



## 2009 ASSEMBLY BILL 252

April 30, 2009 – Introduced by Representatives RICHARDS, A. OTT, SEIDEL, ZIGMUNT, MILROY, BENEDICT, PARISI, BERCEAU, BLACK, ROYS, SOLETSKI, GOTTLIEB, CLARK, BERNARD SCHABER, MURSAU, TOLES, HILGENBERG, CULLEN, SINICKI, TOWNSEND, POPE-ROBERTS, SMITH, PASCH, HINTZ, SPANBAUER and MONTGOMERY, cosponsored by Senators RISSER, ELLIS, JAUCH, MILLER, DARLING, ROBSON and COGGS. Referred to Committee on Health and Healthcare Reform.

1     **AN ACT** *to repeal* 101.123 (1) (am), 101.123 (1) (br), 101.123 (1) (c), 101.123 (1)  
2           (dg), 101.123 (1) (gm), 101.123 (1) (j), 101.123 (2) (a) 1., 101.123 (2) (a) 5.,  
3           101.123 (2) (a) 6., 101.123 (2) (am), 101.123 (2) (b), 101.123 (3) (a) to (gr), 101.123  
4           (4), 101.123 (5), 101.123 (8) (b) and 101.123 (8) (c); *to renumber* 101.123 (1) (a),  
5           101.123 (1) (dm) and 101.123 (2) (c); *to renumber and amend* 101.123 (1) (h),  
6           101.123 (2) (a) 10., 101.123 (2) (ar), 101.123 (2) (bm), 101.123 (2) (br) and  
7           101.123 (2) (bv); *to amend* 77.52 (2) (ag) 39. (intro.), 101.123 (1) (ar), 101.123  
8           (1) (b), 101.123 (1) (d), 101.123 (1) (e), 101.123 (1) (f), 101.123 (1) (g), 101.123 (1)  
9           (i), 101.123 (2) (a) (intro.), 101.123 (3) (intro.), 101.123 (6), 101.123 (7), 101.123  
10          (8) (a), 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a) and 814.63  
11          (1) (c); *to repeal and recreate* 101.123 (2) (title), 101.123 (2) (a) 4. and 101.123  
12          (2) (a) 9.; and *to create* 101.123 (1) (ab), 101.123 (1) (ac), 101.123 (1) (aj),  
13          101.123 (1) (bn), 101.123 (1) (dj), 101.123 (1) (dn), 101.123 (1) (eg), 101.123 (1)  
14          (h) 2., 101.123 (1) (hm), 101.123 (1) (im), 101.123 (1) (ip), 101.123 (2) (a) 2m.,

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1 101.123 (2) (a) 2r., 101.123 (2) (a) 5m., 101.123 (2) (a) 5t., 101.123 (2) (a) 7m.,  
2 101.123 (2) (a) 7r., 101.123 (2) (a) 8d., 101.123 (2) (a) 8g., 101.123 (2) (d) (intro.),  
3 101.123 (2) (e), 101.123 (2) (f), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i),  
4 101.123 (3) (j), 101.123 (3) (k), 101.123 (3) (L), 101.123 (3m), 101.123 (4m) (title),  
5 101.123 (8) (d) and 101.123 (8) (e) of the statutes; **relating to:** prohibiting  
6 smoking in indoor areas, in sports arenas, and in public conveyances and  
7 providing a penalty.

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***Analysis by the Legislative Reference Bureau***

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

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

8 **SECTION 1.** 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:

9 77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and  
10 hospitals but not in residential facilities including personal residences, apartments,  
11 long-term care facilities, as defined under s. 16.009 (1) (em), ~~state institutions, as~~  
12 ~~defined under s. 101.123 (1) (i) prisons, mental health institutes, as defined in s.~~  
13 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type  
14 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities  
15 including, by way of illustration but not of limitation, all of the following:

16 **SECTION 2.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ae).

17 **SECTION 3.** 101.123 (1) (ab) of the statutes is created to read:

18 101.123 (1) (ab) “Assisted living facility” means a community-based  
19 residential facility, as defined in s. 50.01 (1g), a residential care apartment complex,  
20 as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

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1           **SECTION 4.** 101.123 (1) (ac) of the statutes is created to read:

2           101.123 (1) (ac) “Correctional facility” means any of the following:

3           1. A state prison, as defined or named in s. 302.01, except a correctional  
4 institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner’s  
5 place of residence and no one is employed there to ensure the prisoner’s  
6 incarceration.

