Wisconsin's Clean Indoor Air Act

INTRODUCTION

Wisconsin’s Clean Indoor Air Act (CIAA), regulates smoking in public buildings, places of employment and most forms of public transportation. The Act was created in 1984 by 1983 Wisconsin Act 211 and was substantively amended in the 1989, 1991, 1993 and 1999 Legislative Sessions. The most recent amendment prohibited smoking in the State Capitol building and on the State Capitol grounds.

Under the CIAA, smoking is defined as “carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment.” As a general rule, in places covered by the Act, designated smoking is not allowed unless the area has been as a smoking area and signs in designated smoking areas have been posted to that effect. The Act does not require signs to be posted in “no smoking” areas.

RESTRICTED PLACES AND AREAS

Section 101.123 (2), Stats., with certain exceptions, prohibits smoking in the following enclosed or indoor places and areas unless all or part of a room or office has been designated a smoking area:

1. Public conveyances, including mass transit vehicles, motor busses and school busses.

2. Public and private schools or educational facilities used for state-licensed or state-approved instructional programs.

3. Inpatient health care facilities, including public and private hospitals and nursing homes, with some limited exceptions.

4. Indoor movie theaters.

5. Public or privately owned offices where principal activities are professional, clerical or administrative in nature.

6. Physicians’ offices not located in an inpatient or residential facility that are used to provide medical care and treatment.

7. Passenger elevators.

8. Day care center premises when children are present.


10. Restaurants with a seating capacity of more than 50 persons, with certain exceptions.

11. Retail establishments, except bowling alleys.

12. Any enclosed indoor area of state or local government buildings.

In addition, s. 101.123 (2) (ar), Stats., prohibits smoking, with no exceptions, in the State Capitol building and, as to be specified in
Department of Administration rules, in the immediate vicinity of the State Capitol.

**EXCEPTIONS**

Pursuant to s. 101.123 (3), Stats., the CIAA’s smoking restrictions **do not apply** to the following places and areas:

1. Areas that have been designated as smoking areas.

2. Offices or rooms in which the main occupants are smokers, even if nonsmokers are periodically present.

3. Entire rooms or halls used for private functions that are under the control of the function’s sponsor.

4. Taverns and restaurants where the sale of alcohol beverages accounts for more than 50% of the total receipts.

5. Any area of a facility used primarily to manufacture or assemble goods, products or merchandise for sale.

6. Certain correctional institutions if the institution is the prisoner’s place of residence and certain “Type 2” prisons covered under the state’s Intensive Sanctions Program.

7. Rooms of adult patients in inpatient facilities to treat mental illness, alcoholism or drug abuse if the patient has the written permission of a physician and the room has outside ventilation and is designated as a smoking area for only that patient.

These exceptions do not apply to the prohibition on smoking in the State Capitol building or in the immediate vicinity of the State Capitol.

**DESIGNATION OF SMOKING AREAS**

For enclosed indoor areas and other places where smoking is restricted, smoking is generally prohibited unless an area or place has been designated a smoking area by the person in charge or his or her agent pursuant to s. 101.123 (4), Stats. No place may be designated as a smoking area if prohibited by state law, local ordinance or a local fire marshal.

Other than the exceptions cited above, an entire building or room may not be designated as a smoking area, nor may smoking areas be designated in motor busses, hospitals, physicians’ offices and day care centers when children are present. Entire rooms or buildings in prisons, correctional facilities, jails, lockups and certain state institutions may be designated smoking areas.

Signs saying “smoking allowed” or “smoking permitted” must be conspicuously posted in or near designated smoking areas. If an entire room is a smoking area, the notice must be posted at all normally used entrances to the room. The design and characteristics of signs are specified by rule of the Department of Industry, Labor and Human Relations.

In establishing smoking areas, the CIAA expressly provides that new construction and renovation is not required, but that existing physical barriers and ventilation systems must be used to the extent possible. Also, seating should be arranged to accommodate nonsmokers if smoking areas are adjacent to nonsmoking areas.

**ENFORCEMENT**

Under s. 101.123 (8), Stats., in general, any person who wilfully smokes in an area where smoking is prohibited after being advised of the prohibition by an employee of the facility is subject to a forfeiture up to $10. A person who wilfully violates the prohibition on smoking in
the State Capitol building or in the immediate vicinity of the State Capitol, after being advised by an employee of the facility that smoking in the areas is prohibited, is subject to a forfeiture up to $50.

Likewise, a person in charge, or his or her agent, who fails to properly post signs designating smoking areas or fails to arrange seating to accommodate nonsmokers is subject to a forfeiture up to $10.

Any local law enforcement officer, as well as the Wisconsin Department of Justice, may take action to enforce the CIAA. In addition, any state or local official, or any other aggrieved party, may seek an injunction against a person who is guilty of repeated violations of the Act.

Finally, the CIAA expressly states that it shall not be construed to limit the authority of municipalities to enact more stringent ordinances to protect the public, and shall not limit school districts from adopting more stringent “no smoking” policies.

This memorandum was prepared on July 12, 2000, by Dan Fernbach, Senior Staff Attorney, and John Stolzenberg, Staff Scientist.