

CR 84-94

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

RECEIVED
AUG 7 1984
8:55 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Ch. ILHR 4 - Signs for Smoking Areas were duly approved and adopted by this department on August 7, 1984.

(Subject)
(Date)

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 2 pm in the city of Madison, this 7th day of August A.D. 1984.

Howard S. Bellman
Secretary

ORDER OF ADOPTION

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Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(6), 101.123(6) 101.19, & 227.014(2), Stats., the Department of Industry, Labor and Human Relations hereby creates; amends; repeals and recreates; and repeals and adopts rules of Wisconsin Administrative Code chapter(s):

ILHR 4 Signs for Smoking Areas
(Number) (Title)

The attached rules shall take effect on the first day of the month
following publication, pursuant to section
227.026, Stats.

Adopted at Madison, Wisconsin, this 7th
day of August, A.D., 1984.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard S. Bellman
Secretary



RULES in FINAL DRAFT FORM

Rule: Chapter ILHR 4

Relating to: Signs for Smoking Areas

Clearinghouse Rule No.: 84-94

An order to create chapter ILHR 4, relating to signs for smoking areas.

ANALYSIS OF PROPOSED RULES

1983 Wisconsin Act 211 regulates smoking in specified places and contains requirements for the posting of signs in areas where smoking will be allowed as determined by the person in charge of the area. The proposed rules have been developed in response to the mandate in s. 101.123 (6) of 1983 Wisconsin Act 211. The proposed rules specify the minimum design characteristics of the signs to be used to designate the smoking areas. These characteristics include the words and symbol to be used, the minimum size of the letters, and that the letters and background must be of contrasting colors. The proposed rules also contain an allowance for a variance if approved by the department. An appendix is included which contains a sample sign and a reprint of 1983 Wisconsin Act 211.

Pursuant to the authority vested in the state of Wisconsin, Department of Industry, Labor and Human Relations by ss. 101.02 (6), 101.19 and 227.014 (2), Stats., the department hereby creates rules interpreting 1983 Wisconsin Act 211, s. 101.123 (6) as follows:

SECTION 1. Chapter ILHR 4 is created to read:

CHAPTER ILHR 4
SIGNS FOR SMOKING AREAS

ILHR 4.01 PURPOSE. Pursuant to s. 101.123 (6), Stats., the purpose of this chapter is to specify uniform dimensions and other characteristics of signs used to designate smoking areas.

Note: See Appendix for a reprint of s. 101.123, Stats.

ILHR 4.02 SIGNS. (1) WORDING. The signs used to designate smoking areas shall contain the words "Smoking Allowed" or "Smoking Permitted".

(2) CHARACTER SPECIFICATIONS. The letters shall be at least 3/4 inch in height and shall have a width:height ratio between 3:5 and 1:1 and a stroke-width:height ratio between 1:4 and 1:10.

Note: See Appendix for further explanatory information.

(3) INTERNATIONAL SYMBOL. Signs shall include the international symbol for smoking allowed. The symbol shall be at least 2-1/2 inches in each dimension.

Note: See Appendix for further explanatory information.

(4) CHARACTERS CONTRAST AND BACKGROUND. The signs shall have either light characters on a dark background or dark characters on a light background.

Note: Research has indicated that yellow on black, white on black and white on green provide the most easily visible color contrasts.

(5) AFFIXING. Signs shall be securely affixed and, where posted outdoors, shall be weather-resistant.

(6) STATUTORY CITATION. Signs may include, in letters of any size, the words "In accordance with section 101.123, Wisconsin Statutes".

Note: See Appendix for an example of a sign which meets these requirements.

(7) OTHER SIGNS. In addition to the signs required under s. 101.123 (4) (b), Stats., individual signs may be placed on tables and desks to designate "smoking allowed" or "smoking permitted" areas. The signs may be proportionate reductions of the signs specified in subs. (1) to (6).

ILHR 4.03 PETITION FOR VARIANCE. (1) PROCEDURE. The department of industry, labor and human relations shall consider and may grant a variance to s. ILHR 4.02 upon receipt of a completed petition for variance form from the owner, provided an equivalency is established in the petition for variance which meets the intent of the rule being petitioned. The department may impose specific conditions in granting a variance to promote the protection of the health, safety and welfare of the employes or the public. Violation of those conditions under which the variance is granted shall constitute a violation of this chapter. The cost for processing petitions for variance shall be \$50.

