State of Wisconsin
2009 - 2010 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT ,

TO 2009 SENATE BILL 181

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AN ACT ***to repeal*** 101.123 (1) (am), 101.123 (1) (bg), 101.123 (1) (bm), 101.123 (1) (br), 101.123 (1) (c), 101.123 (1) (dg), 101.123 (1) (gm), 101.123 (2) (a) 1., 101.123 (2) (a) 5., 101.123 (2) (a) 6., 101.123 (2) (am), 101.123 (2) (b), 101.123 (3) (a) to (gr), 101.123 (4), 101.123 (5), 101.123 (8) (b) and 101.123 (8) (c); ***to renumber*** 101.123 (1) (a) and 101.123 (1) (dm); ***to renumber and amend*** 101.123 (1) (h), 101.123 (2) (a) 10., 101.123 (2) (ar), 101.123 (2) (bm), 101.123 (2) (br), 101.123 (2) (bv) and 101.123 (2) (c); ***to amend*** 77.52 (2) (ag) 39. (intro.), 101.123 (1) (ar), 101.123 (1) (b), 101.123 (1) (d), 101.123 (1) (e), 101.123 (1) (f), 101.123 (1) (g), 101.123 (1) (i), 101.123 (2) (a) (intro.), 101.123 (3) (intro.), 101.123 (6), 101.123 (7), 125.12 (1) (c), 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a) and 814.63 (1) (c); ***to repeal and recreate*** 101.123 (2) (title), 101.123 (2) (a) 4., 101.123 (2) (a) 9. and 101.123 (8) (a); and ***to create*** 101.123 (1) (ab), 101.123 (1) (ac), 101.123 (1) (aj), 101.123 (1) (ak), 101.123 (1) (bn), 101.123 (1) (dj),

101.123 (1) (dn), 101.123 (1) (eg), 101.123 (1) (hm), 101.123 (1) (id), 101.123 (1) (im), 101.123 (1) (ip), 101.123 (2) (a) 1g., 101.123 (2) (a) 1m., 101.123 (2) (a) 1r., 101.123 (2) (a) 5m., 101.123 (2) (a) 5t., 101.123 (2) (a) 7m., 101.123 (2) (a) 7r., 101.123 (2) (a) 8d., 101.123 (2) (a) 8g., 101.123 (2) (d) (intro.), 101.123 (2) (e), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i), 101.123 (3) (j), 101.123 (8) (d) and 101.123 (8) (dm) and (em) of the statutes; **relating to:** prohibiting smoking in indoor areas, in sports arenas, in public conveyances, and at certain outdoor locations and 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.

Under the substitute amendment, 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 and certain residence rooms in assisted living facilities. In addition to the specified indoor locations listed under current law, the substitute amendment prohibits smoking in any public place or place of employment. The substitute amendment 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 substitute amendment 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 substitute amendment defines an "enclosed place" for purposes of determining at what locations smoking is prohibited. An enclosed place must have a roof and ~~at least~~ more than 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 occupants are smokers, and areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This substitute amendment 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 substitute amendment prohibits smoking in any restaurant regardless of seating capacity or the number of liquor sale receipts.

Current law allows smoking in any tavern holding a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license issued by a municipality. This substitute amendment prohibits smoking in any tavern. The substitute amendment also specifically prohibits smoking in private clubs.

The substitute amendment 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 (municipality) to enact smoking ordinances that protect the public's health and comfort. This substitute amendment makes no change in this provision 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.

This substitute amendment 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 substitute amendment imposes a forfeiture on persons in charge who fail to take these measures 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

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:

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

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

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).

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

101.123 **(1)** (ac) "Correctional facility" means any of the following:

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.

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.

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.

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

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.

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

101.123 **(1)** (ak) "Enclosed place" means a structure or area that has all of the following:

1. A roof ~~or overhead covering.~~

2. ~~Two or more~~ More than two substantial walls, ~~regardless of whether the walls are removed and replaced on a temporary basis.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101.123 **(1)** (eg) "Public place" means any enclosed 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.

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

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

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

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

INSERT 7-11

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

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

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

1. A lighted cigar~~,~~.

2. A lighted cigarette~~,~~.

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

4. Any other lighted smoking equipment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101.123 **(4m)** LOCAL AUTHORITY. This section does not limit the authority of any county, city, village or town to enact ordinances or of any school district to adopt policies that, complying with the purpose of this section, protect the health and comfort of the public. If a county, city, village, or town enacts an ordinance, or if a school district adopts a policy, regulating or prohibiting outside smoking in certain areas as authorized under this subsection, the ordinance may apply only to public property under the jurisdiction of the county, city, village, town, or school district. Such ordinance shall provide that the person in charge of a restaurant, tavern, private club, or retail establishment located in an area subject to the ordinance may designate an outside area that is ~~within~~ a reasonable distance from any entrance to the restaurant, tavern, private club, or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke. Such ordinance may not define the term "reasonable distance" or set any specified measured distance as being a "reasonable distance."

SECTION 54. 101.123 (2) (d) (intro.) of the statutes is created to read:

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

SECTION 55. 101.123 (2) (e) of the statutes is created to read:

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

1. A sports arena.

2. A bus shelter.

3. A public conveyance.

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SECTION 56. 101.123 (2m) of the statutes is created to read:

101.123 **(2m)** RESPONSIBILITY OF PERSONS IN CHARGE. (b) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.

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

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

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

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

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

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

SECTION 57. 101.123 (3) (intro.) of the statutes is amended to read:

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

SECTION 58. 101.123 (3) (a) to (gr) of the statutes are repealed.

1 **SECTION 59.** 101.123 (3) (h) of the statutes is created to read:

2 101.123 **(3)** (h) A private residence.

3 **SECTION 60.** 101.123 (3) (i) of the statutes is created to read:

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

6 **SECTION 61.** 101.123 (3) (j) of the statutes is created to read:

7 101.123 **(3)** (j) A room in an assisted living facility in which 2 or more persons
8 reside if every person who lives in that room smokes and each of those persons has
9 made a written request to the person in charge of the assisted living facility to be
10 placed in a room where smoking is allowed. INS 13-10

11 **SECTION 62.** 101.123 (4) of the statutes is repealed.

12 **SECTION 63.** 101.123 (5) of the statutes is repealed.

13 **SECTION 64.** 101.123 (6) of the statutes is amended to read:

14 101.123 **(6)** UNIFORM SIGNS. The department shall, by rule, specify uniform
15 dimensions and other characteristics of the signs ~~used to designate smoking areas~~
16 required under sub. (2m). These rules may not require the use of signs that are more
17 expensive than is necessary to accomplish their purpose.

18 **SECTION 65.** 101.123 (7) of the statutes is amended to read:

19 101.123 **(7)** SIGNS FOR STATE AGENCIES. The department shall arrange with the
20 department of administration to have ~~the~~ signs prepared and made available to state
21 agencies for use in state facilities that set forth the prohibition against smoking.

22 **SECTION 66.** 101.123 (8) (a) of the statutes is repealed and recreated to read:

23 101.123 **(8)** (a) Any person who violates sub. (2) shall be subject to a forfeiture
24 of not less than $100 nor more than $250 for each violation.

25 **SECTION 67.** 101.123 (8) (b) of the statutes is repealed.

1 **SECTION 68.** 101.123 (8) (c) of the statutes is repealed.

2 **SECTION 69.** 101.123 (8) (d) of the statutes is created to read:

3 101.123 **(8)** (d) Except as provided in par. (dm) or (em), any person in charge
4 who violates sub. (2m) (b) to (d) shall be subject to a forfeiture of $100 for each
5 violation.

