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WISCONSIN STATE
LEGISLATURE ...
PUBLIC HEARING
COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on
Public Health, Senior
Issues, Long Term
Care and Privacy

(SC-PHSILTCP)

(FORM UPDATED: 07/02/2010)

COMMITTEE NOTICES ...

- [Committee Reports ...](#) **CR**
- [Executive Sessions ...](#) **ES**
- [Public Hearings ...](#) **PH**
- [Record of Comm. Proceedings ...](#) **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL ...

- [Appointments ...](#) **Appt**
 - ☞ **Name:**
- [Clearinghouse Rules ...](#) **CRule**
- [Hearing Records ...](#) bills and resolutions
(**ab** = Assembly Bill)
(**ar** = Assm. Resolution) (**ajr** = Assm. Joint Resolution)
(**sb** = Senate Bill)
(**sr** = Sen. Resolution) (**sjr** = Sen. Joint Resolution)
- [Miscellaneous ...](#) **Misc**
 - ☞ **Details:**

2007 SB 150

- Dated Multi-Page Testimonies
(May 31, 2007)
- Un-Dated Multi-Page Testimonies





COUNTY OF MARATHON

COURTHOUSE - 500 FOREST STREET

WAUSAU, WISCONSIN 54403-5568

**MARATHON COUNTY
BOARD OF SUPERVISORS**

(715) 261-1500
FAX (715) 261-1515

May 31, 2007

Dear Members of Senate Public Health, Senior Issues, Long Term Care and Privacy Committee:

On March 20, 2007, the Marathon County Board of Supervisors passed the attached resolution in support of Governor Doyle's proposal for the adoption of a statewide workplace smoking ban with no exceptions. A copy of this resolution was sent to Governor Doyle, members of the Joint Finance Committee, and all legislators who represent portions of Marathon County.

Smoke-free laws are gaining in popularity globally. Not only have many countries adopted smoke-free laws, but now Illinois and Minnesota will be the 19th and 20th states to enact a comprehensive statewide smoke-free law – including restaurants and taverns. The people in Marathon County want these same protections in the state of Wisconsin.

Employees in all venues of work have the right for basic protections from secondhand smoke. A state bill is the best way to protect employees and everyone who lives in Wisconsin.

Currently 33 Wisconsin communities have some sort of smoke-free air law. Although this is great for those who live and work in these 33 communities, it also means a large number of Wisconsin residents continue to be exposed to secondhand smoke while at work and in public places.

While local control is often viewed as the preferred way to develop policy, laws that prohibit smoking in workplaces are one example of how state policy is much more efficient. Waiting for individual communities to enact a patchwork of smoke-free policies one at a time should not be considered good policy making. Not only is it very inefficient, but lives are being lost and health compromised due to exposure to secondhand smoke in these communities that have not yet enacted a smoke-free ordinance. A statewide 100% smoke-free workplace law will also create a fair and equal economic environment for our businesses.

Knowing how dangerous secondhand smoke is to our health, we cannot in good conscience wait for individual municipalities to enact an assortment of different ordinances. Wisconsin needs a statewide smoke-free workplace law. Every day that passes without such a law means that employees and residents have to compromise their health for a paycheck.

Smoke-free air saves lives and is good public health policy. I ask each of you, as our state policy makers, to protect me, to protect my family, and to protect every resident in Wisconsin by passing a statewide 100% smoke-free workplace law with no exemptions.

Thank you for this opportunity to provide written testimony on Senate Bill 150.

Sincerely,

Keith Langenhahn
Chairman

Marathon County Board of Supervisors

Resolution #R -13- 07

Resolution in Support of Increasing the Wisconsin Excise Tax on Cigarettes by \$1.25 per Pack and Adoption of a Statewide Workplace Smoking Ban with No Exceptions

WHEREAS, tobacco use is the leading cause of preventable death and disease in Marathon County, causing 132 deaths and 50 million dollars in health care costs annually, and

WHEREAS, every year, 16,400 Wisconsin children become addicted to tobacco products, and

WHEREAS, significant price increases in tobacco products and smoke-free workplace legislation have been proven to be the best strategies to reduce consumption of tobacco products, especially among youth, and

WHEREAS, the 2006 Surgeon General's Report "Health Consequences of Involuntary Exposure to Tobacco Smoke" concluded that there is no risk-free level of exposure to secondhand smoke, that workplace smoking restrictions are effective in reducing secondhand smoke exposure, and

WHEREAS, all citizens deserve to be protected from exposure to secondhand smoke in workplaces and public settings, and

WHEREAS, it is the responsibility of governmental bodies to protect the health of communities they serve, and

WHEREAS, the Marathon County Board of Supervisors has previously supported efforts to strengthen the state's Clean Indoor Air laws, and

WHEREAS, Governor Doyle's state biennial budget proposal includes a provision for a \$1.25 increase in the tobacco tax, with the additional revenue being allocated to: funding a comprehensive program to reduce tobacco use that follows CDC best practice guidelines, allocates funds to the Medical Assistance Program and funds other state programs that will advance the health, education and general welfare of Wisconsin citizens, and

WHEREAS, the Governor is asking the Legislature to pass legislation proposing all Wisconsin workplaces be completely smokefree, and

WHEREAS, such legislation is supported by three out of four Wisconsin citizens, and

NOW, THEREFORE, BE IT RESOLVED, that the Marathon County Board of Supervisors support: Governor Doyle's budget initiative to increase the Wisconsin excise tax on cigarettes by \$1.25 per pack, provided the funds are used for health programs as outlined above, and

BE IT FURTHER RESOLVED, that the Marathon County Board of Supervisors support adoption of a statewide workplace smoking ban with no exceptions.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the Wisconsin Counties Association, Wisconsin Governor Jim Doyle, the Joint Finance Committee of the State of Wisconsin, and all legislators who represent portions of Marathon County.

Submitted this 20th day of March, 2007.

HUMAN SERVICES COMMITTEE

Betty J. Hall
Ed F. Felt

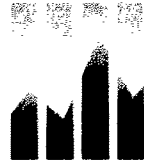
EXECUTIVE COMMITTEE

James R. Suflet
Steve Wagoner

Betty J. Hall
Barbara J. Gromling
Katherine Wagoner
Elroy Zernke
Ed F. Felt

Fiscal Impact: No budgetary tax levy impact.





**TOBACCO SURVEILLANCE
& EVALUATION PROGRAM**

UNIVERSITY OF WISCONSIN
PAUL P. CARBONE
COMPREHENSIVE CANCER CENTER

TO: Members, Committee on Public Health, Senior Issues, Long Term Care and Privacy
Senator Tim Carpenter, Chairperson

FROM: Karen Palmersheim, PhD
University of Wisconsin Comprehensive Cancer Center

DATE: May 31, 2007

RE: Support of Senate Bill 150—"Breathe Free Wisconsin Act"

I am pleased to be here to testify in support of SB 150, as an epidemiologist and the director of the Tobacco Surveillance & Evaluation Program, within the University of Wisconsin Paul P. Carbone Comprehensive Cancer Center. I would like to briefly present the findings from two studies that clearly have relevance to the discussions surrounding SB 150.

We conducted two studies designed to assess change in secondhand smoke exposure and related upper respiratory health symptoms, relative to the implementation of smoke-free workplace ordinances on July 1, 2005, in Appleton and Madison, Wisconsin. Bartenders' level of exposure to secondhand smoke and 8 upper respiratory health symptoms were assessed 2 months prior to the establishment of the ordinances. Secondhand smoke exposure and upper respiratory symptoms were again assessed 3-5 months after the establishment of the ordinances, and again, approximately one year after the initial assessments had been conducted.

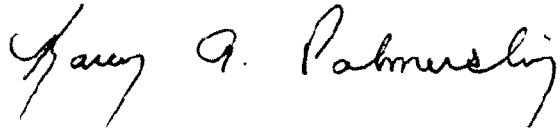
The data revealed that level of exposure to secondhand smoke in the workplace was significantly lower during both of the post-ordinance periods. Interestingly, exposure to secondhand smoke in the home and in other places was also significantly lower. But more importantly, significant reductions in all eight upper respiratory health symptoms were reported by non-smoking bartenders during both post-ordinance periods. Tables 1 and 2 present these findings (see attached tables).

The findings from these studies are not unique to Appleton and Madison bartenders. Our findings duplicate those of two previously reported studies --- one conducted in San Francisco, and the other in Scotland. Taken together, these studies serve to support the reliability of these findings.

In sum, these studies demonstrated that a significant reduction in upper respiratory health symptoms was experienced by non-smoking bartenders following the establishment of a smoke-free workplace ordinance in two Wisconsin cities—a finding associated with a significant reduction in exposure to secondhand smoke. These results suggest that SB 150 has the potential

to help reduce the future risk of disease related to secondhand smoke among employees of bars and restaurants statewide.

Thank you for your time and consideration of this evidence. The full reports can be found on our Web Site at <http://www.medsch.wisc.edu/mep/>.

A handwritten signature in black ink that reads "Karen A. Palmersheim". The signature is written in a cursive style with a large initial 'K' and 'P'.