Note #1: Copies of the petition for variance (form SB-8) are available at no charge from the Division of Safety and Buildings, P.O. Box 7969, Madison, Wisconsin 53707.

Note #2: Section 101.02 (6), Stats., outlines the procedure for submitting petitions to the department and the department procedures for hearing petitions.

(2) PETITION PROCESSING TIME. The department of industry, labor and human relations shall review and make a determination on a petition for variance within 15 business days of receipt of all information necessary to complete the review.

ILHR 4.04 PENALTIES. After April 1, 1985, any person who wilfully fails to comply with the rules of this chapter shall forfeit not more than \$25.

APPENDIX

The material contained in the Appendix is for clarification purposes only. The material is numbered to correspond to the number of the rule as it appears in the text of the code.

A 4.01 PURPOSE. The following is a reprint of 1983 Wisconsin Act 211 which created s. 101.123, Stats.:

STATE OF WISCONSIN

1983 Senate Bill 80

Date of enactment: April 18, 1984
Date of publication*: April 25, 1984

1983 Wisconsin Act 211

AN ACT to create 101.123 of the statutes, relating to regulating smoking in public conveyances and specified places, granting rule-making authority and providing a penalty.

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

SECTION 1. 101.123 of the statutes is created to read:

101.123 Clean indoor air. (1) DEFINITIONS. In this section:

- (a) "Educational facility" means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.
- (b) "Inpatient health care facility" has the meaning provided under s. 140.86 (1), except that it does include community-based residential facilities as defined under s. 50.01 (1).
- (c) "Office" means any area that serves as a place of work at which the principal activities consist of professional, clerical or administrative services.
- (d) "Person in charge" means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within a place where smoking is regulated under this section, regardless of the person's status as owner or lessee.
- (e) "Public conveyance" means mass transit vehicles as defined by s. 340.01 (28q) and school busses as defined by s. 340.01 (56).
- (f) "Restaurant" means an establishment defined in s. 50.50 (3) with a seating capacity of more than 50 persons.
- (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 alleys.
- (h) "Smoking" means carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment.

(2) REGULATION OF SMOKING. (a) Except as provided in sub. (3), no person may smoke in the following places:

1. Public conveyances.
2. Educational facilities.
3. Inpatient health care facilities.
4. Indoor movie theaters.
5. Offices.
6. Passenger elevators.
7. Restaurants.
8. Retail establishments.
9. Public waiting rooms.
10. Any enclosed, indoor area of a state, county, city, village or town building.

* Section 991.11, WISCONSIN STATUTES 1981-82: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication must be within 10 working days from the date of enactment].

(b) The prohibition in par. (a) applies only to enclosed, indoor areas.

(c) 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.

(3) EXCEPTIONS. The regulation of smoking in sub. (2) does not apply to the following places:

(a) Areas designated smoking areas under sub. (4).

(b) Offices occupied exclusively by smokers.

(c) Entire rooms or halls used for private functions, if the arrangements for the function are under the control of the sponsor of the function.

(d) Restaurants holding a "Class B" intoxicating liquor or Class "B" fermented malt beverage license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant's receipts.

(e) Offices that are privately owned and occupied.

(f) Any area of a facility used principally to manufacture or assemble goods, products or merchandise for sale.

(g) Prisons, secured correctional facilities, secure detention facilities, jails and lockup facilities.

(4) DESIGNATION OF SMOKING AREAS. (a) A person in charge or his or her agent may designate smoking areas in the places where smoking is regulated under sub. (2) unless a fire marshal, law, ordinance or resolution prohibits smoking. Entire rooms and buildings may be designated smoking areas.

(b) If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all entrances to the room normally used by the public. If an entire building is designated a smoking area, notice of the designation shall be posted on or near all entrances to the building normally used by the public, but posting notice of the designation on or near entrances to rooms within the building is not required.

(c) The person in charge or his or her agent shall utilize, if possible, existing physical barriers and ventilation systems when designating smoking areas. This paragraph requires no new construction of physical barriers or ventilation systems in any building.

(d) This section requires the posting of signs only in areas where smoking is permitted.

(5) RESPONSIBILITIES. The person in charge or his or her agent shall:

(a) Post signs identifying designated smoking areas; and

(b) Arrange seating to accommodate nonsmokers if smoking areas are adjacent to nonsmoking areas.

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

(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.