6 **SECTION 70.** 101.123 (8) (dm) and (em) of the statutes are created to read:

7 101.123 **(8)** (dm) For violations subject to the forfeiture under par. (d), if the
8 person in charge has not previously received a warning notice for a violation of sub.
9 (2m) (b) to (d), the law enforcement officer shall issue the person in charge a warning
10 notice and may not issue a citation.

11 (em) No person in charge may be required under par. (d) to forfeit more than
12 $100 in total for all violations of sub. (2m) (b) to (d) occurring on a single day.

13 **SECTION 71.** 125.12 (1) (c) of the statutes is amended to read:

14 125.12 **(1)** (c) Neither a municipality nor the department may consider an
15 arrest or conviction for a violation punishable under s. 101.123 (8) (d), 945.03 (2m),
16 945.04 (2m), or 945.05 (1m) in any action to revoke, suspend, or refuse to renew a
17 Class "B" or "Class B" license or permit.

18 **SECTION 72.** 165.60 of the statutes is amended to read:

19 **165.60 Law enforcement.** The department of justice is authorized to enforce
20 ss. 101.123 (2), ~~(5)~~, (2m), and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
21 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
22 upon sheriffs and municipal police officers in the performance of those duties. This
23 section does not deprive or relieve sheriffs, constables, and other local police officers
24 of the power and duty to enforce those sections, and those officers shall likewise
25 enforce those sections.

1 **SECTION 73.** 165.755 (1) (b) of the statutes is amended to read:

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

10 **SECTION 74.** 302.46 (1) (a) of the statutes is amended to read:

11 302.46 **(1)** (a) If a court imposes a fine or forfeiture for a violation of state law
12 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
13 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5)~~ (2m), or for a first violation of s. 23.33 (4c)
14 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
15 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
16 the time of the violation, or for a violation of state laws or municipal or county
17 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
18 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
19 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
20 forfeiture imposed or $10, whichever is greater. If multiple offenses are involved, the
21 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
22 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
23 surcharge in proportion to the suspension.

24 **SECTION 75.** 460.01 (5) of the statutes is amended to read:

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

SECTION 76. 757.05 (1) (a) of the statutes is amended to read:

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

SECTION 77. 814.63 (1) (c) of the statutes is amended to read:

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

SECTION 78. Initial applicability.

1 (1) This act first applies to violations occurring on the effective date of this
2 subsection.

3 **SECTION 79. Effective date.**

4 (1) This act takes effect on July 5, 2010.

5 **(END)**

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa0316/1
MGG:wlj:ph

INSERTS

SENATE AMENDMENT ,

TO 2009 SENATE BILL 181

INSERT 7-11

that does not have a "Class B" intoxicating liquor license or a Class "B" fermented malt beverage license and

that generates 75% or more of its gross annual income from the retail sale of

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

2 **1.** Page 7, line 14: after that line insert:

3 "**SECTION 23m.** 101.123 (1) (gg) of the statutes is created to read:

4 101.123 **(1)** (gg) "Retail tobacco store" means a retail establishment the

5 primary business of which is the sale of tobacco products and accessories, and in

6 which other products may be sold if those sales are incidental to the primary

7 business.".

8 **2.** Page 8, line 16: after that line insert:

INSERT 8-16

9 "**SECTION 29g.** 101.123 (1) (in) of the statutes is created to read:

10 101.123 **(1)** (in) "Tobacco bar" means a tavern that generates 15 percent or more

11 of its annual gross income from the sale and on the tavern premises, other than from a

12 vending machine, of tobacco products. cigars and tobacco for pipes

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

INS 8-16 end

101.123 **(1)** (io) "Tobacco product" means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.".

3. Page 11, line 5 : delete that line and substitute:

"**SECTION 54b.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m) (a) and amended to read:

101.123 **(4m)** (a) This section does not limit the authority of any county, city, village or town to enact ordinances or of any school district to adopt policies that, complying with the purpose of this section, protect the health and comfort of the public, except as provided in par. (b).".

