

# Smoking Ban: Final Analysis

We have received many calls and emails with questions about the smoking ban recently signed by Governor Doyle. While we were not supportive of any smoking ban bill in the end the Tavern League of Wisconsin was able to secure a number of critical changes to the bill.

Under the bill, effective July 5, 2010 smoking will be prohibited in restaurants, taverns, hotels and virtually all other public places. Smoking is prohibited in an "enclosed area" of a business. Under the statewide smoking ban any local ordinances and local penalties will be pre-empted by the state law on July 5, 2010. Every municipality must abide by the state law and state penalties.

The new law pre-empts the ability of cities, towns and villages to pass any ordinance restricting smoking outdoors of any licensed tavern or restaurant. This was an extremely important provision of the bill we were able to incorporate into the final document. After July 5, 2010 local governments will not have the power to regulate smoking on Class B licensed premises either indoors or outdoors nor will they be able to establish local fines relating to violations of the state smoking ban.

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 than 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 removable 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.

Under Governor Doyle's original smoking ban proposal, business owners faced fines up to \$500 for each occurrence of smoking on a licensed premise. If 10 people were smoking in an establishment the fine could

be as much as \$5000 to the business. In addition, the original bill would have permitted the municipality to use any smoking violations to revoke, suspend or not renew a liquor license.

The amended version of the bill requires business owners receive a warning for a first violation and any subsequent violations would be \$100 per day not per person smoking. It also prohibits a municipality from using any smoking violations to revoke, suspend or not renew a liquor license.

I hope this begins to answer some of the questions you may have regarding the smoking ban. We will continue to provide you with helpful information to make sure you know what type of outdoor smoking areas are permitted. Feel free to visit our website [www.tlw.org](http://www.tlw.org) to see more detailed information and also an FAQ section which may be helpful to you.

**For further information, please contact Tadhg McInerney, Korb Tredo Architects, 790 N. Milwaukee St., Suite 210, Milwaukee, WI 53202, (414) 273-8230, [tadhg@korbredo.com](mailto:tadhg@korbredo.com) or The Tavern League of Wisconsin, 2817 Fish Hatchery Rd, Fitchburg, WI 53713, (608) 270-8591, [www.tlw.org](http://www.tlw.org).**

The Governor's original smoking ban bill contained in the budget would have done the following:

- Take Effect August, 2009
- Permitted municipalities to ban smoking outdoors
- Fined business owners up to \$500 for each occurrence of smoking on a licensed premise
- Permitted municipalities to use smoking violations to revoke, suspend or not renew a liquor license.

The bill signed by the Governor contained the following provisions:

- Effective July 5, 2010
- Pre-empts local governments from passing restrictions regulating outdoor smoking
- Gives business owners a warning for first violation and any subsequent violations would be \$100 fine per day not per violation
- Municipalities may not use any smoking violations to revoke, suspend or not renew a liquor license.

# THE SMOKING PROHIBITION-ARCHITECTURAL SOLUTIONS

SECTION 35, 101.123 101.123 (2) NO PERSON MAY SMOKE IN ANY OF THE FOLLOWING ENCLOSED SPACES: 101.123(2) (A) 7M. TAVERNS, 101.123 (2) (A) 7R. PRIVATE CLUBS, 101.123 (2) (A) 9. ALL ENCLOSED PLACES, OTHER THAN THOSE LISTED IN SUBDS. 1. TO 8R, THAT ARE PLACES OF EMPLOYMENT OF THAT ARE PUBLIC PLACES.

SECTION 6, 101.123 (1) (AK) 101.123 (1) (AK) "ENCLOSED PLACE" MEANS A STRUCTURE OR AREA THAT HAS ALL OF THE FOLLOWING: (1) A ROOF, (2) MORE THAN 2 SUBSTANTIAL WALLS.

SECTION 29, 101.123 (1) (ID): 101.123 (1) (ID) "SUBSTANTIAL WALL" MEANS A WALL WITH AN OPENING THAT MAY BE USED TO ALLOW AIR IN FROM THE OUTSIDE THAT IS LESS THAN 25 PERCENT OF THE WALL'S SURFACE AREA.



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TADHG McNERNEY  
790 N. Milwaukee St., Suite 210  
Milwaukee, WI 53202  
414.273.8230 tadhg@korbtredo.com

CONTACT YOUR LOCAL ZONING ADMINISTRATOR AND BUILDING INSPECTOR.

KORB TREDO ARCHITECTS