Karen A. Palmersheim, Ph.D.
Researcher and Director

Tobacco Surveillance & Evaluation Program
University of Wisconsin Paul P. Carbone Comprehensive Cancer Center
610 Walnut Street
Madison, Wisconsin 53726

Phone: (608) 262-2825
Email: kpalmers@wisc.edu

Table 1. Percent of Bartenders Reporting Upper Respiratory Symptoms, at Baseline and 3-5 Month Follow-up (Non-Smokers; N=230)

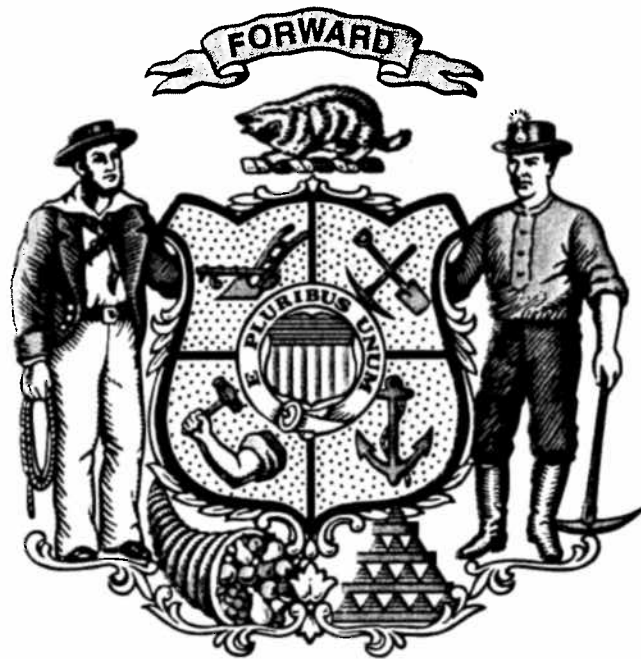
Upper Respiratory Symptoms (past 4 weeks)	Percent Reporting Symptom		Paired t-tests*
	Baseline (pre-ordinance)	Follow-up (post-ordinance)	p-value
Wheezing or whistling in chest	31%	21%	.001
Shortness of breath	41%	30%	.001
Cough first thing in the morning	43%	33%	.014
Cough during the rest of the day/night	52%	32%	.000
Cough up any phlegm	53%	34%	.000
Red or irritated eyes	70%	48%	.000
Runny nose/irritation, sneezing	78%	57%	.000
Sore or scratchy throat	61%	38%	.000

* Comparison of Baseline to Follow-up; Paired T-Test Analyses, 2-tailed test

Table 2. Percent of Bartenders Reporting Upper Respiratory Symptoms, Pre-Ordinance and One Year Later (Non-Smokers)

Upper Respiratory Symptoms (past 4 weeks)	Percent Reporting Symptom		p-value ^a
	Pre-Ordinance (N=409)	Post-Ordinance (N=433)	
Wheezing or whistling in chest	31%	16%	.000
Shortness of breath	40%	27%	.000
Cough first thing in the morning	44%	24%	.000
Cough during the rest of the day/night	50%	29%	.000
Cough up any phlegm	50%	32%	.000
Red or irritated eyes	72%	41%	.000
Runny nose/irritation, sneezing	76%	53%	.000
Sore or scratchy throat	62%	38%	.000

^a Comparison of Pre-Ordinance to Post-Ordinance; Pearson Chi-square Analyses, 2-tailed test





Serving the
Lodging Industry
for Over 100 Years

May 31, 2007

To: Senate Committee on Public Health, Senior Issues, Long Term
Care, and Privacy
Senator Tim Carpenter, Chairman
From: Jeff Machut, 2007 Chairman of the Board (Owner/Operator of
The AmericInn Madison South)
Trisha Pugal, President, CEO
RE: Support of SB 150 Statewide Smoking Ban

The Board of Directors of the Wisconsin Innkeepers Association, representing over 1,000 Hotels, Motels, Resorts, Inns, Condos, and Bed & Breakfasts throughout Wisconsin, respectfully asks for your timely support of SB 150, the Statewide Smoking Ban bill.

With the data you likely have already heard this afternoon on other states already passing statewide smoking bans (Minnesota and Illinois most importantly as border states), and the challenges with municipalities each addressing the issue – resulting in a patchwork effect impacting fair competition between like businesses separated by municipal lines, good reasons already exist for supporting this bill.

With the lodging industry having many owners/operators also responsible for a restaurant and bar, we also support this bill as the only proposed mechanism to ensure restaurants and bars do not have an unfair advantage over each other.

Within SB 150 there is an authorization for up to 25% of sleeping rooms at a lodging property to be designated as smoking rooms. While for some properties this is a reduction in their designated smoking rooms, we accept this restriction, as there is a national trend evolving toward lower smoking room counts for guests. As you are aware, a sleeping room is a private enclosed room/suite/unit provided solely to the paying guest – similar to one's own residence versus to a "public" area shared by multiple customers.

There are two changes to SB 150 that we respectfully seek your consideration of at the appropriate time:

- 1. Clarification in the limitation of "up to 25%" of sleeping rooms that can be designated as smoking rooms for the guest, to allow lodging properties with less than 4 rooms/units to provide one.**

The WIA has record of 368 lodging properties in Wisconsin with less than 4 rooms/units. Forcing small properties to turn away all guests requesting a private

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Brookfield, WI 53005
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Fax# 262/782-0550
wia@execpc.com

<http://www.lodging-wi.com>





Serving the
Lodging Industry
for Over 100 Years

smoking room puts them at a disadvantage, when this could be resolved simply in the language.

- 2. The addition of language that would specifically allow lodging properties to assess damages of up to \$500 on persons smoking in a designated non-smoking room.**

It is costly and time-consuming to cleanse a sleeping room or unit sufficiently to remove the odor from smoking in the air and in the many fabrics absorbing smoke in the sleeping room. When rooms are booked consecutively, a person ignoring the "non-smoking" designation and smoking in their room can cause an irate following customer also resulting in lost current and future room sales.

We appreciate your consideration of these changes and seek your support of SB 150.

CC; WIA Board of Directors
Kathi Kilgore

1025 S. Moorland Rd.
Suite 200
Brookfield, WI 53005
262/782-2851
Fax# 262/782-0550
wia@execpc.com
<http://www.lodging-wi.com>







Date: May 31, 2007

To: The Senate Committee on Public Health, Senior Issues, Long-Term Care and Privacy,
Senator Carpenter, Chair

From: Edward J. Lump, President & CEO
Wisconsin Restaurant Association
2801 Fish Hatchery Rd.
Madison, WI 53713

Re: Support for SB 150 – Smoke-Free Workplaces

The Wisconsin Restaurant Association (WRA) supports SB 150. We wish to express our appreciation to Senator Risser and Representative Wieckert for authoring this legislation. We thank the other legislators that have taken the courageous step of putting their name on this bill as co-sponsors.

What may be a little known fact today is that WRA worked with Senator Risser in the 1980's to pass Wisconsin's "Clean Indoor Air Act." At that time, the WRA Board of Directors envisioned the future and realized that regulation of smoking in restaurants was going to happen and that it would be better to have one state law than many municipal ordinances. They decided that a fair law was more likely to be passed if they got on the train than if they waited to be run over by it.

The situation is the same today. It's clear a smoking ban is coming. 33 municipalities have passed a smoking ban of some kind. More are on the way. In January 2007, Governor Doyle announced support for a workplace smoking ban. The Tavern League (TLW) responded by saying they could support it as long as there is a tavern exemption. In 2005, TLW had a bill introduced that banned smoking in restaurants statewide but exempted taverns - sort of a "my rights are more important than your rights" argument. This session, we anticipate a smoking ban budget amendment from the TLW with a tavern exemption, since there would not be the votes to pass a stand-alone bill like that through either house of this Legislature.

Given all this activity, WRA felt it was time to get on the train and try to pass a bill that was fair to everyone and not be run over by the train. The Clean Indoor Air Act has served Wisconsin well for 20 years, but the time has come for another change in smoking public policy.

A big question being asked is why WRA can't agree with the TLW on this issue? The answers are simple:

- **Approximately 35 % of our members do not have liquor licenses.** In every municipality where a ban exists with a tavern exemption, these restaurants lose customers to businesses that have liquor licenses. I am not referring to Quick Service Chains here. I am talking about "ma & pa" diners, locally owned sit down restaurants like George Webb's, the many "family" restaurants, and main street cafés in small towns.

- **Many restaurants with liquor licenses do not sell enough alcohol to qualify as a tavern.** A tavern is defined as any business that sells more alcohol than food. Regardless of what happens with a tavern exemption in a state law, these restaurants do not and will not qualify for a tavern exemption in many municipalities. Where they do qualify as a tavern, they will be the first target as their municipality tries to tighten its exemption.
- **A workplace smoking ban is coming sooner or later.** If it doesn't pass now, the issue will return to the legislature every session until it does. In the meantime, the hodgepodge of local ordinances will continue to proliferate with all the inequities that go along with them. In January 2007, the WRA Board voted to support a total workplace ban because they viewed it as the only way to create a level playing field. To state this another way, there are just two paths two paths to a level playing field. One is no regulation at all, but that horse has left the barn. The other is a complete ban. Anything in between unfairly creates winners and losers, with government regulations determining which businesses will survive and which flounder.