INS 13-10

4. Page 13, line 10: delete that line and substitute:

"**SECTION 65m.** 101.123 (3) (k), (L) and (m) of the statutes are created to read:"

5. Page 13, line 12: after that line insert:

101.123 (3) (B)

"(L) A tobacco bar (retail tobacco store) if it is in existence on the effective date of the (this) paragraph .... [LRB inserts date], and it continues to remain in the same location after the effective date of the (this) paragraph .... [LRB inserts date].

(m) A retail tobacco store (tobacco bar).

6. Page 13, line 22: after that line insert:

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

101.123 **(4m)** (b) Any ordinance enacted under this subsection may not prohibit smoking in a tobacco bar that is exempted under sub. (3) (L) or a retail tobacco store.".

(END)

that is in existence on the effective date of this paragraph, ..., [LRB inserts date].

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 (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:

5/7 conv w/ Risser
press got it wrong w/ local ordinances
does not want to specifically include or exclude hukahs
~~S0055/3 is based on S0054/3 591~~

S 0054/3 is same as S 0059/1 being drafted
Ass. companion sub first

no difference between S0054/3 + S0059/1

RMR

State of Wisconsin

2009 – 2010 LEGISLATURE

from LRBs0059/1 — S0054/23

LRBs0059/1
MGG:kjf:rs

NOW no changes

SENATE

~~ASSEMBLY~~ SUBSTITUTE AMENDMENT ,

TO 2009 ~~ASSEMBLY~~ BILL ~~253~~ 181

SENATE

Regen

AN ACT ***to repeal*** 101.123 (1) (am), 101.123 (1) (bg), 101.123 (1) (bm), 101.123 (1) (br), 101.123 (1) (c), 101.123 (1) (dg), 101.123 (1) (gm), 101.123 (2) (a) 1., 101.123 (2) (a) 5., 101.123 (2) (a) 6., 101.123 (2) (am), 101.123 (2) (b), 101.123 (3) (a) to (gr), 101.123 (4), 101.123 (5), 101.123 (8) (b) and 101.123 (8) (c); ***to renumber*** 101.123 (1) (a) and 101.123 (1) (dm); ***to renumber and amend*** 101.123 (1) (h), 101.123 (2) (a) 10., 101.123 (2) (ar), 101.123 (2) (bm), 101.123 (2) (br), 101.123 (2) (bv) and 101.123 (2) (c); ***to amend*** 77.52 (2) (ag) 39. (intro.), 101.123 (1) (ar), 101.123 (1) (b), 101.123 (1) (d), 101.123 (1) (e), 101.123 (1) (f), 101.123 (1) (g), 101.123 (1) (i), 101.123 (2) (a) (intro.), 101.123 (3) (intro.), 101.123 (6), 101.123 (7), 125.12 (1) (c), 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a) and 814.63 (1) (c); ***to repeal and recreate*** 101.123 (2) (title), 101.123 (2) (a) 4., 101.123 (2) (a) 9. and 101.123 (8) (a); and ***to create*** 101.123 (1) (ab), 101.123 (1) (ac), 101.123 (1) (aj), 101.123 (1) (ak), 101.123 (1) (bn), 101.123 (1) (dj),

1 101.123 (1) (dn), 101.123 (1) (eg), 101.123 (1) (gg), 101.123 (1) (hm), 101.123 (1)
2 (id), 101.123 (1) (im), 101.123 (1) (in), 101.123 (1) (io), 101.123 (1) (ip), 101.123
3 (2) (a) 1g., 101.123 (2) (a) 1m., 101.123 (2) (a) 1r., 101.123 (2) (a) 5m., 101.123
4 (2) (a) 5t., 101.123 (2) (a) 7m., 101.123 (2) (a) 7r., 101.123 (2) (a) 8d., 101.123 (2)
5 (a) 8g., 101.123 (2) (d) (intro.), 101.123 (2) (e), 101.123 (2m), 101.123 (3) (h),
6 101.123 (3) (i), 101.123 (3) (j), 101.123 (3) (L) and (m), 101.123 (8) (d) and
7 101.123 (8) (dm) and (em) of the statutes; **relating to:** prohibiting smoking in
8 indoor areas, in sports arenas, in public conveyances, and at certain outdoor
9 locations and 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.

