amended to read:

125.12 (1) (c) Neither a municipality nor the department may consider an arrest or conviction for a violation punishable under s. ~~101.123 (2)(2)~~, 945.03 (2m), 945.04 (2m), or 945.05 (1m) in any action to revoke, suspend, or refuse to renew a Class "B" or "Class B" license or permit.

History: 1981 c. 79; 1983 a. 516; 1987 a. 93; 1993 a. 98; 1995 a. 27 s. 9126 (19); 1995 a. 417, 448; 1997 a. 27, 35, 166, 187; 1999 a. 9; 2005 a. 14, 25, 442; 2007 a. 20 s. 9121 (6) (a); 2007 a. 85.

****NOTE: MGG will need to add the appropriate cross-reference for the violation, or delete the question marks to simply cross-reference the whole section.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

def enclosed spaces
person in charge par. (a) back in
local authority delete "outside" within

retail - no liquor - existing
license

remain on site location

Retail Tobacco Shop and Cigar Bar Exemption Language

The Cigar Store Alliance of Wisconsin is advocating specific language in any smoking ban bill considered by the State of Wisconsin. Other states have laws that exempt retail tobacco shops and cigar bars. Our businesses rely on providing our customers a venue for socializing and enjoying their passion for tobacco products. A ban on smoking in our establishments would destroy our business model and move our customers to internet and catalogue sales since they could purchase them for less as they do not pay our State Other Tobacco Tax (OTP). The result would be a loss of jobs and OTP, sales, and income tax revenue for the State.

In addition, we believe that no person would enter a retail tobacco shop or cigar bar with the expectation of a smoke free environment. It will allow some freedom in the marketplace for smokers and still protect the people it was intended to protect.

States with Retail Tobacco Shops Revenue Requirements

State	Thresholds	
	Tobacco Revenue by %	Tobacco Revenue by \$
Maryland	75%	n/a
Rhode Island	75%	n/a

We have reviewed the exemptions in other states and found that 30 of 35 states with smoking bans exempt tobacco shops and that 16 of 35 states had language that exempted bars or specifically cigar bars. Only 2 states define retail tobacco shops by revenue thresholds. Maryland and Rhode Island each set a threshold of 75% tobacco and accessory revenue to be considered a retail tobacco shop.

States with Cigar Bar Revenue Requirements

State	Thresholds	
	Tobacco Revenue by %	Tobacco Revenue by \$
Colorado	5%	\$50,000
Connecticut	10%	n/a
Oregon	n/a	\$5,000
Pennsylvania	15%	n/a
Massachusetts	50%	n/a
New Jersey	15%	n/a
New Mexico	10%	\$10,000
New York	10%	n/a
Rhode Island	50%	n/a

A total of 9 states had specific language defining a cigar bar by revenue thresholds. Eight of the nine defined the revenue as a % of total sales with the average being 21% and the mean was 10%. Three states defined the threshold via dollar amounts with an average of \$21,667.

We believe that it is prudent to define both a retail tobacco shop and a cigar bar to ensure that the exemption truly covers those businesses that it was intended to cover.

We recommend that a retail tobacco shop be defined as:

"Retail tobacco shop" means any enclosed indoor

workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Also, any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested. Most states don't define by a revenue threshold for retail shops.

We recommend that a cigar bar be defined as: "cigar bar" means an establishment that has a valid liquor license and is engaged in the business of selling cigars for consumption by patrons on the premises and generates fifteen percent (15%) or more of its total annual gross revenue ~~or at least twenty five thousand dollars (\$25,000)~~ in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar shall agree to provide adequate information to demonstrate to the state's satisfaction compliance with this definition.

Other items deserving consideration for an exemption would include; private limos, long term health care facilities, casinos, research facilities, private clubs, veterans groups, tobacco manufacturing and wholesale sites, hookah lounges theatrical performances, and airport lounges.

Cigar Store Alliance of Wisconsin
327 W Main Street
Waukesha, WI 53186

*existing ones
cigar or pipe, no hookah*

X "Tobacco bar" means a tavern, which generates ten percent ~~(10%)~~ ^{15%} 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)

X "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.

ing, but not limited to, janitorial services, repairs, or renovations.

(7) "Physical barrier" includes an uncovered opening; a screened or otherwise partially covered opening; or an open or closed window, jalousie, or door.

(8) "Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested.

existing no location change

(9) "Secondhand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

(10) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

75% tobacco, not cig.

(11) "Stand-alone bar" means any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and the licensed premises is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. A place of business constitutes a stand-alone bar in which the service of food is merely incidental in accordance with this subsection if the licensed premises derives no more than 10 percent of its gross revenue from the sale of food consumed on the licensed premises.

(12) "Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like. The term does not include noncommercial activities performed by members of a membership association.

(13) "Membership association" means a charitable, nonprofit, or veterans' organization that holds a current exemption under s. 501(c)(3), (4), (7), (8), (10), or (19) or s. 501(d) of the Internal Revenue Code.

History.--s. 3, ch. 85-257; s. 1, ch. 88-266; s. 3, ch. 92-185; s. 42, ch. 94-218; s. 78, ch. 97-101; s. 2, ch. 2000-185; s. 3, ch. 2003-398.