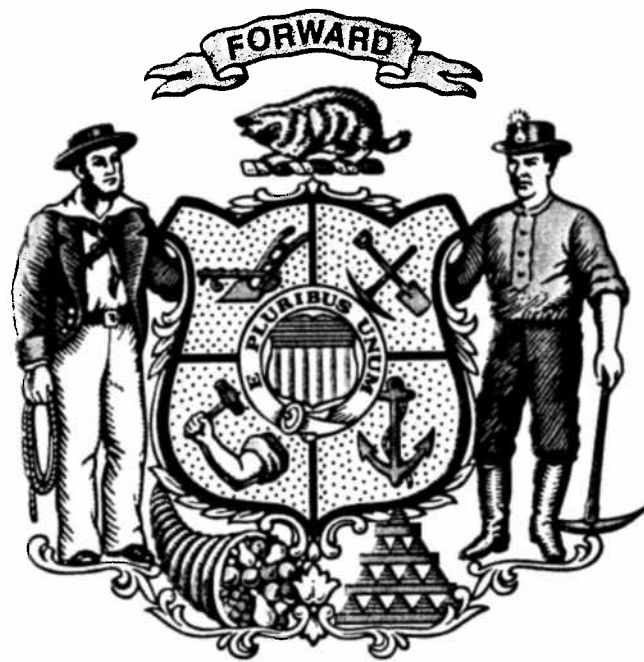
Let's get our facts straight. The Committee is going to hear from tavern owners that they will lose 35%- 40%- 50 % and more of their business if SB 150 passes. We agree that some have faced this outcome in Madison and Appleton. However, the reason for these losses is that smokers can go to taverns/restaurants just outside the municipal boundaries or to businesses inside the city that have an exemption. This is exactly what WRA aims to prevent this by passing a statewide ban. This "levels the playing field" so no one loses customers to anyone else.

Some speakers will seek to authenticate the horror stories by citing various studies, including one by the National Restaurant Association released in 2004. **What they are unlikely to tell you is that the talking points state that, and I quote, "...the impact of statewide bans was not examined."** They are also not likely to tell you that the data was obtained from annual operations surveys conducted by Deloitte for the national Restaurant Association for the years 1991, 1996, 1997, 1999, and 2000. In other words the data is somewhere between 7 and 16 years old. A lot has happened since then. 20 states and several foreign countries have banned smoking. Wisconsin has 33 local ordinances vs. just a few during the years surveyed. With all the newer and better data available, why would anyone refer to a study conducted in the 1990's as the definitive study on the impact of smoking bans on businesses?

The number of smokers continues to decrease and customer support for banning smoking everywhere continues to rise. Whereas, even as late as 2000, most state restaurant associations opposed bans, now more and more lead the charge for workplace bans.

The time has come. Nearly two-thirds of Wisconsin voters want this law, and our industry needs this law. Let's put this behind us for good and step into the future, which we know includes smoke-free workplaces. We urge you to pass SB 150.

Thank you for your consideration.



MAY 31, 2007

TESTIMONY BEFORE THE COMMITTEE ON PUBLIC HEALTH, SENIOR ISSUES,
LONGTERM CARE AND PRIVACY

SENATE BILL 150

GOOD AFTERNOON. I WOULD LIKE TO THANK THE COMMITTEE FOR ALLOWING ME TO SPEAK DURING THIS HEARING.

YOU HAVE HEARD FROM PROPONENTS OF SENATE BILL 150 THAT SECOND HAND SMOKE IS A HEALTH ISSUE. AND, YOU HAVE HEARD FROM OPPONENTS OF SENATE BILL 150 THAT IF PASSED AS WRITTEN IT WOULD BE A VIOLATION OF BUSINESS OWNER RIGHTS.

I AM A SUPPORTER OF THE BREATH FREE WISCONSIN ACT. I AM A DOCTORAL CANDIDATE AT WALDEN UNIVERSITY IN THE SCHOOL OF PUBLIC POLICY AND PUBLIC ADMINISTRATION. MY WORK EXPERIENCE INCLUDES EDUCATING AND MOBILIZING WISCONSIN PARENTS INTO DRUG PREVENTION ACTION AS STATE COORDINATOR FOR THE PARENT CORPS. I ALSO VOLUNTEER AS THE STATE DRUG DEMAND REDUCTION ADMINISTRATOR FOR THE UNITED STATES CIVIL AIR PATROL AIR FORCE AUXILIARY WISCONSIN WING.

I HAVE HEARD BUSINESS OWNERS CRY OUT ABOUT CONSTITUTIONALLY PROTECTED RIGHTS, AND FREEDOM AND JUSTICE FOR ALL. IT IS TIME FOR A CIVICS LESSON THAT IS NO LONGER TAUGHT IN OUR SCHOOLS.

FIRST, FREEDOM AND JUSTICE FOR ALL CAME OUT DURING THE CIVIL RIGHTS MOVEMENT. IT IS A PHRASE THAT IS NOT FOUND ANYWHERE IN OUR DECLARATION OF INDEPENDENCE, OR OUR UNITED STATES CONSTITUTION WITH AMENDMENTS. SECOND, THE IDEA THAT EVERYONE HAS INALIENABLE RIGHTS AND THEY ARE LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS IS A GOOD ARGUMENT. HOWEVER, THE DECLARATION OF INDEPENDENCE IS A LETTER OF INTENT FROM OUR FOUNDING FATHERS THAT WE WERE SEPARATING FROM THE TYRANNY OF KING GEORGE. THIRD, NO WHERE DOES THE UNITED STATES CONSTITUTION PROTECT A PERSON'S LIFESTYLE CHOICE. IT WAS NOT WRITTEN TO REFLECT THESE TYPES OF PROTECTIONS.

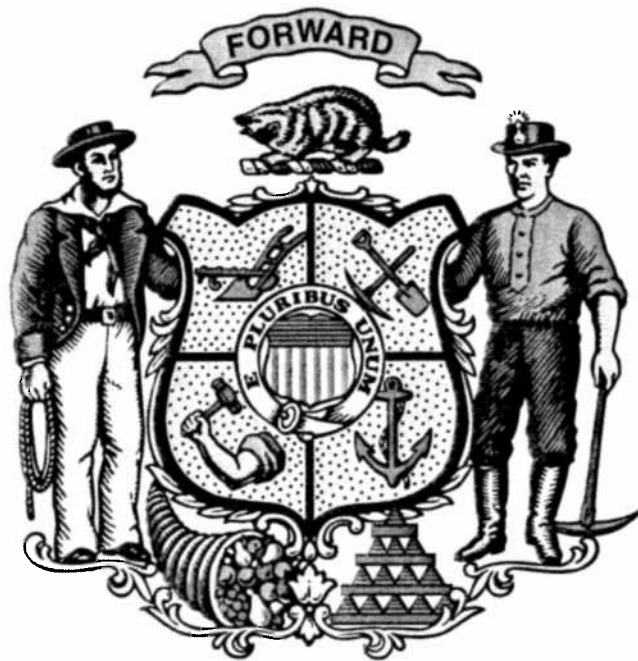
HOW DOES ALL THIS RELATE TO SENATE BILL 150? ANYONE CAN START A BUSINESS IN WISCONSIN. IF IT IS A FOR-PROFIT BUSINESS, THE PROPRIETOR MUST REGISTER WITH THE SECRETARY OF STATE, OR IF THE BUSINESS IS A CORPORATION OR NON-PROFIT, THE PERSON NAMED "THE FOUNDER" MUST REGISTER WITH THE DEPARTMENT OF FINANCIAL INSTITUTIONS. THEN, DEPENDING ON THE TYPE OF BUSINESS, THE

OWNERS MUST GO TO THEIR COUNTY AND LOCAL GOVERNMENTS TO FILE REQUESTS FOR LICENSES AS DEEMED BY LOCAL ORDINANCES, AND, IN SOME CASES, STATE LAW. THESE LICENSES DO NOT GIVE BUSINESS OWNERS RIGHTS, THEY GIVE THEM RESPONSIBILITIES. THE HIGHEST RESPONSIBILITY IS TO ENSURE THE SAFETY AND WELL-BEING OF THEIR EMPLOYEES AND THEIR CUSTOMERS. IN THE END, SENATE BILL 150 WILL HELP BUSINESS OWNERS MEET THEIR RESPONSIBILITY.

SECONDHAND SMOKE COSTS TAXPAYERS. IF A SMALL BUSINESS CANNOT PROVIDE HEALTH INSURANCE, THE BURDEN FALLS UPON THE TAXPAYERS. SECONDHAND SMOKE CAUSE DISEASES THROUGH THE CHEMICALS RELEASED IN THE SMOKE WHEN EXHALED. MANY OF THESE CHEMICALS ARE CARCINOGENS. THE SMOKE PUTS ALL WHO WORK AND PATRONIZE BUSINESSES AT RISK OF CONTRACTING LUNG DISEASES, ASTHMA, AND CANCER. SECONDHAND SMOKE KILLS. THIS IS NOT A SENSATIONALIZED STATEMENT, IT IS FACT THAT IS BACKED UP BY YEARS OF RESEARCH AND IS SUPPORTED BY THE UNITED STATES SURGEON GENERAL.

SENATE BILL 150 IS NOT ABOUT RIGHTS. IT IS ABOUT PUBLIC HEALTH, AND THE RESPONSIBILITY THAT BUSINESS OWNERS, PUBLIC HEALTH OFFICIALS, AND POLICY MAKERS HAVE TOWARD THE CITIZENS, AND VISITORS, IN WISCONSIN.

Donna R. Dennis





Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Committee on Public Health, Senior Issues, Long Term Care and Privacy
Senator Tim Carpenter, Chairperson

FROM: Pat Remington, MD, MPH
Council on Health Care Quality and Population Health, Chairperson

DATE: May 31, 2007

RE: Support of Senate Bill 150—"Breathe Free Wisconsin Act"

I am pleased to be here to testify in support of SB 150, both as one of the 11,500 members of the Wisconsin Medical Society and a Board Member of the Midwest Division of the American Cancer Society.

Today, you will hear from both sides on this issue.

You'll hear from public health advocates about the importance of this policy in protecting the health of the public. The evidence is incontrovertible. Over 30 years of research and hundreds of studies have demonstrated the health effects of passive smoke.

We conducted a study right here in Wisconsin to examine the effects of the smoke-free policies that were enacted in Madison and Appleton over the past few years. Our research demonstrated that these policies led to almost complete elimination of indoor air pollutants from cigarette smoke. More importantly, we showed that non-smoking bartenders reported significantly less respiratory symptoms, thereby reducing their risk of long-term health consequences.

But you don't need to know about epidemiology to understand how passive smoke affects health. All you have to do is spend an hour in a smoky room to feel the effects. People who live in Madison and Appleton have grown accustomed to eating and drinking in a smoke-free environment. Just ask them if they want to go back to the way it was, or what it's like to travel to another city that permits smoking in bars and taverns.

Although the evidence on the health effects is clear and compelling, you will hear from others who claim that the costs of this policy far exceed the potential benefits. They will argue that a policy that bans smoking in bars and taverns will have a tremendous effect on their business. But what does the evidence show?

Will this policy hurt business? It depends. Research in communities in Wisconsin and elsewhere in the U.S. has shown that these policies do not hurt the hospitality business. People continue to go out to dine and drink.

There is evidence that businesses respond to this policy by making changes in their business. Some see an increase in families and food sales, and others see declines in alcohol sales late in the evening. Regardless, studies show that overall business in bars and taverns does not decline.

SB 150 will actually reduce one of the suspected adverse effects of smoke-free policies when they are implemented in some communities and not in others. Although few research studies have been conducted, anecdotal reports suggest that bars that are on the edge of a smoke-free community, that serve only alcohol, may lose business to bars that permit smoking. Of course, these border effects shift business, but may not affect the hospitality business overall.

But let me be very clear. SB 150 will hurt other businesses in Wisconsin—the tobacco industry and those who profit from the sales of cigarettes. Research has clearly demonstrated that communities and states that have implemented statewide smoke-free policies have seen reductions in the smoking rates. These policies change the social norm from one where drinking and smoking are inextricably linked to one where people can go out to eat and drink without smoking.

I want to close by thanking the sponsors of this legislation for their leadership and commitment to this important public health policy. It's not whether--but when--Wisconsin becomes a smoke-free state and provides all its residents safe and healthy places to live and work.



Patrick L. Remington, M.D., M.P.H.
Professor and Director

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Department of Population Health Sciences
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610 Walnut Street
Madison, Wisconsin 53726

Phone: (608) 263-1745
Email: plreming@wisc.edu



05-31-2007

SSM Health Care of Wisconsin

Testimony of Sandy Anderson, St. Clare Hospital and Health Services (Baraboo), and Frank Byrne, MD, St. Mary's Hospital (Madison), in support of Senate Bill 150.

Good afternoon, Chairman Carpenter and members of the Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy. Thank you for the opportunity to express our strong and enthusiastic support for Senate Bill 150 (SB 150).

I am Sandy Anderson, President of St. Clare Hospital and Health Services in Baraboo. With me is Dr. Frank Byrne, President of St. Mary's Hospital here in Madison. We are here today representing our individual facilities as well as all of the health care providers and facilities of SSM Health Care of Wisconsin.

SSM Health Care, the first health care organization to win the Malcolm Baldrige National Quality Award, owns, operates or is affiliated with hospitals and nursing homes throughout southern Wisconsin. We are a nonprofit, Catholic system that cares for all patients who come through our doors regardless of their ability to pay.

In 2004, SSM Health Care became one of the largest systems in the nation to "go smoke free". This means no smoking is allowed on our campuses, by employees, patients or their families. While this creates challenges, there is no doubt it is the healthy thing to do. We are health care providers. Our mission is improving care. We believe our smoke free policy is leading by example. Beyond that, it is simply the right thing to do, for our employees, for our patients and for their families. It is also the right thing for Wisconsin to do.

You will hear many statistics today, on both sides of the discussion. Please let me reference just two of them: First, the National Cancer Institute estimates that secondhand smoke causes 3,000 deaths annually from lung cancer and over 35,000 deaths every year from ischemic heart disease. In plain terms, these people die as a result of the unhealthy actions of others. Second, waiters and waitresses have four times the rate of lung cancer than the rest of the population. While we are sympathetic to the concerns of small business owners, it is inexcusable to place employees at such a risk when proposals such as Senate Bill 150 can reduce this risk while providing businesses with a level playing field.

Many of you are rightfully concerned about government interference in the day-to-day operations of business. As the leader of a health care provider, I am quite familiar with government regulation! However, as Oliver Wendell Holmes, Jr., once said, "The right to swing my fist ends where the other man's nose begins." To paraphrase, the right to expose our state's workforce to secondhand smoke ends where their lungs begin.

Thank you and I now turn over the discussion to Dr. Byrne.

Thank you Sandy, and thank you again Chairman Carpenter and members of the Committee.

While I am a hospital president, I am first and foremost a physician. My specialty is pulmonary and critical care medicine, so I am acutely aware of the devastating personal impact of smoking and secondhand smoke. I had the professional duty and sacred privilege of serving as physician to hundreds of patients who had their lives shortened and quality of life diminished by diseases such as lung cancer, emphysema, and heart disease because at some point in their life they chose to smoke, and scores of adolescents and adults with asthma whose capabilities were impaired because of exposure to secondhand smoke in the workplace or home.

These impacts are often borne by our children. According to the National Cancer Institute, exposure to secondhand smoke results in 10,000 cases of low birth weight, 2,000 cases of Sudden Infant Death Syndrome (SIDS) and more than 8,000 new cases of asthma annually. First and foremost, these health issues are personal tragedies. In addition, they impose a huge cost to our society and our business community.

For example, the Society of Actuaries has determined that secondhand smoke cost the U.S. economy nearly \$10 BILLION annually: \$5 billion in medical costs associated with exposure to secondhand smoke and an additional \$4.6 billion in lost wages. Beyond the health costs and wages, let's look at the loss of productivity; the U.S. Centers of Disease Control and Prevention estimate that smoking and secondhand smoke cost \$92 BILLION in productivity losses annually.

Additionally, all of these health care costs are a drain on the broader health care system, consuming clinician, staff and financial resources that could be better directed toward wellness and preventive care. If our nation is ever truly going to control health care costs, this is where much of that savings will originate. This will not be possible until we make societal and cultural changes that create healthier environments and make it easier to avoid obvious deadly and costly health hazards, such as secondhand smoke.

Thus, even as we try to address the legitimate concerns of some small businesses, we must look at the other side of this discussion as I have just described. Like my colleague Sandy Anderson, I help lead a hospital. I am quite familiar with government regulation, and I don't always like it. But from a fundamental conservative perspective, government policy should be driven toward the basic goals of protecting public health and safety.

SB 150 follows this directive and makes a bold, substantive step toward improving the health of our state's workforce. We would like to thank Senators Risser and Roessler and Representatives Wieckert and Richards and the other bill sponsors for their leadership on this issue. We encourage the Committee's support of this bill.

Thank you again for the opportunity to comment on this important legislation. If you have questions or would like additional information, please contact either Sandy or me, or Michael Heifetz, our Vice President for Governmental Affairs, at (608) 250-1225.



Date ?

**To: Senator Dale Shultz and members of Senate Committee
considering SB 150**

People who drink alcohol and smoke are in the highest risk to get sick and die from tobacco-caused and related diseases according to researchers from the Centers for Disease Prevention and Control studying tobacco and health.

Tavern and bar operators have a stake in reducing these tobacco-caused deaths and disease. We know that many smokers are likely to die from lung cancer (90% of all lung cancer deaths.) They also get sick and die from other lung diseases like emphysema and heart disease. Many of these sufferers drink in our Wisconsin taverns and bars.