Under the substitute amendment, 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, certain existing retail tobacco stores and tobacco bars, and certain residence rooms in assisted living facilities. In addition to the specified indoor locations listed under current law, the substitute amendment prohibits smoking in any public place or place of employment. The substitute amendment 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 substitute amendment 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 substitute amendment

defines an "enclosed place" for purposes of determining at what locations smoking is prohibited. An enclosed place must have a roof and more than 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 occupants are smokers, and areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This substitute amendment 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 substitute amendment prohibits smoking in any restaurant regardless of seating capacity or the number of liquor sale receipts.

Current law allows smoking in any tavern holding a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license issued by a municipality. This substitute amendment prohibits smoking in any tavern that is not an existing tobacco bar. The substitute amendment also specifically prohibits smoking in private clubs.

The substitute amendment 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 (municipality) to enact smoking ordinances that protect the public's health and comfort. This substitute amendment makes no change in this provision 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 outdoor smoking that is a reasonable distance from any entrance to the establishment.

This substitute amendment 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 substitute amendment imposes a forfeiture on persons in charge who fail to take these measures 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.

1 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type
2 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities
3 including, by way of illustration but not of limitation, all of the following:

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

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

6 101.123 **(1)** (ab) "Assisted living facility" means a community–based
7 residential facility, as defined in s. 50.01 (1g), a residential care apartment complex,
8 as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

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

10 101.123 **(1)** (ac) "Correctional facility" means any of the following:

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

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

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

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

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.

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

101.123 **(1)** (ak) "Enclosed place" means a structure or area that has all of the following:

1. A roof.

2. More than two substantial walls.

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

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

101.123 **(1)** (ar) "Immediate vicinity of the state capitol" means the area directly adjacent to the state capitol building, as determined by rule of the department of administration. "Immediate vicinity of the state capitol" does not include any location that is more than ~~one fathom~~ <u>six feet</u> from the state capitol building.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101.123 **(1)** (e) "Public conveyance" means a mass transit ~~vehicles~~ vehicle as defined ~~by~~ in s. 340.01 (28m) ~~and~~, a school ~~buses~~ bus as defined ~~by~~ in s. 340.01 (56),

or any other device by which persons are transported, for hire, on a highway or by rail, water, air, or guidewire within this state, but does not include such a device while providing transportation in interstate commerce.

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

101.123 **(1)** (eg) "Public place" means any enclosed 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.

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

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

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

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

SECTION 24. 101.123 (1) (gg) of the statutes is created to read:

101.123 **(1)** (gg) "Retail tobacco store" means a retail establishment that does not have a "Class B" intoxicating liquor license or a Class "B" fermented malt beverages license and that generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories.

SECTION 25. 101.123 (1) (gm) of the statutes is repealed.

SECTION 26. 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.) and amended to read:

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

1. A lighted cigar~~,~~.

2. A lighted cigarette~~,~~.

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

4. Any other lighted smoking equipment.

SECTION 27. 101.123 (1) (hm) of the statutes is created to read:

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

SECTION 28. 101.123 (1) (i) of the statutes is amended to read:

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

SECTION 29. 101.123 (1) (id) of the statutes is created to read:

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

SECTION 30. 101.123 (1) (im) of the statutes is created to read:

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

SECTION 31. 101.123 (1) (in) of the statutes is created to read:

101.123 **(1)** (in) "Tobacco bar" means a tavern that generates 15 percent or more of its annual gross income from the sale on the tavern premises, other than from a vending machine, of cigars and tobacco for pipes.

1 **SECTION 32.** 101.123 (1) (io) of the statutes is created to read:

2 101.123 **(1)** (io) "Tobacco product" means any form of tobacco prepared in a
3 manner suitable for smoking but not including a cigarette.

