



1995 SENATE BILL 127

April 4, 1995 - Introduced by Senators RISSER, CLAUSING and ROSENZWEIG, cosponsored by Representatives UNDERHEIM, BOCK, NOTESTEIN, PLACHE, BALDWIN, URBAN, BLACK, BOYLE, R. YOUNG, MORRIS-TATUM, WASSERMAN, COGGS, BELL, TURNER, L. YOUNG and LA FAVE. Referred to Committee on State Government Operations and Corrections.

1 **AN ACT to renumber and amend** 101.123 (1) (a), 101.123 (2) (c) and 101.123 (9);
2 **to amend** 66.124 (1), 66.124 (4), 101.123 (title), 101.123 (1) (f), 101.123 (9)
3 (title), 165.60, 254.69 (2) (am), 254.69 (2) (c), 254.69 (2) (g), 254.74 (1) (a), 254.85
4 (1) and 254.85 (4); and **to create** 36.11 (27), 101.123 (2) (a) 11., 101.123 (2) (a)
5 12., 101.123 (2) (c) 2. and 3. and 101.123 (9) (a) of the statutes; **relating to:**
6 prohibiting the use of cigarettes and tobacco products on the premises of
7 shopping malls and in the common areas of privately owned residential
8 buildings, regulating smoking in restaurants and in private schools, colleges
9 and universities, authorizing the department of health and social services to
10 enforce smoking restrictions in restaurants, authorizing the board of regents
11 of the University of Wisconsin System to prohibit the use of cigarettes and
12 tobacco products on property that is subject to its jurisdiction and authorizing
13 a person owning, leasing or renting a building to prohibit the use of cigarettes
14 and tobacco products in the area of that building that is subject to that person's
15 control.

Analysis by the Legislative Reference Bureau

Under current law, the clean indoor air law regulates smoking in certain public places. This bill expands the regulation to prohibit smoking in indoor shopping malls

and in the common areas of residential buildings. The bill also provides that the clean indoor air law does not limit the authority of a person who owns, rents or leases a building, or an area of a building, to prohibit smoking in the building or area of the building owned, leased or rented by, or under the control of, that person.

Currently, the clean indoor air law applies only to those restaurants whose seating capacity is more than 50 persons and whose receipts from the sale of beer or liquor, or both, amount to 50% or less of the restaurant's total receipts. This bill lowers the seating capacity requirement to cover, under the clean indoor air law, restaurants with a seating capacity of more than 30 persons.

Currently, the clean indoor air law applies only to those schools that offer a course of instruction or training program that has been approved or licensed by a state agency or board. This bill eliminates the state approval requirement and includes private schools, colleges and universities within the coverage of the clean indoor air law. The bill also authorizes the board of regents of the University of Wisconsin System to prohibit the use of cigarettes and tobacco products on property that is subject to its jurisdiction.

Under current law, personnel of the department of justice (DOJ), together with sheriffs, constables and other local police officers, are authorized to enforce the clean indoor air law. This bill requires the department of health and social services to enforce the clean indoor air law with respect to restaurants concurrently with DOJ and local police officers.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 36.11 (27) of the statutes is created to read:

2 36.11 **(27)** PROHIBITION OF TOBACCO. The board may prohibit the use of
3 cigarettes, as defined in s. 139.30 (1), and tobacco products, as defined in s. 139.75
4 (12), on property that is subject to its jurisdiction.

5 **SECTION 2.** 66.124 (1) of the statutes is amended to read:

6 66.124 **(1)** An employe or agent of a local health department designated by the
7 department of health and social services under s. 254.69 (2) or the department of
8 agriculture, trade and consumer protection under s. 97.41 may enter, at reasonable
9 hours, any premises for which the local health department issues a permit under s.
10 97.41 or 254.69 (2) to inspect the premises, secure samples or specimens, examine

1 and copy relevant documents and records or obtain photographic or other evidence
2 needed to enforce subch. VII of ch. 254, ch. 97, s.101.123 with respect to restaurants
3 or s. 254.47, relating to those premises. If samples of food are taken, the local health
4 department shall pay or offer to pay the market value of those samples. The local
5 health department, department of health and social services or department of
6 agriculture, trade and consumer protection shall examine the samples and
7 specimens secured and shall conduct other inspections and examinations needed to
8 determine whether there is a violation of subch. VII of ch. 254, ch. 97, s.101.123 with
9 respect to restaurants or s. 254.47, rules adopted by the departments promulgated
10 under those statutes subch. VII of ch. 254, ch. 97 or s. 254.47, ordinances adopted by
11 the village, city or county or regulations adopted by the local board of health under
12 s. 97.41 (7) or 254.69.

