

..Number

061339

..Version

PROPOSED SUBSTITUTE *A*

..Reference

..Sponsor

ALD. BAUMAN

..Title

Substitute resolution supporting an anti-smoking initiative.

...Analysis

This resolution supports the proposition that any anti-smoking initiative adopted by the state shall have statewide application and directs the Intergovernmental Relations Division-Department of Administration to support that position.

..Body

Whereas, There has been considerable discussion regarding amending current law relating to the regulation of smoking in public places; and

Whereas, Statewide applicability of any changes in current law is fair and equitable, and eliminates the potential for competition and economic disadvantage among businesses near municipal boundaries, and will be more effective than a patchwork of local bans which vary in degree of inclusiveness; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the Common Council supports the proposition that any anti-smoking initiative adopted by the state shall have statewide application and directs the Intergovernmental Relations Division-Department of Administration to support that position; and, be it

Further Resolved, That the City Clerk shall forward a copy of this resolution to all state legislators representing the City of Milwaukee.

..Requestor

..Drafter

LRB07033-3

LCS

3/21/07

2007 BILL**DRAFT**

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

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1 101.123 (2) (d) (intro.), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i), 101.123 (3)
2 (j), 101.123 (3) (k), 101.123 (3m), 101.123 (4m) (title), 101.123 (8) (d) and
3 101.123 (8) (e) of the statutes; **relating to:** prohibiting smoking in places of
4 employment, restaurants, taverns, and other indoor areas and providing a
5 penalty.

*Analysis by the Legislative Reference Bureau**Prohibition against smoking*

Current law prohibits smoking in most indoor areas that are accessible to the public unless there has been a specific area that has been designated a smoking area. Under this bill, designated smoking areas may no longer be permitted in any public place or place of employment with exceptions for private residences, designated rooms in lodging establishments, and certain retirement homes. The bill defines “a place of employment” to be any indoor area that employees normally frequent during the course of employment such as an office, a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. Other locations where smoking areas may no longer be permitted under the bill, regardless of whether they meet the definition of “place of employment,” include the following:

1. Mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Residence halls and dormitories of colleges and universities.
4. Day care centers.
5. Inpatient health care facilities, such as community-based residential facilities and nursing homes.
6. Prisons, jails, and juvenile correctional facilities.
7. Mental health institutions and hospitals where the primary purpose is the treatment of mental illness, alcoholism, or drug abuse.
8. Centers for the developmentally disabled.
9. Restaurants and taverns, as described below.
10. Retail establishments.
11. Public waiting rooms.
12. Governmental buildings.

Current law also provides exceptions from the prohibition against smoking for bowling centers, halls used for private functions, for rooms in which the main occupants are smokers, and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exceptions.

Current law allows smoking in any restaurant that has a seating capacity of 50 individuals or less, or that holds a liquor license, if the sale of alcohol beverages accounts for more than 50 percent of the restaurant's receipts. This bill prohibits

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smoking in any restaurant regardless of seating capacity or the number of liquor sale receipts.

Current law allows smoking in any tavern holding a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license, issued by a municipality (liquor license). This bill prohibits smoking in any tavern.

Enforcement

This bill requires that persons in charge of places where smoking is prohibited enforce the prohibitions by taking certain steps to ensure compliance, such as asking the person to leave or refusing to serve the person if the place is a restaurant or tavern. This bill imposes forfeitures on persons in charge who fail to take these measures.

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

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

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

2 77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and
3 hospitals but not in residential facilities including personal residences, apartments,
4 long-term care facilities, as defined under s. 16.009 (1) (em), ~~state institutions, as~~
5 ~~defined under s. 101.123 (1) (i), prisons, mental health institutions, as defined in s.~~
6 ~~51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type~~
7 ~~1 secured juvenile~~ correctional facilities, as defined in s. 938.02 (19), or similar
8 facilities including, by way of illustration but not of limitation, all of the following:

9 **SECTION 2.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).

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

11 101.123 (1) (ac) “Correctional facility” means any prison, juvenile correctional
12 facility, or any other correctional facility that is used to incarcerate persons convicted
13 of crimes or adjudged delinquent but does not include a facility that is the private

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1 residence of the incarcerated person at which no one is employed to insure the
2 person's incarceration.

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

4 101.123 (1) (aj) Notwithstanding s. 101.01 (5), "employment" means any trade,
5 occupation, or process of manufacture or any method of carrying on such trade,
6 occupation, or process of manufacture in which any person may be engaged.

7 **SECTION 5.** 101.123 (1) (am) of the statutes is amended to read:

8 101.123 (1) (am) "Hospital" has the meaning given in s. 50.33 (2), except that
9 "hospital" does not include a nursing home licensed under s. 50.03 that is operated
10 in connection with a hospital ~~or a retirement home that is operated in connection~~
11 ~~with a hospital.~~

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

13 101.123 (1) (b) "Inpatient health care facility" means a hospital, a county home
14 established under s. 49.70, a county infirmary established under s. 49.72 ~~or~~, a
15 community-based residential facility or a nursing home licensed under s. 50.03.