4 **SECTION 33.** 101.123 (1) (ip) of the statutes is created to read:

5 101.123 **(1)** (ip) "Treatment facility" means a publicly or privately operated
6 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,
7 or developmentally disabled persons.

8 **SECTION 34.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

9 101.123 **(2)** (title) PROHIBITION AGAINST SMOKING.

10 **SECTION 35.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

11 101.123 **(2)** (a) (intro.) Except as provided in sub. (3), no person may smoke in
12 <u>any of</u> the following <u>enclosed</u> places:

13 **SECTION 36.** 101.123 (2) (a) 1. of the statutes is repealed.

14 **SECTION 37.** 101.123 (2) (a) 1g. of the statutes is created to read:

15 101.123 **(2)** (a) 1g. The state capitol.

16 **SECTION 38.** 101.123 (2) (a) 1m. of the statutes is created to read:

17 101.123 **(2)** (a) 1m. Residence halls or dormitories owned or operated by a
18 college or university.

19 **SECTION 39.** 101.123 (2) (a) 1r. of the statutes is created to read:

20 101.123 **(2)** (a) 1r. Day care centers.

21 **SECTION 40.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

22 101.123 **(2)** (a) 4. Theaters.

23 **SECTION 41.** 101.123 (2) (a) 5. of the statutes is repealed.

24 **SECTION 42.** 101.123 (2) (a) 5m. of the statutes is created to read:

25 101.123 **(2)** (a) 5m. Correctional facilities.

1 **SECTION 43.** 101.123 (2) (a) 5t. of the statutes is created to read:

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

3 **SECTION 44.** 101.123 (2) (a) 6. of the statutes is repealed.

4 **SECTION 45.** 101.123 (2) (a) 7m. of the statutes is created to read:

5 101.123 **(2)** (a) 7m. Taverns.

6 **SECTION 46.** 101.123 (2) (a) 7r. of the statutes is created to read:

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

8 **SECTION 47.** 101.123 (2) (a) 8d. of the statutes is created to read:

9 101.123 **(2)** (a) 8d. Common areas of multiple–unit residential properties.

10 **SECTION 48.** 101.123 (2) (a) 8g. of the statutes is created to read:

11 101.123 **(2)** (a) 8g. Lodging establishments.

12 **SECTION 49.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

13 101.123 **(2)** (a) 9. All enclosed places, other than those listed in subds. 1. to 8r.,

14 that are places of employment or that are public places.

15 **SECTION 50.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.

16 and amended to read:

17 101.123 **(2)** (a) 8r. ~~Any enclosed, indoor area of a state,~~ State, county, city,

18 village, or town ~~building~~ buildings.

19 **SECTION 51.** 101.123 (2) (am) of the statutes is repealed.

20 **SECTION 52.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and

21 amended to read:

22 101.123 **(2)** (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~

23 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

24 **SECTION 53.** 101.123 (2) (b) of the statutes is repealed.

SECTION 54. 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2. and amended to read:

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

SECTION 55. 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and amended to read:

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

SECTION 56. 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and amended to read:

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

SECTION 57. 101.123 (2) (c) of the statutes is renumbered 101.123 (4m) and amended to read:

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

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 a reasonable distance from any entrance to the
4 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 **SECTION 58.** 101.123 (2) (d) (intro.) of the statutes is created to read:

9 101.123 **(2)** (d) (intro.) No person may smoke at any of the following outdoor
10 locations:

11 **SECTION 59.** 101.123 (2) (e) of the statutes is created to read:

12 101.123 **(2)** (e) No person may smoke in any of the following:

13 1. A sports arena.

14 2. A bus shelter.

15 3. A public conveyance.

16 **SECTION 60.** 101.123 (2m) of the statutes is created to read:

17 101.123 **(2m)** RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
18 may allow any person to smoke in violation of sub. (2) at a location that is under the
19 control or direction of the person in charge.