7           2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile  
8 correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional  
9 facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility  
10 is a private residence in which the juvenile is placed and no one is employed there  
11 to ensure that the juvenile remains in custody.

12           3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work  
13 camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under  
14 s. 302.30.

15           **SECTION 5.** 101.123 (1) (aj) of the statutes is created to read:

16           101.123 (1) (aj) Notwithstanding s. 101.01 (5), “employment” means any trade,  
17 occupation, or process of manufacture or any method of carrying on such trade,  
18 occupation, or process of manufacture in which any person may be engaged.

19           **SECTION 6.** 101.123 (1) (am) of the statutes is repealed.

20           **SECTION 7.** 101.123 (1) (ar) of the statutes is amended to read:

21           101.123 (1) (ar) “Immediate vicinity of the state capitol” means the area  
22 directly adjacent to the state capitol building, as determined by rule of the  
23 department of administration. “Immediate vicinity of the state capitol” does not  
24 include any location that is more than ~~one fathom~~ six feet from the state capitol  
25 building.

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1           **SECTION 8.** 101.123 (1) (b) of the statutes is amended to read:

2           101.123 (1) (b) “Inpatient health care facility” means a hospital, as defined in  
3 s. 50.33 (2), a county home established under s. 49.70, a county infirmary established  
4 under s. 49.72 or a community-based residential facility or, a nursing home licensed  
5 under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a  
6 Wisconsin veteran’s home under s. 45.50, or a treatment facility.

7           **SECTION 9.** 101.123 (1) (bn) of the statutes is created to read:

8           101.123 (1) (bn) “Lodging establishment” means any of the following:

9           1. A bed and breakfast establishment, as defined in s. 254.61 (1).

10          2. A hotel, as defined in s. 254.61 (3).

11          3. A tourist rooming house, as defined in s. 254.61 (6).

12          **SECTION 10.** 101.123 (1) (br) of the statutes is repealed.

13          **SECTION 11.** 101.123 (1) (c) of the statutes is repealed.

14          **SECTION 12.** 101.123 (1) (d) of the statutes is amended to read:

15          101.123 (1) (d) “Person in charge” means the person, or his or her agent, who  
16 ultimately controls, governs or directs the activities aboard a public conveyance or  
17 within a place at a location where smoking is prohibited or regulated under this  
18 section, ~~regardless of the person’s status as owner or lessee.~~

19          **SECTION 13.** 101.123 (1) (dg) of the statutes is repealed.

20          **SECTION 14.** 101.123 (1) (dj) of the statutes is created to read:

21          101.123 (1) (dj) Notwithstanding s. 101.01 (11), “place of employment” means  
22 any indoor area that employees normally frequent during the course of employment,  
23 including an office, a work area, an elevator, an employee lounge, a restroom, a  
24 conference room, a meeting room, a classroom, a hallway, a stairway, a lobby, a  
25 common area, a vehicle, or an employee cafeteria.

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1           **SECTION 15.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m).

2           **SECTION 16.** 101.123 (1) (dn) of the statutes is created to read:

3           101.123 (1) (dn) “Private club” means an organization that limits its  
4 membership and is organized for a recreational, fraternal, social, patriotic, political,  
5 benevolent, or athletic purpose.

6           **SECTION 17.** 101.123 (1) (e) of the statutes is amended to read:

7           101.123 (1) (e) “Public conveyance” means a mass transit vehicles vehicle as  
8 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),  
9 or any other device by which persons are transported, for hire, on a highway or by  
10 rail, water, air, or guidewire within this state, but does not include such a device  
11 while providing transportation in interstate commerce.

12           **SECTION 18.** 101.123 (1) (eg) of the statutes is created to read:

13           101.123 (1) (eg) “Public place” means a place that is open to the public,  
14 regardless of whether a fee is charged or a place to which the public has lawful access  
15 or may be invited.

16           **SECTION 19.** 101.123 (1) (f) of the statutes is amended to read:

17           101.123 (1) (f) “Restaurant” means an establishment as defined in s. 254.61 (5)  
18 ~~with a seating capacity of more than 50 persons.~~

19           **SECTION 20.** 101.123 (1) (g) of the statutes is amended to read:

20           101.123 (1) (g) “Retail establishment” means any store or shop in which retail  
21 sales is the principal business conducted, ~~except a tavern operating under a “Class~~  
22 ~~B” intoxicating liquor license or Class “B” fermented malt beverages license, and~~  
23 ~~except bowling centers.~~

24           **SECTION 21.** 101.123 (1) (gm) of the statutes is repealed.