If they help support their customers to become tobacco free tavern and bar operators will have those customers for the extra years they will be alive to drink in their taverns. Drinkers who smoke lose from 10 to 20 years of their expected life span. Retaining present customers is easier than finding new customers.

Even drinkers who don't smoke get sick and die from second hand smoke and the fumes from cigarettes, cigars and pipes in smoke-filled taverns, bars and other places where there is smoking.

We are learning more about the harm from tobacco as government and medical scientists discover the facts. The best information we now have is that more than 420,000 Americans die each year from tobacco caused and related diseases. That means that 1,200 Americans are lost to tobacco each and every day.

Now we have information that about 200,000 of these deaths are people with substance abuse and mental health disorders. In Wisconsin this means that 270 of our people with these disorders die each and every month. That is more than 3 times as many American lives lost in the Iraq war every month. How important is that information?

Many of those lost to tobacco are customers of our Wisconsin taverns. Nobody knows how many of the tavern patrons have substance dependence or mental health disorders. We do know that those men who drink more than 2 drinks a day and women who drink more than one drink a day are

drinking irresponsibly according to the President of the American Society of Addiction Medicine, Michael Miller, M.D. and other medical authorities.

The link between smoking and drinking is well known. Patients who get help to quit smoking report they smoke more when they are drinking and they drink more when they are smoking. Bartenders and servers I have interviewed report the average number of drinks customers they serve is 3 to 4 an hour; that customers tend to drink for two or more hours depending on the time of day.

This suggests that while there are many customers who know their limit; many do not and over drink and have alcohol abuse and alcohol dependence disorders.

Dr. Hurt, from the Mayo Clinic, studied more than 800 patients with alcohol and drug dependence disorders treated by Mayo over many years. Dr. Hurt determined that the cause of death of those studied was significantly more from tobacco caused diseases than from alcoholism or drugs.

These findings suggest that the Wisconsin Tavern League can best serve their customers who drink and smoke by following the lead of the Wisconsin Restaurant Association to support state legislation to provide smoke-free workplaces for their employees and customers. The evidence to date documents that smoke-free facilities encourages smokers to quit. Higher prices for cigarettes and other tobacco products move smokers to quit. An active tobacco prevention and control program provides the education and treatment that helps smokers quit.

These are the measures Governor Doyle and public health advocates are proposing that creatively and wisely confront the real harm caused by tobacco that hurts those we love and care about. When the Wisconsin Tavern League joins the Wisconsin Restaurant Association, the tourism industry and the dozen of other advocates supporting these policies we can become leaders in saving Wisconsin lives; among them the customers of our Wisconsin taverns and bars.

David Macmaster, CSAC, TTS
199 Fieldstone Drive, #215
Wisconsin Dells, WI 53965
608-393-1556



SB 150?
Date?

My name is Joyce Mann, I am a program coordinator for the Fond du Lac County Tobacco Control Coalition. I hope to provide insights on the public health and community benefits of a comprehensive smokefree state law.

First and foremost: it's about the secondhand smoke, not the person smoking. The Breathe Free Wisconsin Act recognizes the past 20+ years of research: there is no safe level of exposure to secondhand smoke, and the only way to remove the risk is to eliminate the smoke. The Breathe Free Act places safety above convenience: for the safety of all workers and patrons, people who smoke should take it outside. About one-fifth of all health insurance costs in the state are used to pay for smoking-related diseases. More people die from secondhand smoke than traffic accidents.

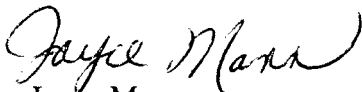
Taverns contain four to six times the levels of secondhand smoke of other businesses. Public health advocates have consistently heard from tavern owners that they want a "level playing field". A statewide law does just that.

Some people will complain that a comprehensive law infringes on their personal rights. From a public health perspective, a citizen's right to breath clean, unpolluted air should take precedence. It doesn't matter if they are a worker or a patron.

Loss of business is a frequent argument from the hospitality industry against smokefree laws. Those claims were made when Fond du Lac's current ordinance went into effect but did not materialize. The city of Appleton which is totally smokefree has a waiting list of applicants for liquor licenses. In Madison, 39 new liquor licenses were issued one year after the implementation of their smokefree workplace ordinance. Last year's Surgeon General's report also concluded that smokefree policies and regulations do not have an adverse economic impact on the hospitality industry.

The majority of residents (local and statewide) want smokefree environments. Attached to copies of my testimony is a resolution adopted by our local Board of Health and County Board supporting a statewide smokefree workplace law with no exceptions. The resolution was adopted by a 23-10 vote.

In summary, The Breathe Free Wisconsin Act , provides a safer working environment for those at greatest risk, reduces the incidence of heart disease, lung disease, and other illnesses, treats all businesses equally, and is supported by the majority of the citizens. That sounds like a win-win scenario to us.


Joyce Mann

**** AMENDMENT**

RESOLUTION NO. 123-06

**RESOLUTION STATING THAT THE
FOND DU LAC COUNTY BOARD OF SUPERVISORS
SUPPORT ADOPTION OF A
STATEWIDE WORKPLACE SMOKING BAN WITH NO EXECPTIONS**

WHEREAS, tobacco use is the leading cause of preventable death and disease in Fond du Lac County, causing 128 deaths and 38.6 million dollars in health care costs annually, and

WHEREAS, every year, 16,400 Wisconsin children become addicted to tobacco products, and

WHEREAS, significant price increases in tobacco products and smoke free workplace legislation have been proven to be the best strategies to reduce consumption of tobacco products, especially among youth, and

WHEREAS, exposure to secondhand smoke is the third most common cause of preventable death and disease in Fond du Lac County, and

WHEREAS, the 2006 Surgeon General's Report "Health Consequences of Involuntary Exposure to Tobacco Smoke" concluded that there is no risk-free level of exposure to secondhand smoke, that workplace smoking restrictions are effective in reducing secondhand smoke exposure, and that smoke free policies and regulations do not have an adverse economic impact on the hospitality industry, and

WHEREAS, all citizens deserve to be protected from exposure to secondhand smoke in workplaces and public settings, and

WHEREAS, it is the responsibility of governmental bodies to protect the health of communities they serve, and

WHEREAS, the Fond du Lac County Board of Supervisors has previously supported efforts to strengthen the State's Clean Indoor Air laws, and

WHEREAS, Governor Doyle's State biennial budget proposal includes a provision for a \$1.25 increase in the tobacco tax, with the additional revenue being allocated to: funding a comprehensive program to reduce tobacco use that follows CDC (Center for Disease Control) best practice guidelines, allocates funds to the Medical Assistance Program and funds other State programs that will advance the health, education and general welfare of Wisconsin citizens, and

WHEREAS, the Governor is asking the Legislature to pass legislation proposing all Wisconsin workplaces be completely smoke free and Fond du Lac County's buildings and confined spaces are already complying with this, and

WHEREAS, such legislation is supported by three out of four Wisconsin citizens.

NOW, THEREFORE, BE IT RESOLVED that the Fond du Lac County Board of Supervisors support adoption of a statewide workplace smoking ban with no exceptions.

BE IT FURTHER RESOLVED that the Fond du Lac County Board of Supervisors support Governor Doyle's budget initiative to increase the Wisconsin excise tax on cigarettes by \$1.25 per pack.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Wisconsin Counties Association, Wisconsin Governor Jim Doyle, the Joint Finance Committee of the State of Wisconsin, and all Legislators who represent portions of Fond du Lac County.

Dated March 20, 2007

**** AMENDMENT**

Motion by County Board to add "and supports the Governor's budget initiative to increase the Wisconsin excise tax on cigarettes by \$1.25 per pack" to heading. Motion carried.

SUBMITTED BY:
BOARD OF HEALTH


Shirley Ries

Motion by County Board to divide resolution separating statewide workplace smoking ban from the WI. excise tax on cigarettes by \$1.25 per pack. Motion carried.


Todd M. Schmitz

Motion to support smoking ban in workplace with no exceptions was carried by a vote of Ayes, 23. Nays, 10. Absent, 3.


Leonard D. Duffy

Motion to support \$1.25 sales tax, carried by a vote of Ayes, 17. Nays, 16. Absent, 3.

Jenna Saul

FISCAL NOTE: This resolution does not require an appropriation from the County General Fund. It is advisory in nature.

APPROVED BY:

Allen J. Buechel
COUNTY EXECUTIVE

APPROVED BY:


William J. Bendt
CORPORATION COUNSEL



Date ?

Good Afternoon

My name is Shawn Boogaard – I live in Kaukauna and work in Appleton

I am here asking you to support SB150. //

I am told I inherited my grandmother's spunk. If I didn't, I would struggle to stand before you today.

You see, I have no recollection of my mom's mother. She developed breast cancer at age 40 and died 10 years later. She grew up with smokers and spent years as a bartender and bar owner.

The latest research on breast cancer in young women exposed to secondhand smoke, is convincing enough to make me think her cancer was the result of her lifelong exposure.