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

17 101.123 (1) (bn) "Lodging establishment" means any of the following:

- 18 1. A bed and breakfast establishment, as defined in s. 254.61 (1).
- 19 2. A hotel, as defined in s. 254.61 (3).
- 20 3. A tourist rooming house, as defined in s. 254.61 (6).

21 **SECTION 8.** 101.123 (1) (br) of the statutes is repealed.

22 **SECTION 9.** 101.123 (1) (c) of the statutes is repealed.

23 **SECTION 10.** 101.123 (1) (d) of the statutes is amended to read:

24 101.123 (1) (d) "Person in charge" means the person, or his or her agent, who
25 ultimately controls, governs or directs the activities aboard ~~a public conveyance or~~

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1 within a place at a location where smoking is prohibited or regulated under this
2 section, ~~regardless of the person's status as owner or lessee.~~

3 **SECTION 11.** 101.123 (1) (dg) of the statutes is repealed.

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

5 101.123 (1) (dj) Notwithstanding s. 101.01 (11), "place of employment" means
6 any indoor area that employees normally frequent during the course of employment,
7 including an office, a work area, an employee lounge, a restroom, a conference room,
8 a meeting room, a classroom, a hallway, a stairway, a vehicle, or a cafeteria that is
9 provided by the employer.

10 **SECTION 13.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m)

11 **SECTION 14.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and
12 amended to read:

13 101.123 (1) (cm) ~~"Public conveyance"~~ "Passenger vehicle" means a mass transit
14 vehicles vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01
15 (31), and a school buses bus as defined by in s. 340.01 (56).

16 **SECTION 15.** 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 16.** 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 17.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)
25 and amended to read:

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

2 1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted
3 smoking equipment.

4 **SECTION 18.** 101.123 (1) (h) 2. of the statutes is created to read:

5 101.123 (1) (h) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,
6 pipe, or other lighted smoking equipment.

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

8 101.123 (1) (i) “State institution” means ~~a prison~~, a mental health institute as
9 defined in s. 51.01 (12) or a center for the developmentally disabled as defined in s.
10 51.01 (3).

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

12 101.123 (1) (im) “Tavern” means an establishment, other than a restaurant,
13 that holds a “Class B” intoxicating liquor license or Class “B” fermented malt
14 beverages license.

15 **SECTION 21.** 101.123 (1) (j) of the statutes is repealed.

16 **SECTION 22.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

17 101.123 (2) (title) PROHIBITION AGAINST SMOKING.

18 **SECTION 23.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

19 101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in
20 any of the following indoor places:

21 **SECTION 24.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

22 101.123 (2) (a) 1. Passenger vehicles.

23 **SECTION 25.** 101.123 (2) (a) 2m. of the statutes is created to read:

24 101.123 (2) (a) 2m. Residence halls or dormitories of universities or colleges.

25 **SECTION 26.** 101.123 (2) (a) 2r. of the statutes is created to read:

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1 101.123 (2) (a) 2r. Day care centers.

2 **SECTION 27.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

3 101.123 (2) (a) 4. Theaters.

4 **SECTION 28.** 101.123 (2) (a) 5. of the statutes is repealed.

5 **SECTION 29.** 101.123 (2) (a) 5m. of the statutes is created to read:

6 101.123 (2) (a) 5m. Lockup facilities, jails, or correctional facilities.

7 **SECTION 30.** 101.123 (2) (a) 5t. of the statutes is created to read:

8 101.123 (2) (a) 5t. State institutions.

9 **SECTION 31.** 101.123 (2) (a) 6. of the statutes is repealed and recreated to read:

10 101.123 (2) (a) 6. Elevators.

11 **SECTION 32.** 101.123 (2) (a) 7m. of the statutes is created to read:

12 101.123 (2) (a) 7m. Taverns.

13 **SECTION 33.** 101.123 (2) (a) 8g. of the statutes is created to read:

14 101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3m).

15 **SECTION 34.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

16 101.123 (2) (a) 9. Any indoor place, other than the places listed in subd. 1. to
17 8r., that is a place of employment or that is open to the public or to which members
18 of the public may be invited or have lawful access.

19 **SECTION 35.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.
20 and amended to read:

21 101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State, county, city,~~
22 village, ~~or~~ and town building buildings.

23 **SECTION 36.** 101.123 (2) (am) of the statutes is repealed.

24 **SECTION 37.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
25 amended to read:

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

3 **SECTION 38.** 101.123 (2) (b) of the statutes is repealed.

4 **SECTION 39.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
5 and amended to read:

6 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
7 Outside on the premises, ~~indoors or outdoors,~~ of a day care center when children who
8 are receiving day care services are present.

