

83 WisACT 211

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1983 Senate Bill 80

Date of enactment: April 18, 1984  
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## 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 buses 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.

(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.

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(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.

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