Back then, the ~~city~~ ^{health risks} ~~knowledge~~ of smoking and secondhand smoke was skillfully concealed in Big Tobacco's secret files/Today, the truth is out!
^{my grandmother's} Yet 45 years after ~~her~~ death, young women serving us in bars and restaurants still have significant secondhand smoke exposure.

My daughters are lucky – they are parttime bartenders in smoke-free Appleton. On the other hand, my niece Laura, a college student on summer break is looking for work in the Fox Valley. Having a parttime job at the mall, hospitality work provides the hours and higher pay to supplement that job. If she can't find work in the city of Appleton, she must put her health at risk for a job in a smoking community.

Even if she was lucky enough to work in Appleton, there are thousands of others like her who will forfeit their health for a paycheck. The majority of hospitality workers are young women the number in Kaukauna and Appleton is between 70 and 85 Percent. I am talking about our daughters, nieces, sisters, granddaughters and neighbors.

The solution to this problem is currently in your hands.

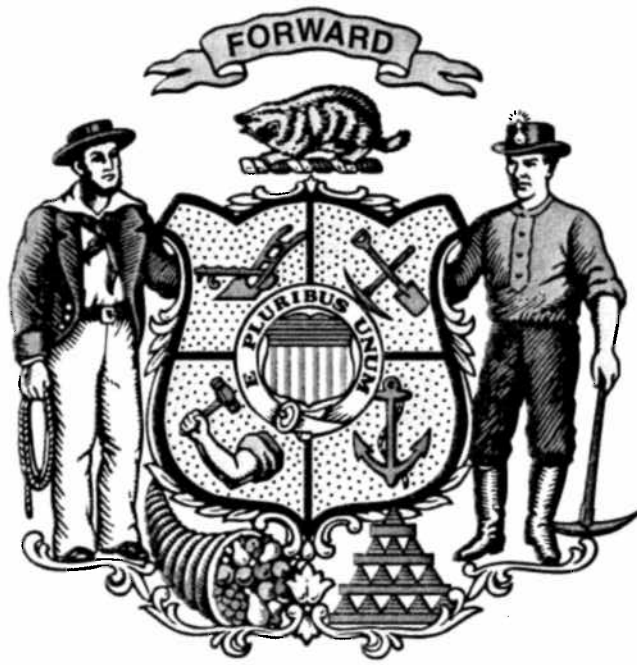
The connection between secondhand smoke and disease and death is undeniable. It is time for Wisconsin to unite with 20 other states including our neighboring states and pass SB150.

This will take courage and commitment as well as a core belief in the foundation of true public health. It will also take having a tough shell to deflect the personal criticisms, accusations and fabrications that you will endure. Having worked on the Appleton campaign, I am all too well aware of that. But, you will also be stopped by many others who with thank you for standing up to the Tobacco Industry.

I can only hope in the near future when you go to a restaurant or bar and a young woman serves you, you will silently reflect on your role in making sure her workplace is free from secondhand smoke.

But, if smoking is still allowed in that workplace then it is this legislature's obligation to explain to her - why.

Shawn Boogard
721 Maltard Dr.
Kaukauna, WI 54130
(920) 759-2211



Date?

Possible Amendments to SB150

--Exemptions:

--bars or “adult only” facilities. This would require either a standard based on percent of alcohol sales, or forcing businesses to declare themselves as adult only. There is not a business class or license class that separates such businesses, and on a practical level there is heavy and indistinguishable overlap between restaurants, taverns, and bars.

--One version is a completely unenforceable law that allows smoking until a minor walks into the room

--bowling alleys

--private clubs, staffed or unstaffed

--small businesses or family-owned businesses

--retail tobacco stores

--cigar bars

--non-hospitality workplaces

--Preemption

--Ventilation

--Smoking rooms, either open to the public or staff-only

--Informed consent or “red light/green light”. This involves having businesses do nothing more than post signs informing the public and employees of a health hazard.

--One version often pitched to state legislators is from St. Louis Park, MN. They did air quality testing and posted different levels of warnings based on the results. This was wiped off the books first by a county smoke-free ordinance and then by the state smoke-free law. It achieved no measurable health protection or improvement.

--“Consent” provisions—similar to the item above, staff and customers are asked to sign an agreement specifying that they understand the hazards.

--Hours provisions

--Opt out

--Hardship

--long phase-ins

--Trucks or truck stops

--Farms and farm equipment

Avoid the “minors only” trap: alcohol sales vs. age of entry for defining bars

As an extension of the discussion above relating to definition of “bar” versus “restaurant,” public health advocates should strongly urge policymakers to avoid the “minors only” trap.

In a nutshell, this fundamentally flawed concept is based in the premise that only children deserve protection from secondhand smoke. Framing secondhand smoke exposure solely from a youth perspective can create the misconception that secondhand smoke is harmful only to young people, while adult exposure is acceptable. Secondhand smoke poses significant health risk to all ages, and everyone deserves the right to a safe and healthy work environment. Just because a person is of legal age to smoke cigarettes does not mean that person should be required to smoke—via secondhand smoke—due to workplace exposure to tobacco smoke. It is a tobacco

industry tactic to frame this as a “kids” issue. Don’t let them. Secondhand smoke is an equal opportunity killer, regardless of age, gender, or ethnicity.

Age vs. alcohol sales for defining “bar”

In distinguishing “bar” versus “restaurant” for the purpose of a smokefree ordinance, there may be an inclination for policymakers to define a bar as an establishment to which only adults are admitted. However, there are a few serious problems with using “age of entry” as a basis for the definition of “bar,” rather than alcohol sales compared with overall sales.

The first problem with using age-of-admission to an establishment as a determining factor is that an establishment could choose to change the clientele it admits at certain times of the day or days of the week. If “bar” were defined solely based on the age of the patrons admitted to the establishment, an establishment could claim to be restaurant during a certain part of the day and admit all ages, while claiming to be a bar during other parts of the day, admitting only adults.

Such a situation would:

- lead to confusion among the public regarding which establishments are smokefree and prevent them from making health-conscious decisions about where to patronize;
- lead to confusion among smokers regarding where smoking is allowed and where it is prohibited, leading to lower compliance;
- lead to confusion among enforcement authorities regarding which establishments should be checked for compliance because it would be unknown which establishments would have to be smokefree under the law because the enforcement authorities would not know prior to visiting an establishment whether or not an establishment was claiming to be all-ages or adult-only;
- require the enforcement authority to card patrons in such establishments in order to verify compliance with the law if an establishment claims to admit only adults as a way to claim to be exempt from a law.

Smoke does not dissipate from an establishment the moment an establishment switches from adult-only to all-ages, or when a door opens or closes.

Furthermore, an exemption from a smokefree workplace law for adult-only venues could have an unintended consequence of causing restaurateurs to choose between families and smoking. This scenario is the only scenario that actually would prohibit potential customers from entering certain establishments, which could adversely affect revenues in those establishments.

Avoid “Accommodation” in its many forms

Tobacco companies have developed public relations and political affairs strategies to convince the public and the hospitality industry that there are alternate ways to handle the secondhand smoke issue aside from creating smokefree public places. Philip Morris’ *Accommodation Program* <http://legacy.library.ucsf.edu/cgi/getdoc?tid=ehf36e00&fmt=pdf&ref=results> is the most prominent of these PR campaigns.

The details of “accommodation” language in an ordinance vary, but the result is a weak and ineffective policy. Essentially, the premise of “accommodation” that the tobacco industry tries to pitch to policymakers and business owners is that smoking should be able exist in part of an establishment without concern about harm to nonsmokers and others who deserve to be protected from this exposure. As described below, it can take many forms: a ventilation/ smoking rooms provision; a provision requiring posting of signs for places where smoking is allowed (“red light/green light”); even basic smoking and nonsmoking sections.

Accommodation through ventilation

An element of the tobacco industry’s accommodation policy is the push for ventilation in ordinances instead of going smokefree. Led by the Philip Morris *Options* program, <http://tobaccodocuments.org/pm/2081374213-4239.html>, for example, the tobacco companies’ ventilation strategy seeks to convince business owners and operators, employees, and patrons that ventilation can eliminate and protect against the health risks caused by secondhand smoke.

The truth: no ventilation system can completely remove all the poisonous toxins and gases in secondhand smoke.

Even Philip Morris, numerous air filtration and ventilation companies (such as The Sharper Image, United Air Specialists, Brookstone, Radio Shack, IQAir North America, and Honeywell), and the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) agree that ventilation does not eliminate the health risks associated with secondhand smoke exposure.

ASHRAE, an international standard-setting body for indoor air quality, adopted a Board position statement in 2005, expressing the inadequacy of air filtration and other ventilation systems at protecting against secondhand smoke related ailments¹.

Further, allowing ventilation systems makes it very difficult to strengthen the law in the future. Once business owners have made large financial investments in smoking rooms (or any kind of construction) that are permitted by law, lawmakers are highly reluctant to then strengthen the law in the future. Going 100% smokefree not only protects employees and patrons, but it also protects business owners’ bottom line for the short and long terms.