9 **SECTION 40.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
10 amended to read:

11 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
12 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ On the
13 grounds of a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

14 **SECTION 41.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
15 amended to read:

16 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
17 ~~in~~ A location that is 25 feet or less from a residence hall or dormitory that is owned
18 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
19 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

20 **SECTION 42.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

21 **SECTION 43.** 101.123 (2) (d) (intro.) of the statutes is created to read:

22 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
23 locations:

24 **SECTION 44.** 101.123 (2m) of the statutes is created to read:

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1 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
2 may allow any person to smoke in violation of sub. (2) at a location that is under the
3 control or direction of the person in charge.

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

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

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

10 2. Refusing to serve a person, if the person is smoking in a restaurant or tavern.

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

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

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

19 **SECTION 45.** 101.123 (3) (intro.) of the statutes is amended to read:

20 101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against~~ smoking
21 in sub. (2) (a) does not apply to the following places:

22 **SECTION 46.** 101.123 (3) (a) to (gr) of the statutes are repealed.

23 **SECTION 47.** 101.123 (3) (h) of the statutes is created to read:

24 101.123 (3) (h) A private residence.

25 **SECTION 48.** 101.123 (3) (i) of the statutes is created to read:

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1 101.123 (3) (i) A room used by a person in a retirement home as his or her
2 residence.

3 **SECTION 49.** 101.123 (3) (j) of the statutes is created to read:

4 101.123 (3) (j) A room in a retirement home in which 2 or more persons reside
5 if every person that lives in that room smokes and each of those persons has made
6 a written request to the person in charge of the retirement home to be placed in a
7 room where smoking is allowed.

8 **SECTION 50.** 101.123 (3) (k) of the statutes is created to read:

9 101.123 (3) (k) A room in a lodging establishment that has been designated as
10 a room where smoking is allowed, as provided under sub. (3m).

11 **SECTION 51.** 101.123 (3m) of the statutes is created to read:

12 101.123 (3m) LODGING. The owner of a lodging establishment may designate
13 not more than 25 percent of the guest rooms in the lodging establishment as guest
14 rooms in which smoking is permitted.

15 **SECTION 52.** 101.123 (4) of the statutes is repealed.

16 **SECTION 53.** 101.123 (4m) (title) of the statutes is created to read:

17 101.123 (4m) (title) LOCAL REGULATION.

18 **SECTION 54.** 101.123 (5) of the statutes is repealed.

19 **SECTION 55.** 101.123 (6) (title) of the statutes is repealed.

20 **SECTION 56.** 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 57.** 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 58.** 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 per violation.

9 **SECTION 59.** 101.123 (8) (b) of the statutes is repealed.

10 **SECTION 60.** 101.123 (8) (c) of the statutes is repealed.

11 **SECTION 61.** 101.123 (8) (d) of the statutes is created to read:

12 101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to
13 a forfeiture as follows:

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

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

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

18 **SECTION 62.** 101.123 (8) (e) of the statutes is created to read:

19 101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

20 **SECTION 63.** 165.60 of the statutes is amended to read:

21 **165.60 Law enforcement.** The department of justice is authorized to enforce
22 ss. 101.123 (2), ~~(5), (2m)~~, and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
23 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
24 upon sheriffs and municipal police officers in the performance of those duties. This
25 section does not deprive or relieve sheriffs, constables, and other local police officers

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1 of the power and duty to enforce those sections, and those officers shall likewise
2 enforce those sections.

3 **SECTION 64.** 165.755 (1) (b) of the statutes is amended to read:

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

12 **SECTION 65.** 302.46 (1) (a) of the statutes is amended to read:

13 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
14 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
15 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv) or (5) (2m)~~, or for a first violation of s. 23.33 (4c)
16 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
17 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
18 the time of the violation, or for a violation of state laws or municipal or county
19 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
20 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
21 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
22 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
23 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
24 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
25 surcharge in proportion to the suspension.

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1 **SECTION 66.** 460.01 (5) of the statutes is amended to read:

2 460.01 **(5)** "Physician's office" ~~has the meaning given in s. 101.123 (1) (dg)~~
3 means a place, other than a residence or a hospital, that is used primarily to provide
4 medical care and treatment.

5 **SECTION 67.** 757.05 (1) (a) of the statutes is amended to read:

6 757.05 **(1)** (a) Whenever a court imposes a fine or forfeiture for a violation of
7 state law or for a violation of a municipal or county ordinance except for a violation
8 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, or for a first violation
9 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
10 who committed the violation had a blood alcohol concentration of 0.08 or more but
11 less than 0.1 at the time of the violation, or for a violation of state laws or municipal
12 or county ordinances involving nonmoving traffic violations, violations under s.
13 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
14 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
15 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
16 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
17 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
18 in proportion to the suspension.

19 **SECTION 68.** 814.63 (1) (c) of the statutes is amended to read:

20 814.63 **(1)** (c) This subsection does not apply to an action for a violation of s.
21 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, for a first violation of s. 23.33
22 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
23 committed the violation had a blood alcohol concentration of 0.08 or more but less
24 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
25 safety belt use violation under s. 347.48 (2m).