20 (b) A person in charge may not provide matches, ashtrays, or other equipment
21 for smoking at the location where smoking is prohibited.

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

24 1. Posting signs setting forth the prohibition and providing other appropriate
25 notification and information concerning the prohibition.

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

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

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

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

SECTION 61. 101.123 (3) (intro.) of the statutes is amended to read:

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

SECTION 62. 101.123 (3) (a) to (gr) of the statutes are repealed.

SECTION 63. 101.123 (3) (h) of the statutes is created to read:

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

SECTION 64. 101.123 (3) (i) of the statutes is created to read:

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

SECTION 65. 101.123 (3) (j) of the statutes is created to read:

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

SECTION 66. 101.123 (3) (L) and (m) of the statutes are created to read:

101.123 **(3)** (L) A retail tobacco store if it is in existence on the effective date of this paragraph .... [LRB inserts date], and it continues to remain in the same location after the effective date of this paragraph .... [LRB inserts date].

(m) A tobacco bar that is in existence on the effective date of this paragraph .... [LRB inserts date], and in which only the smoking of cigars and pipes is allowed.

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

SECTION 68. 101.123 (5) of the statutes is repealed.

SECTION 69. 101.123 (6) of the statutes is amended to read:

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

SECTION 70. 101.123 (7) of the statutes is amended to read:

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

SECTION 71. 101.123 (8) (a) of the statutes is repealed and recreated to read:

101.123 **(8)** (a) Any person who violates sub. (2) shall be subject to a forfeiture of not less than $100 nor more than $250 for each violation.

SECTION 72. 101.123 (8) (b) of the statutes is repealed.

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

SECTION 74. 101.123 (8) (d) of the statutes is created to read:

101.123 **(8)** (d) Except as provided in par. (dm) or (em), any person in charge who violates sub. (2m) (b) to (d) shall be subject to a forfeiture of $100 for each violation.

1 **SECTION 75.** 101.123 (8) (dm) and (em) of the statutes are created to read:

2 101.123 **(8)** (dm) For violations subject to the forfeiture under par. (d), if the
3 person in charge has not previously received a warning notice for a violation of sub.
4 (2m) (b) to (d), the law enforcement officer shall issue the person in charge a warning
5 notice and may not issue a citation.

6 (em) No person in charge may be required under par. (d) to forfeit more than
7 $100 in total for all violations of sub. (2m) (b) to (d) occurring on a single day.

8 **SECTION 76.** 125.12 (1) (c) of the statutes is amended to read:

9 125.12 **(1)** (c) Neither a municipality nor the department may consider an
10 arrest or conviction for a violation punishable under s. 101.123 (8) (d), 945.03 (2m),
11 945.04 (2m), or 945.05 (1m) in any action to revoke, suspend, or refuse to renew a
12 Class "B" or "Class B" license or permit.

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

14 **165.60 Law enforcement.** The department of justice is authorized to enforce
15 ss. 101.123 (2), ~~(5)~~, (2m), and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
16 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
17 upon sheriffs and municipal police officers in the performance of those duties. This
18 section does not deprive or relieve sheriffs, constables, and other local police officers
19 of the power and duty to enforce those sections, and those officers shall likewise
20 enforce those sections.

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

22 165.755 **(1)** (b) A court may not impose the crime laboratories and drug law
23 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar),~~
24 ~~(bm), (br), or (bv) or (5) (b)~~ or (2m), for a first violation of s. 23.33 (4c) (a) 2., 30.681
25 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation

had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a violation of a state law or municipal or county ordinance involving a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use violation under s. 347.48 (2m).

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

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

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

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

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

757.05 **(1)** (a) Whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation

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

SECTION 82. 814.63 (1) (c) of the statutes is amended to read:

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

SECTION 83. Initial applicability.

(1) This act first applies to violations occurring on the effective date of this subsection.

SECTION 84. Effective date.

(1) This act takes effect on July 5, 2010.

(END)