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1           **SECTION 22.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)  
2 and amended to read:

3           101.123 (1) (h) (intro.) “Smoking” means ~~carrying~~ any of the following:

4           1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted  
5 smoking equipment containing tobacco products.

6           **SECTION 23.** 101.123 (1) (h) 2. of the statutes is created to read:

7           101.123 (1) (h) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,  
8 pipe, or other lighted smoking equipment containing tobacco products.

9           **SECTION 24.** 101.123 (1) (hm) of the statutes is created to read:

10           101.123 (1) (hm) “Sports arena” means any stadium, pavilion, gymnasium,  
11 swimming pool, skating rink, bowling center, or other building where spectator  
12 sporting events are held.

13           **SECTION 25.** 101.123 (1) (i) of the statutes is amended to read:

14           101.123 (1) (i) “State institution” means ~~a prison,~~ a mental health institute,  
15 as defined in s. 51.01 (12), a center for the developmentally disabled, as defined in  
16 s. 51.01 (3), or a secure mental health facility at which persons are committed under  
17 s. 980.06.

18           **SECTION 26.** 101.123 (1) (im) of the statutes is created to read:

19           101.123 (1) (im) “Tavern” means an establishment, other than a restaurant,  
20 that holds a “Class B” intoxicating liquor license or Class “B” fermented malt  
21 beverages license.

22           **SECTION 27.** 101.123 (1) (ip) of the statutes is created to read:

23           101.123 (1) (ip) “Treatment facility” means a publicly or private operated  
24 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,  
25 or developmentally disabled persons.

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1           **SECTION 28.** 101.123 (1) (j) of the statutes is repealed.

2           **SECTION 29.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

3           101.123 (2) (title) PROHIBITION AGAINST SMOKING.

4           **SECTION 30.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

5           101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in  
6           any of the following indoor places:

7           **SECTION 31.** 101.123 (2) (a) 1. of the statutes is repealed.

8           **SECTION 32.** 101.123 (2) (a) 2m. of the statutes is created to read:

9           101.123 (2) (a) 2m. Residence halls or dormitories owned or operated by a  
10          college or university.

11          **SECTION 33.** 101.123 (2) (a) 2r. of the statutes is created to read:

12          101.123 (2) (a) 2r. Day care centers.

13          **SECTION 34.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

14          101.123 (2) (a) 4. Theaters except as provided in sub. (3) (L).

15          **SECTION 35.** 101.123 (2) (a) 5. of the statutes is repealed.

16          **SECTION 36.** 101.123 (2) (a) 5m. of the statutes is created to read:

17          101.123 (2) (a) 5m. Correctional facilities.

18          **SECTION 37.** 101.123 (2) (a) 5t. of the statutes is created to read:

19          101.123 (2) (a) 5t. State institutions.

20          **SECTION 38.** 101.123 (2) (a) 6. of the statutes is repealed.

21          **SECTION 39.** 101.123 (2) (a) 7m. of the statutes is created to read:

22          101.123 (2) (a) 7m. Taverns.

23          **SECTION 40.** 101.123 (2) (a) 7r. of the statutes is created to read:

24          101.123 (2) (a) 7r. Private clubs.

25          **SECTION 41.** 101.123 (2) (a) 8d. of the statutes is created to read:

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1 101.123 (2) (a) 8d. Common areas of multiple-unit residential properties.

2 **SECTION 42.** 101.123 (2) (a) 8g. of the statutes is created to read:

3 101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3) (k).

4 **SECTION 43.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

5 101.123 (2) (a) 9. Any indoor place, other than the places listed in subds. 1. to  
6 8r., that is a place of employment or that is a public place.

7 **SECTION 44.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.  
8 and amended to read:

9 101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State,~~ county, city,  
10 village, or town ~~building~~ buildings.

11 **SECTION 45.** 101.123 (2) (am) of the statutes is repealed.

12 **SECTION 46.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and  
13 amended to read:

14 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~  
15 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

16 **SECTION 47.** 101.123 (2) (b) of the statutes is repealed.

17 **SECTION 48.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.  
18 and amended to read:

19 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~  
20 ~~on~~ On the premises, ~~indoors or outdoors,~~ of a day care center when children who are  
21 receiving day care services are present.

22 **SECTION 49.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and  
23 amended to read:



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1           101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~  
2           ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ On the  
3           grounds of a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

4           **SECTION 50.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and  
5           amended to read:

6           101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~  
7           ~~in~~ A location that is 25 feet or less from a residence hall or dormitory that is owned  
8           or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~  
9           location ~~that is 25 feet or less from such a residence hall or dormitory~~.

10          **SECTION 51.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

11          **SECTION 52.** 101.123 (2) (d) (intro.) of the statutes is created to read:

12          101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor  
13          locations:

14          **SECTION 53.** 101.123 (2) (e) of the statutes is created to read:

15          101.123 (2) (e) No person may smoke in a sports arena.

16          **SECTION 54.** 101.123 (2) (f) of the statutes is created to read:

17          101.123 (2) (f) No person may smoke in a public conveyance.

18          **SECTION 55.** 101.123 (2m) of the statutes is created to read:

19          101.123 (2m) **RESPONSIBILITY OF PERSONS IN CHARGE.** (a) No person in charge  
20          may allow any person to smoke in violation of sub. (2) at a location that is under the  
21          control or direction of the person in charge.

22          (b) No person in charge may provide matches, ashtrays, or other equipment for  
23          smoking at the location where smoking is prohibited.

24          (c) A person in charge shall make reasonable efforts to prohibit persons from  
25          smoking at a location where smoking is prohibited by doing all of the following:

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1           1. Posting signs setting forth the prohibition and providing other appropriate  
2 notification and information concerning the prohibition.

3           2. Refusing to serve a person, if the person is smoking in a restaurant, tavern,  
4 or private club.

5           3. Asking a person who is smoking to refrain from smoking and, if the person  
6 refuses to do so, asking the person to leave the location.

7           (d) If a person refuses to leave a location after being requested to do so as  
8 provided in par. (c) 3., the person in charge shall immediately notify an appropriate  
9 law enforcement agency of the violation.

10           (e) A person in charge may take measures in addition to those listed in pars.  
11 (b) and (c) to prevent persons from being exposed to others who are smoking or to  
12 further ensure compliance with this section.

13           **SECTION 56.** 101.123 (3) (intro.) of the statutes is amended to read:

14           101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against~~ smoking  
15 in sub. (2) (a) does not apply to the following places:

16           **SECTION 57.** 101.123 (3) (a) to (gr) of the statutes are repealed.

17           **SECTION 58.** 101.123 (3) (h) of the statutes is created to read:

18           101.123 (3) (h) A private residence.

19           **SECTION 59.** 101.123 (3) (i) of the statutes is created to read:

20           101.123 (3) (i) A room used by a person in an assisted living facility as his or  
21 her residence.

22           **SECTION 60.** 101.123 (3) (j) of the statutes is created to read:

23           101.123 (3) (j) A room in an assisted living facility in which 2 or more persons  
24 reside if every person who lives in that room smokes and each of those persons has

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1 made a written request to the person in charge of the assisted living facility to be  
2 placed in a room where smoking is allowed.

3 **SECTION 61.** 101.123 (3) (k) of the statutes is created to read:

4 101.123 (3) (k) A room in a lodging establishment that has been designated as  
5 a room where smoking is allowed, as provided under sub. (3m).

6 **SECTION 62.** 101.123 (3) (L) of the statutes is created to read:

7 101.123 (3) (L) Any stage of a theater when the stage is being used for a  
8 theatrical performance and the smoking is part of the performance.

9 **SECTION 63.** 101.123 (3m) of the statutes is created to read:

10 101.123 (3m) LODGING. (a) Except as provided in par. (b), the owner of a lodging  
11 establishment may designate not more than 25 percent of the guest rooms in the  
12 lodging establishment as guest rooms in which smoking is permitted.

13 (b) If a lodging establishment has less than 4 rooms, the owner of the lodging  
14 establishment may designate one guest room as a guest room in which smoking is  
15 permitted.

16 **SECTION 64.** 101.123 (4) of the statutes is repealed.

17 **SECTION 65.** 101.123 (4m) (title) of the statutes is created to read:

18 101.123 (4m) (title) LOCAL AUTHORITY.

19 **SECTION 66.** 101.123 (5) of the statutes is repealed.

20 **SECTION 67.** 101.123 (6) of the statutes is amended to read:

21 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform  
22 dimensions and other characteristics of the signs used to designate smoking areas  
23 required under sub. (2m). These rules may not require the use of signs that are more  
24 expensive than is necessary to accomplish their purpose.