13 **SECTION 3.** 66.124 (4) of the statutes is amended to read:

14 66.124 (4) A proceeding under this section, or the issuance of a permit for the
15 premises after notification of procedures under this section, does not constitute a
16 waiver by the village, city or county of its authority to rely on a violation of ch. 97,
17 s. 101.123 with respect to restaurants, s. 254.47 or subch. VII of ch. 254 or any rule
18 adopted promulgated under those statutes ch. 97, s. 254.47 or subch. VII of ch. 254
19 as the basis for any subsequent suspension or revocation of the permit or any other
20 enforcement action arising out of the violation.

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

22 **101.123** (title) ~~Clean indoor air~~ **Smoking restrictions.**

23 **SECTION 5.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag) and
24 amended to read:

1 101.123 (1) (ag) “Educational facility” means any building used principally for
2 educational purposes in which a school, college or university, whether public or
3 private, is located or a course of instruction or training program is offered ~~that has~~
4 ~~been approved or licensed by a state agency or board.~~

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

6 101.123 (1) (f) “Restaurant” means an establishment defined in s. 254.61 (5)
7 with a seating capacity of more than ~~50~~ 30 persons.

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

9 101.123 (2) (a) 11. Shopping malls.

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

11 101.123 (2) (a) 12. Common areas of privately owned residential buildings.

12 **SECTION 9.** 101.123 (2) (c) of the statutes is renumbered 101.123 (2) (c) (intro.)
13 and amended to read:

14 101.123 (2) (c) (intro.) This section does not limit ~~the~~ any of the following:

15 1. The authority of any county, city, village or town to enact ordinances or of any
16 school district to adopt policies that, complying with the purpose of this section,
17 protect the health and comfort of the public.

18 **SECTION 10.** 101.123 (2) (c) 2. and 3. of the statutes are created to read:

19 101.123 (2) (c) 2. The authority of the board of regents of the University of
20 Wisconsin System under s. 36.11 (27) to prohibit the use of cigarettes and tobacco
21 products on property that is subject to its jurisdiction.

22 3. The authority of a person who owns, rents or leases a building, or an area
23 of a building, to prohibit smoking in that building or area of that building owned,
24 leased or rented by, or under the control of, that person.

25 **SECTION 11.** 101.123 (9) (title) of the statutes is amended to read:

1 101.123 (9) (title) ~~INJUNCTION~~ ENFORCEMENT AND INJUNCTION.

2 **SECTION 12.** 101.123 (9) of the statutes is renumbered 101.123 (9) (b) and
3 amended to read:

4 101.123 (9) (b) Notwithstanding s. ~~165.60~~ par. (a), state or local officials or any
5 affected party may institute an action in any court with jurisdiction to enjoin
6 repeated violations of this section.

7 **SECTION 13.** 101.123 (9) (a) of the statutes is created to read:

8 101.123 (9) (a) Subject to par. (b), the department of justice, together with
9 sheriffs, constables and other local police officers, shall enforce this section as
10 provided under s. 165.60, except that the department of health and social services
11 under s. 254.69, shall enforce this section with respect to restaurants as provided
12 under s. 254.85.

13 **SECTION 14.** 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) and (8)~~ and (5), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
16 and 945.04 and is invested with the powers conferred by law upon sheriffs and
17 municipal police officers in the performance of those duties. This section does not
18 deprive or relieve sheriffs, constables and other local police officers of the power and
19 duty to enforce those sections, and those officers shall likewise enforce those sections,
20 nor does this section deprive or relieve the department of health and social services,
21 or a local health department that is an agent of the department of health and social
22 services under s. 254.69, of the power and duty to enforce s. 101.123 (2) and (5) with
23 respect to restaurants, and those departments shall likewise enforce s. 101.123 (2)
24 and (5).

25 **SECTION 15.** 254.69 (2) (am) of the statutes is amended to read:

1 254.69 (2) (am) In the administration of this subchapter, s. 101.123 with
2 respect to restaurants or s. 254.47, the department may enter into a written
3 agreement with a local health department with a jurisdictional area that has a
4 population greater than 5,000, which designates the local health department as the
5 department's agent in issuing permits to and making investigations or inspections
6 of hotels, restaurants, temporary restaurants, tourist rooming houses, bed and
7 breakfast establishments, campgrounds and camping resorts, recreational and
8 educational camps and public swimming pools. In a jurisdictional area of a local
9 health department without agent status, the department of health and social
10 services may issue permits, collect permit fees established by rule under s. 254.68
11 and make investigations or inspections of hotels, restaurants, temporary
12 restaurants, tourist rooming houses, bed and breakfast establishments,
13 campgrounds and camping resorts, recreational and educational camps and public
14 swimming pools. If the department designates a local health department as its
15 agent, the department or local health department may require no permit for the
16 same operations other than the permit issued by the local health department under
17 this subsection. The department shall coordinate the designation of agents under
18 this subsection with the department of agriculture, trade and consumer protection
19 to ensure that, to the extent feasible, the same local health department is granted
20 agent status under this subsection and under s. 97.41. Except as otherwise provided
21 by the department, a local health department granted agent status shall regulate all
22 types of establishments for which this subchapter permits the department of health
23 and social services to delegate regulatory authority.

24 **SECTION 16.** 254.69 (2) (c) of the statutes is amended to read:

1 254.69 (2) (c) The department shall provide education and training to agents
2 designated under this subsection to ensure uniformity in the enforcement of this
3 subchapter, s. 101.123 with respect to restaurants, s. 254.47 and rules promulgated
4 under this subchapter and s. 254.47.

5 **SECTION 17.** 254.69 (2) (g) of the statutes is amended to read:

6 254.69 (2) (g) A village, city or county may adopt ordinances and a local board
7 of health may adopt regulations regarding the permittees and premises for which the
8 local health department is the designated agent under this subsection, which are
9 stricter than this subchapter, s. 101.123 with respect to restaurants, s. 254.47 or
10 rules promulgated by the department of health and social services under this
11 subchapter or s. 254.47. No such provision may conflict with this subchapter or with
12 department rules.

13 **SECTION 18.** 254.74 (1) (a) of the statutes is amended to read:

14 254.74 (1) (a) Administer and enforce this subchapter, the rules promulgated
15 under this subchapter and any other rules or laws relating to the public health and
16 safety in hotels, tourist rooming houses, bed and breakfast establishments,
17 restaurants, vending machine commissaries, vending machines and vending
18 machine locations, including s. 101.123 with respect to restaurants.

19 **SECTION 19.** 254.85 (1) of the statutes is amended to read:

20 254.85 (1) The department may enter, at reasonable hours, any premises for
21 which a permit is required under this subchapter or s. 254.47 to inspect the premises,
22 secure samples or specimens, examine and copy relevant documents and records or
23 obtain photographic or other evidence needed to enforce this subchapter, s. 101.123
24 with respect to restaurants or s. 254.47. If samples of food are taken, the department
25 shall pay or offer to pay the market value of the samples taken. The department shall

1 examine the samples and specimens secured and shall conduct other inspections and
2 examinations needed to determine whether there is a violation of this subchapter,
3 s. 101.123 with respect to restaurants, s. 254.47 or rules promulgated by the
4 department under this subchapter or s. 254.47.

5 **SECTION 20.** 254.85 (4) of the statutes is amended to read:

6 254.85 (4) A proceeding under this section, or the issuance of a permit for the
7 premises after notification of procedures under this section, does not constitute a
8 waiver by the department of its authority to rely on a violation of this subchapter,
9 s. 101.123 with respect to restaurants, s. 254.47 or any rule promulgated under this
10 subchapter or s. 254.47 as the basis for any subsequent suspension or revocation of
11 the permit or any other enforcement action arising out of the violation.

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(END)