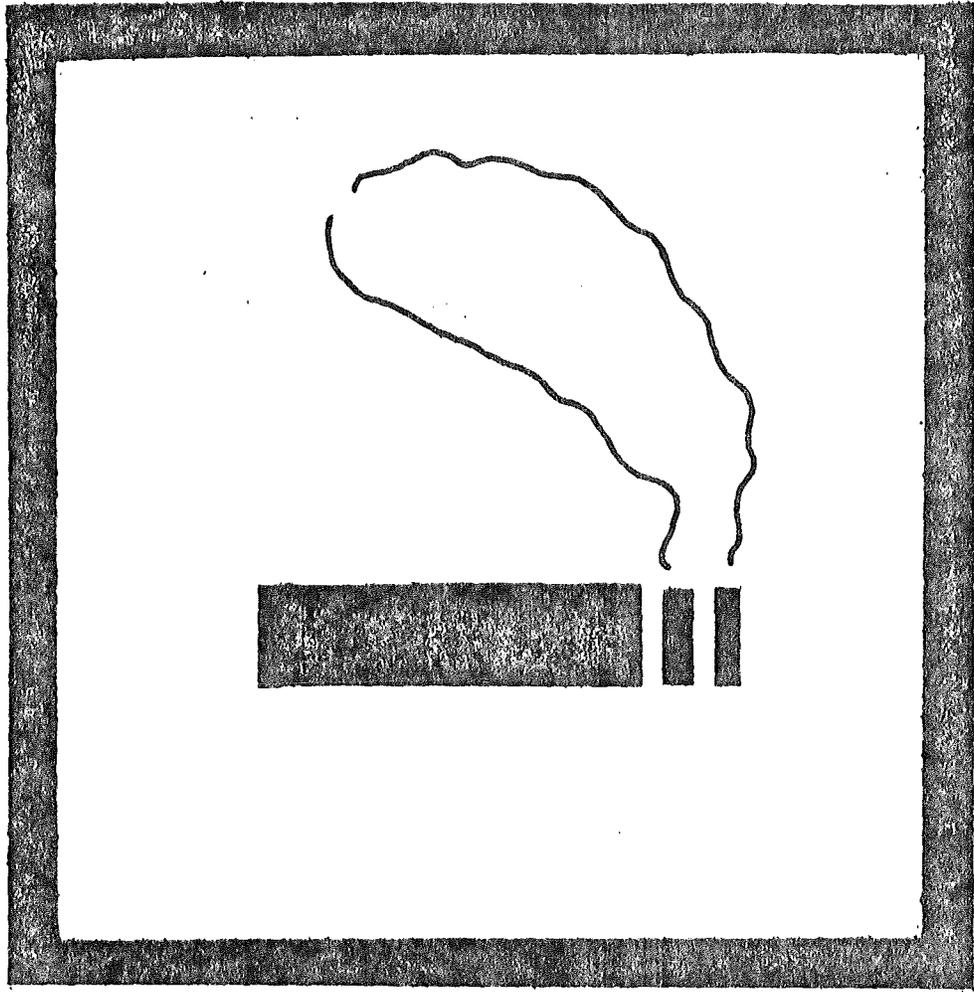
(8) PENALTIES. (a) On and after the first day of the 12th month commencing after the effective date of this section (1983), any person in charge or his or her agent who wilfully fails to comply with sub. (5) shall forfeit not more than \$25.

(b) Sections 101.02 (13) (a) and 939.61 (1) do not apply to this section.

(c) A violation of this section does not constitute negligence as a matter of law.

(9) INJUNCTION. After July 1, 1985, state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

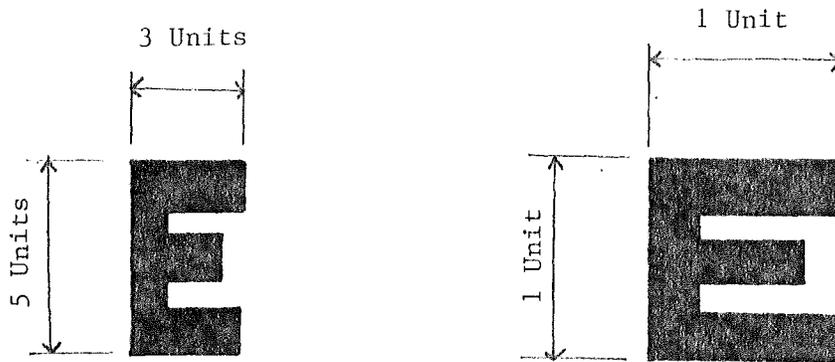
A 4.02 The following is a SAMPLE sign which conforms to the specifications outlined in this section:



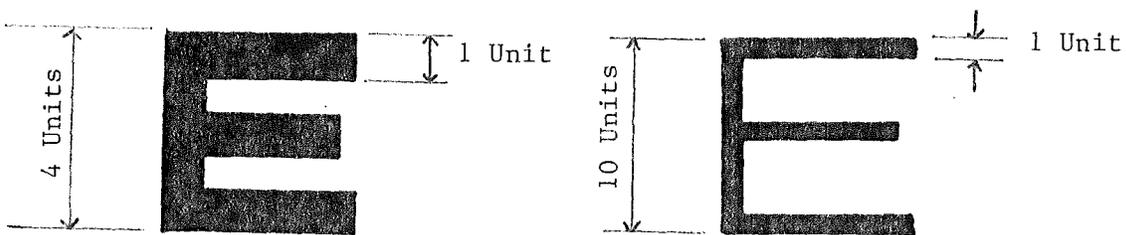
**SMOKING
ALLOWED**

SECTION 101.123(4), WIS. STATS.

A 4.02 (2) The following diagram illustrates character ratio requirements.

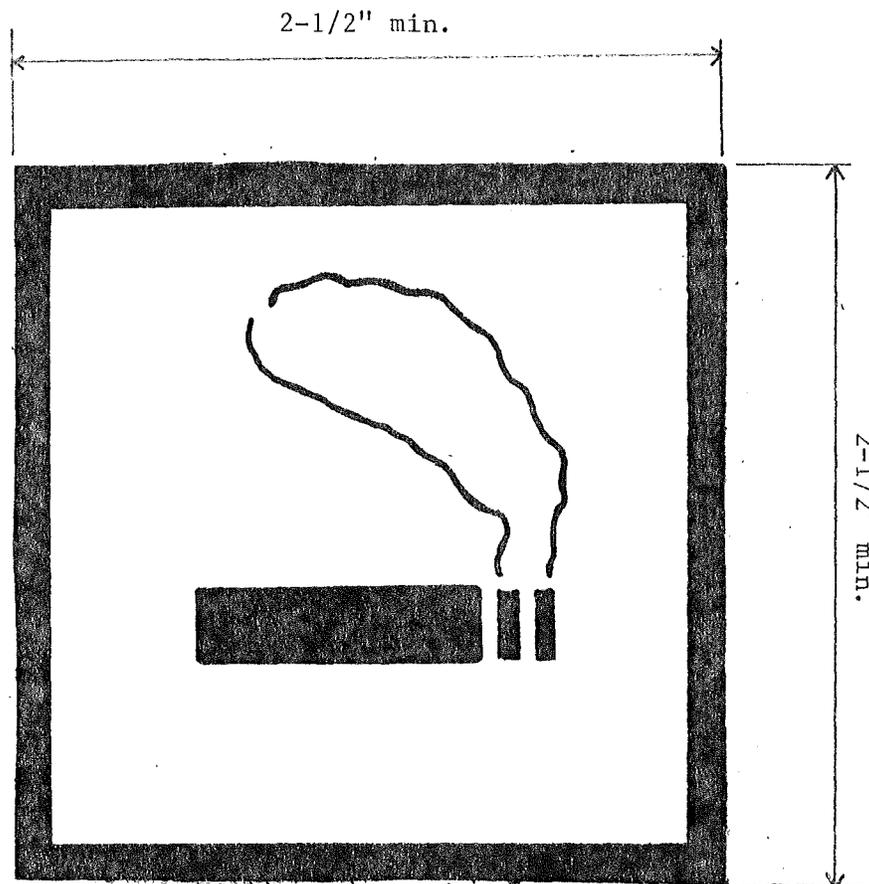


Width:Height Ratio



Stroke-Width:Height Ratio

A 4.02 (3) The following diagram illustrates the international symbol for smoking allowed:



* * * * *

EFFECTIVE DATE

Pursuant to s. 227.026 (1) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

* * * * *

The Wisconsin Department of Industry, Labor and Human Relations

August 7, 1984

Office of the Secretary
201 E. Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707
Telephone 608/266-7552

Gary Poulson
Assistant Revisor of Statutes
for Administrative Rules
411 West, State Capitol
Madison, Wisconsin

Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 84-94

RULE NO. W.A.C. Ch. ILHR 4

RELATING TO: Signs for Smoking Areas

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,



Howard S. Bellman
Secretary

cc: Agency Contact Person

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