25 **SECTION 68.** 101.123 (7) of the statutes is amended to read:

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1           101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the  
2 department of administration to have the signs prepared and made available to state  
3 agencies for use in state facilities that set forth the prohibition against smoking.

4           **SECTION 69.** 101.123 (8) (a) of the statutes is amended to read:

5           101.123 (8) (a) Any person who ~~willfully~~ violates sub. (2) (a), ~~(am) 1., (bm), (br),~~  
6 ~~or (bv) after being advised by an employee of the facility that smoking in the area is~~  
7 ~~prohibited or any person in charge or his or her agent who willfully fails to comply~~  
8 ~~with sub. (5) shall forfeit not less than \$10 and not more than \$10 \$100 for each~~  
9 ~~violation.~~

10          **SECTION 70.** 101.123 (8) (b) of the statutes is repealed.

11          **SECTION 71.** 101.123 (8) (c) of the statutes is repealed.

12          **SECTION 72.** 101.123 (8) (d) of the statutes is created to read:

13          101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to  
14 a forfeiture as follows:

15           1. Not less than \$50 nor more than \$100 for the first violation.

16           2. Not less than \$100 nor more than \$200 for the 2nd violation.

17           3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent  
18 violation.

19          **SECTION 73.** 101.123 (8) (e) of the statutes is created to read:

20          101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

21          **SECTION 74.** 165.60 of the statutes is amended to read:

22          **165.60 Law enforcement.** The department of justice is authorized to enforce  
23 ss. 101.123 (2), ~~(5), (2m)~~, and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03  
24 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law  
25 upon sheriffs and municipal police officers in the performance of those duties. This

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1 section does not deprive or relieve sheriffs, constables, and other local police officers  
2 of the power and duty to enforce those sections, and those officers shall likewise  
3 enforce those sections.

4 **SECTION 75.** 165.755 (1) (b) of the statutes is amended to read:

5 165.755 (1) (b) A court may not impose the crime laboratories and drug law  
6 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar),~~  
7 ~~(bm), (br), or (bv) or (5) (b) or (2m)~~, for a first violation of s. 23.33 (4c) (a) 2., 30.681  
8 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation  
9 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the  
10 violation, or for a violation of a state law or municipal or county ordinance involving  
11 a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use  
12 violation under s. 347.48 (2m).

13 **SECTION 76.** 302.46 (1) (a) of the statutes is amended to read:

14 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law  
15 or for a violation of a municipal or county ordinance except for a violation of s. 101.123  
16 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv) or (5) (2m)~~, or for a first violation of s. 23.33 (4c)  
17 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed  
18 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at  
19 the time of the violation, or for a violation of state laws or municipal or county  
20 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)  
21 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall  
22 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or  
23 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the  
24 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a

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1 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail  
2 surcharge in proportion to the suspension.

3 **SECTION 77.** 460.01 (5) of the statutes is amended to read:

4 460.01 (5) "Physician's office" ~~has the meaning given in s. 101.123 (1) (dg)~~  
5 means a place, other than a residence or a hospital, that is used primarily to provide  
6 medical care and treatment.

7 **SECTION 78.** 757.05 (1) (a) of the statutes is amended to read:

8 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of  
9 state law or for a violation of a municipal or county ordinance except for a violation  
10 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or (5) (2m), or for a first violation  
11 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person  
12 who committed the violation had a blood alcohol concentration of 0.08 or more but  
13 less than 0.1 at the time of the violation, or for a violation of state laws or municipal  
14 or county ordinances involving nonmoving traffic violations, violations under s.  
15 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be  
16 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent  
17 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty  
18 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine  
19 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced  
20 in proportion to the suspension.

21 **SECTION 79.** 814.63 (1) (c) of the statutes is amended to read:

22 814.63 (1) (c) This subsection does not apply to an action for a violation of s.  
23 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or (5) (2m), for a first violation of s. 23.33  
24 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who  
25 committed the violation had a blood alcohol concentration of 0.08 or more but less

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1 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a  
2 safety belt use violation under s. 347.48 (2m).

3 **SECTION 80. Initial applicability.**

4 (1) This act first applies to violations occurring on the effective date of this  
5 subsection.

6 **SECTION 81. Effective date.**

7 (1) This act takes effect on May 1, 2009, or on the day after publication,  
8 whichever is later.

9 (END)