Bottom line: 100% smokefree indoor air is the only solution to the problem of exposure to secondhand smoke.

Accommodation through smoking rooms or sections

Smoking room provisions prevent future progress and do not protect anyone’s health. Smoking rooms do not protect people (such as workers) in the room from secondhand smoke. In addition, they offer limited protection, at best, to those outside the room. Secondhand smoke has a non-linear dose response. This means that just because one is exposed to less secondhand smoke does not necessarily mean that one is less at risk to developing adverse health effects, such as

heart disease and asthma. This means that the health dangers persist despite the appearance that the problem has been addressed with a smoking room. Remember, there is no safe level of exposure to secondhand smokeⁱⁱ.

Smokefree laws should create smokefree establishments, not merely require certain rooms within establishments to become smokefree. If smoking is occurring in any portion of an establishment, then for all intents and purposes, that is a smoking establishment. Research shows that purportedly “smokefree” portions of establishments that have smoking rooms measure significant levels of secondhand smoke. These types of ordinances are antiquated remnants of early work to secure smokefree venues.

Indiana’s first major city’s smokefree workplace ordinance, enacted in Fort Wayne in the 1990’s, contained a clause that allowed for smoking rooms in workplaces. At the time of its passage the original Fort Wayne ordinance was a landmark primarily because it was the first of its kind here in Indiana, but also because of the strong community-based campaign that led to the ordinance’s enactment. However, since that time, the science and technology regarding ventilation and smoking rooms has been studied more extensively, and we know, based on the most state-of-the-art research and best practices, that smokefree ordinances should create smokefree venues that are smokefree all throughout all the time.

In fact, using the prevailing science as outlined in the major conclusions of the Surgeon General’s Report as a basis for action, the Fort Wayne city council came back and adopted a new, comprehensive smokefree workplace ordinance in the Spring of 2007, covering all workplaces entirely all the time, including bars. The new ordinance which took effect in June of 2007 eliminates “smoking rooms” in venues where those had been permitted and protects every Fort Wayne worker from occupational exposure to secondhand smoke.

The science shows that smoking rooms are ineffective because they neither protect workers or patrons in the room where smoking is allowed nor do they effectively confine smoke only to the room where smoking is occurring, and they are misleading because such policies purport to protect people from secondhand smoke exposure, when, in fact, there could be significant presence of secondhand smoke all throughout an establishment.

Furthermore, as mentioned above, such a “smoking room” policy that requires the building of walls for separation or installation of equipment only serves to institutionalize smoking in these venues and create a constituency that has invested in the preservation and continuation of smoking.

Accommodation through “red light/green light” provisions

Restaurants, bars, or other places do not protect anyone by simply posting their smoking policy. Such “informed consent” provisions (generally referred to as a “Red Light/Green Light” policy) does not result in any protection for nonsmokers, but merely gives the impression that something has been done to solve the problem, thus suggesting that no further legislation is necessary. In addition to being a public affairs diversion by tobacco industry allies to prevent an effective ordinance smokefree ordinance, the tobacco industry wants signs at the entrance of establishments letting smokers know that smoking is permitted as a cue to remind them to

smoke. Moreover, even if customers can choose between smoking and nonsmoking establishments, employees cannot.

Never Accept Preemption in a State Law

Preemption is a provision at one level of government that precludes lower levels of government from addressing an issue, or from enacting stronger laws on an issue than exist at the higher government level. Over the past 15 years, one of the tobacco industry's favorite tactics has been to lobby state legislatures to preempt local smokefree laws. Where successful, as it has been in a number of states, this tactic shifts the struggle for smokefree air from local jurisdictions, where grassroots smokefree advocates are more likely to have the upper hand, to the state legislature, where the tobacco industry typically wields substantial influence. Advocates in states where local smokefree ordinances have recently been passed for the first time, where a flurry of local ordinances has recently occurred, or where a smokefree ordinance has recently been enacted in the capital city should be on special guard for attempts to preempt local smokefree activity. These attempts are often stealthy, employing technical, unclear language, bills that are placed on the fast track by the legislative leadership with few committee assignments and no public notice, and amendments or riders that are tacked on to unrelated bills. The tobacco industry's push for preemption is a tribute to our success at the local level. **Preemption is unacceptable and should be avoided at all costs.**

Local control is at the heart of our broader goal of educating the public about the health effects of secondhand smoke and changing social norms. Debates over proposed local smokefree ordinances typically generate extensive media coverage, letters to the editor, town hall meetings, and city council hearings, all of which increase public awareness of secondhand smoke and tobacco issues and public support for smokefree laws.

For further information on preemption, visit the Protect Local Control website supported by Americans for Nonsmokers' Rights and the American Cancer Society, at www.protectlocalcontrol.org

Avoid "hours" provisions

Places that are designated smokefree should be smokefree at all times, not just certain hours of the day or days of the week. Voluntary compliance will be more difficult to achieve if a person needs a watch or a calendar to know whether the law is in effect. In such cases, enforcement will consume more time, personnel and financial resources. Also, voluntary compliance will be lower if patrons receive mixed messages regarding whether or not smoking is permitted. For example, if physical cues in an establishment indicate that smoking is permitted (the presence of ashtrays, cigarette butts, and the smell of smoke), few smokers will know that a smokefree law is in place and thus fewer smokers will comply with the law.

Such provisions are generally found with respect to hospitality venues, usually in an attempt to make a distinction in the law with respect to when minors are present. First, smokefree laws are

meant to protect employees as well as members of the general public, and allowing smoking at any part of the day will expose employees to secondhand smoke. Second, smokefree laws are important for everyone, not just minors. Third, because smoke lingers in places for as long as two weeks, allowing smoking in a restaurant or bowling alley at night, but not in the morning, will result in exposure to secondhand smoke by both the morning and evening workers and customers. Lastly, these provisions create confusion and are very difficult to enforce.

Avoid “Consent” provisions

Avoid loopholes where employees are pressured into “consenting” to work in smoke-filled areas either voluntarily or contractually. This kind of provision, usually used in connection with restaurants and bars that allow smoking in separate rooms or areas, puts undue pressure on employees, particularly new employees, to either agree to endanger their health or risk losing their jobs. If a smoking room or area is created and service must be provided there, then some employee or employees will have to work there, and the employer will expect that one or more employees will volunteer for the job. If nobody volunteers, the employer will necessarily have to replace one or more employees with people who are willing to risk their health to get a job. Also, consent forms are a means for employers to evade their liability for work-related health hazards.

This kind of provision is unacceptable because it creates a situation in which peer pressure, rather than an enforceable law, is the determining factor as to whether smoking is allowed. A nonsmoker who is outnumbered by smokers in a small office, or whose supervisor smokes, may believe that he will be subject to harassment, or even termination, if he complains about others' smoking. Even some smokers may prefer to have a smokefree office, but would feel the pressure from fellow smokers to allow smoking in the office. Further, once an office develops a "smoking allowed" policy, it will be difficult for a nonsmoker to be hired without agreeing to that policy.

Minimize exemptions

Generally, smokefree air ordinances should create establishments that are free from smoke throughout the establishment at all times. Exemptions should be limited because: 1) they do not effectively protect workers and the public from secondhand smoke exposure; 2) they weaken an ordinance; and 3) they are more susceptible to legal challenges. If your language does include exemptions and allows smoking in certain places, as part of a strategic incremental approach, be sure that the places that are covered are completely smokefree entirely throughout. For example, it may be appropriate to include 100% of workplaces and restaurants, while exempting free-standing bars in full, if the plan allows you to return at a later date to include all bars. On the other hand, an undesirable and troublesome compromise would be an ordinance that makes only a portion of many establishments smokefree, while still maintaining smoking in another part of each of these establishments. Advocates are advised that it is better health policy cover a smaller number of enclosed places with smokefree provisions, but to cover those venues entirely, thus

making those establishments truly smokefree, rather than requiring only a portion of all venues to become smokefree, thereby maintaining the potential for secondhand smoke exposure in every venue.

Pursue smokefree workplaces, not just smokefree restaurants

Don't exempt factories, warehouses, etc. from the smokefree workplace policy.

All employees, not just those who work in an office or in a business open to the public, should be protected from the health hazards of secondhand smoke. There is no safe level of exposure to secondhand smoke, so the argument that, because of their large size, factories and warehouses should be exempt from the law is not valid. Nor should there be any distinction in protecting people from secondhand smoke between blue-collar and white-collar workers.

Don't exempt private offices in the workplace.

Because most buildings have shared ventilation systems, smoke from a private office can travel throughout the building, exposing everyone in the building to the health hazards of secondhand smoke. Plus, even if there was a separate ventilation system and a full wall separation, smoke from this office will diffuse throughout the entire workplace. Further, nonsmokers who must enter the private offices for business purposes will also be exposed to secondhand smoke.

Avoid local "opt-out" provisions

These provisions **allow local government bodies to ignore a statewide law** if a majority of the registered voters in the municipality vote to do so. The elected leaders of the local jurisdiction or a certain percentage of its registered voters in the municipality could place a measure on the ballot that would allow the community to "opt out" of the statewide smokefree law.

Allowing local jurisdictions to ignore state smokefree laws denies health protections to a portion of the state's population. It also violates a fundamental principle. Statewide smokefree laws should provide the floor for local smokefree laws, not the ceiling. Local laws should be used to strengthen these important public health measures, but not to weaken them. Municipalities aren't allowed to ignore other state public health measures such as laws and regulations on sanitary food preparation practices and drunk driving. While state laws shouldn't be a ceiling, they should be a floor or a baseline of protection for Hoosiers.

Avoid "hardship" exemptions

Hardship exemptions should be avoided because they weaken an ordinance and are based on the false premise that negative economic impact results from smokefree air laws.

Avoid long phase-in provisions

Smokefree laws should go into effect within 30-90 days of enactment. Smokefree ordinances typically provide for some phase-in period so that the employers and businesses subject to the law can prepare for its implementation and so that the authorities can adequately prepare for enforcement procedures. But, at the behest of restaurant and bar owners, ordinances sometimes provide for overly long phase-in periods, even for as long as two or three years. Such a long period serves no purpose other than to postpone implementation of the law as long as possible or even to allow for the possible repeal of the law before it goes into effect. Restaurants and bars can fully prepare for a smokefree law by simply putting up a few signs and removing their ashtrays. If the sense of the community is that restaurants and bars should be smokefree, then there is no reason to postpone that from happening.

Work from the inside out

Tobacco control advocates should work “from the inside out.” Prior to addressing outdoor restrictions, municipalities first should achieve comprehensive smokefree coverage of indoor environments. Attempting to pass outdoor restrictions too soon runs the risk of having your efforts ridiculed as unnecessarily harsh. Further, without strong established policies restricting smoking in all enclosed places, outdoor policies may have the unintended consequence of encouraging people to come indoors to smoke.

Remember the goal is a smokefree environment, not simply the passage of law

Sure and steady wins the race. Diligence and persistence are qualities that lead to success, whereas impatience leads to problems. Accepting a flawed policy provision as a compromise to put an end to a difficult, exhausting process may seem like a way to accomplish your objective. However, this is a shortsighted approach. **The passage of a policy for the sake of getting “something” is not our purpose in embarking on a smokefree air campaign; ultimately, we seek to achieve comprehensive protections from exposure to secondhand smoke.** It can be difficult to investing significant time and effort into a smokefree campaign only to walk away with nothing, but often times that is the best thing to do.

Don’t be afraid to walk away with nothing rather than accepting something that hinders your efforts down the road. Holding firm to your goals puts you in the seat of power and makes it possible to embark on a new campaign when the circumstances have changed. There are many community coalitions that have had to re-trench, and try a different way to get the smokefree policy they wanted without the bad compromises. Educate your champions on the need to have good policy, not just any policy.

Know your deal breakers. Advocates should not be afraid to walk away with nothing or work to defeat a bad policy, rather than to support a perceived “step in the right direction” approach that ultimately goes against the principles outlined in this document and could even prevent us from reaching our smokefree goal. It is acceptable and many times advisable to take an incremental approach toward achieving comprehensive smokefree policy coverage. One example of incremental steps toward comprehensive coverage would be first achieving a policy that creates

smokefree workplaces, but exempts bars, and then working and achieving coverage of bars in a second policy campaign.

But along the way, never accept a compromise that will prevent you from reaching that ultimate goal. Preemption, ventilation/smoking rooms, “accommodation” compromises, and other such policies described herein can create roadblocks to achieving comprehensive smokefree workplace laws in the future. Be steadfast and vigilant not to accept a weak compromise now that may set your efforts back in the future.

You are the experts on secondhand smoke and smokefree air – hold firm to ensure your public health policy goals are met.

ⁱ American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE). Environmental Tobacco Smoke Position Document, 2005 Conference, ASHRAE Board of Directors

ⁱⁱ U.S. Public Health Service’s National Toxicology Program issued its 10th Report on Carcinogens. Research Triangle Park, NC: U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, December 2002.





**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2007 Senate Bill 150

**Senate Amendments
1, 3, 4, 5, and 6**

Memo published: January 14, 2008

Contact: Jessica L. Karls, Staff Attorney (266-2230)

SENATE BILL 150

The bill prohibits smoking¹ in the following **indoor** locations: (1) passenger vehicles; (2) educational facilities; (3) residence halls or dormitories of universities or colleges; (4) day care centers; (5) inpatient health care facilities; (6) theaters; (7) lockup facilities, jails, or correctional facilities; (8) state institutions; (9) elevators; (10) restaurants; (11) taverns; (12) retail establishments; (13) lodging establishments, except as provided below; (14) government buildings; and (15) any indoor place, other than those listed above, that is a place of employment or that is open to the public or to which members of the public may be invited or have lawful access. The bill prohibits smoking at the following **outdoor** locations: (1) immediate vicinity of the state capitol; (2) premises of a day care center when children are present; (3) grounds of a Type 1 juvenile correctional facility; and (4) 25 feet or less from a residence hall or dormitory owned or operated by the Board of Regents of the University of Wisconsin System.

The prohibition against smoking does not apply to the following locations: (1) private residence; (2) room used by a person in a retirement home as a residence; (3) room in a retirement home in which two or more persons reside if every person that lives in that room smokes and each has made a written request to be placed in a room where smoking is permitted; and (4) room in a lodging establishment that has been designated as a room where smoking is permitted. The owner of a lodging establishment may designate not more than 25% of the guest rooms in the lodging establishment as guest rooms where smoking is permitted.

The bill provides that a person in charge of a location may not allow a person to smoke in violation of the bill and must make reasonable efforts to prohibit a person from smoking at that location,

¹ The bill defines "smoking" as: (1) burning or holding a lighted cigar, cigarette, pipe, or any other lighted smoking equipment; or (2) inhaling or exhaling smoke from a lighted cigar, cigarette, pipe, or other lighted smoking equipment.

including posting signs, refusing to serve a person, asking a person to refrain from smoking or leave the location, and notifying law enforcement of a violation.

The bill 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 proposed s. 101.123, protect the health and comfort of the public.

The bill provides that any person who violates the prohibition against smoking is subject to a forfeiture of not less than \$10 nor more than \$100 per violation. Any person in charge who violates the prohibition against smoking is subject to a forfeiture of not less than \$50 nor more than \$100 for the first violation; not less than \$100 nor more than \$200 for the 2nd violation; and not less than \$200 nor more than \$500 for the 3rd or any subsequent violation. Each day that the prohibition against smoking is violated is a separate violation.

The bill's effective date is the first day of the 7th month beginning after publication.

SENATE AMENDMENT 1 (LRBa1036/1)

Senate Amendment 1 changes the effective date to January 1, 2009.

SENATE AMENDMENT 3 (LRBa1050/1)

Senate Amendment 3 changes the effective date to January 1, 2010, for taverns and restaurants and to January 1, 2009, for other locations. Prior to January 1, 2010, the current law regarding smoking in taverns and restaurants remains intact, which includes the following:

1. The prohibition against smoking does not apply to taverns operating under a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license. [See s. 101.123 (1) (g) and (2) (a), Stats.]
2. The prohibition against smoking does not apply to restaurants that hold a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant's receipts. [s. 101.123 (3) (d), Stats.]
3. A person in charge of a restaurant may designate smoking areas in the restaurant, unless a fire marshal, law, ordinance, or resolution prohibits smoking. [s. 101.123 (4) (a) 1., Stats.] The person in charge must utilize, if possible, existing physical barriers and ventilation systems when designating smoking areas and must post notice of the designation of a smoking area. [s. 101.123 (4) (b) and (c), Stats.]

SENATE AMENDMENT 4 (LRBa0721/1)

Senate Amendment 4 provides that the owner of a retail establishment selling cigars may allow customers to sample cigars in order for the customers to determine whether to make a purchase if the retail establishment: (1) derives not less than 50% of its annual gross income from the on-site sale of tobacco, tobacco products, or tobacco product accessories; and (2) if it adjoins to another establishment, is sufficiently ventilated to prevent smoke from entering any adjoining establishment.

SENATE AMENDMENT 5 (LRBa0722/1)

Senate Amendment 5 provides that the prohibition against smoking does not apply to the following locations: (1) place of employment operated by a manufacturer, importer, wholesaler, or distributor of tobacco products; (2) place of employment operated by a tobacco leaf dealer or processor; and (3) tobacco storage facility.

SENATE AMENDMENT 6 (LRBa0744/1)

Senate Amendment 6 provides that if a lodging establishment has less than four rooms, the owner of the lodging establishment may designate one guest room as a guest room where smoking is permitted.

Legislative History

On January 8, 2008, the Senate Committee on Public Health, Senior Issues, Long-Term Care, and Privacy introduced Senate Amendments 1, 3, 4, 5, and 6 by unanimous consent. The committee recommended adoption of Senate Amendments 1, 3, and 5 on votes of Ayes, 3; Noes, 2, and adoption of Senate Amendments 4 and 6 on votes of Ayes, 5; Noes, 0. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 3; Noes, 2.

JK:ksm