

Frequently Asked Questions

- 1. I thought the powerful Tavern League of Wisconsin could have defeated the smoking ban again this year. Why did the TLW compromise if they could have killed the bill again?**

We could not have killed the bill. Last session there were 18 authors of the bill this year there were 34 authors. Unlike last session, Governor Doyle took the unprecedented step of including an extreme smoking ban in his state budget bill. He had us in a very difficult position – either compromise or risk passage of his smoking ban in the budget. Governor Doyle’s bill would have taken effect August 1st and allowed local governments to ban outdoor smoking and fine business owners up to \$500 for violations. Based on that information the TLW Board of Directors unanimously agreed to seek a compromise which would include three main provisions. 1. A year long phase in, 2. Pre-emption of local smoking ordinances, and 3. Lower fines. The compromise accomplished that objective. Some members have said we should have fought to the bitter end. Our objective was to defeat the smoking ban and when that became unachievable we tried as best we could to do what was in the best interest of the Membership.

- 2. What does pre-emption mean and how will it affect me?**

This is one of the most important elements of the bill. We felt it was so important to achieve pre-emption or we would be fighting battles in municipalities to ban smoking outdoors. This provision of the bill prohibits local municipalities from enacting any ordinances restricting smoking outside of a licensed establishment. In addition, the pre-emption language eliminates any existing local smoking ordinance and local fines on July 5, 2010 and replaces them with the state law. Pre-emption provides you certainty that you can create an outdoor smoking area which will not be jeopardized by a local ordinance. It also reduces fines in communities with an existing smoking ban.

- 3. What are the penalties in the bill?**

The penalties of the bill do not go into effect until July 5, 2010. The bill requires a warning be issued to the licensee holder or a person in charge of a licensed establishment for a first violation. Subsequent violations shall be \$100 for all violations occurring on a single day. A person smoking on the premise would face a fine of at least \$100 but not more than \$250. The bill eliminates any municipal fines that may currently exist in communities with smoking bans effective July 5, 2010. Very importantly, the bill provides that neither a municipality nor the Department of Revenue may use any smoking violations to revoke, suspend or refuse to renew a liquor license or permit.

- 4. Why aren't the casinos covered by the bill?**

According to the legislative staff attorneys the state does not have the authority to impose a smoking ban on a tribal casino or have the ability to enforce a smoking ban if it were imposed.

5. May I build a smoking room allowing my customers to have a cigarette?

When the law takes effect on July 5, 2010 it will permit the use of outdoor structures where patrons can smoke. In order for patrons to smoke in a structure it cannot meet the definition of an enclosed area. If an outdoor smoking structure does not meet the following definitions smoking is permitted. There is also no state restriction on the sale of food or drink in an outdoor smoking area, providing it is part of your licensed premise.

An “enclosed area” is a structure or area that has a roof **and** three or more substantial walls.

A substantial wall is a wall with an opening that may be used to allow air in from the outside that is less the 25% of the wall’s surface area.

If an outdoor structure has four solid walls and no permanent roof, as opposed to a tarp or a retractable roof it would not meet the definition of an enclosed area and smoking would be permitted.

If an outdoor structure has a roof and four walls and two or more of the walls have an opening greater than 25%, smoking is permitted.

6. Are private living quarters above bar exempt from ban? If it’s ok to smoke in them, can bar owners allow patrons to go up there and smoke?

Private quarters are exempt if they are not considered part of the licensed premise

7. Clarification on fines – is it \$100/day or \$100 violation? Can individuals be fined multiple times in 1 day for smoking?

The Maximum fine for the licensee is \$100/day no matter the number of individual smoking violations. The smoker faces fines ranging from \$100 to \$250.

8. Who enforces the ban – city, county, state or a combination of these?

Enforcement lays with local law enforcement officials i.e.: sheriff’s department & local police.

9. Are tobacco stores and cigar bars exempts from the smoking ban? If so, what is the definition of a tobacco store and a cigar bar?

Both retail tobacco stores and tobacco bars are exempt from the smoking ban. But only ones that were in existence before June 3, 2009

Exemptions for the smoking ban: 101.123 (3) (L) A retail tobacco store that is in existence on or before June 3, 2009, and in which only the smoking of cigars and pipes is allowed.

(m) A tobacco bar that is in existence on or before June 3, 2009 and in which only the smoking of cigars and pipes is allowed.

Definitions:

101.123 (1) (in) “Tobacco bar” means a tavern that generates 15 percent or more of its annual gross income from the sale on the tavern premises, other than from a vending machine, of cigars and tobacco for pipes.

“Retail tobacco store” means a retail establishment that does not have a “Class B” intoxicating liquor license or a Class “B” fermented malt beverages license and that generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories.