



The 'ins' and 'outs' of Wisconsin's new smoke-free law

An overview of your obligations inside and your opportunities outside when the smoking ban takes effect July 5

by Julie Maager

Last May, Gov. Jim Doyle signed Wisconsin's long-anticipated comprehensive indoor workplace smoking ban. The ban was supported by the Wisconsin Restaurant Association as a way to end the patchwork of varying local ordinances and create a level playing field for everyone in the hospitality industry.

As restaurant operators prepare to follow the new rules, *Wisconsin Restaurateur* asked Pete Hanson, Director of Government Relations for WRA, to explain the new law, including what restaurant operators are obligated to do inside their restaurant and what their options are for creating outdoor smoking accommodations.

What does the law prohibit?

"The bill bans smoking in all indoor workplaces, enclosed public places, and even some outdoor venues such as sports stadiums," Hanson said. Taverns and restaurants are specifically included as places where smoking is banned.

When does the law take effect?

July 5, 2010.

What do I do if someone lights up in my restaurant or bar?

There is a four-step procedure outlined by the law that is supposed to be followed by the person in charge in the establishment:

- Instruct the smoking patron to stop smoking;
- Refuse to serve the smoking patron;
- Ask the smoking patron to leave;
- And if all else fails, call the police.

Can I receive a citation if someone is smoking in my place of business?

"According to the state law, if you follow the four steps, you won't get a fine," Hanson said. If the business is not following the procedures, a \$100 fine can be issued to the business.

The maximum fine for the smoker is \$250. Local ordinances can prescribe higher fines, however, and 38 cities in Wisconsin have local smoking ordinances.

If I can no longer allow smoking indoors, can I provide a smoking area outdoors?

Yes. This is one of the things the Wisconsin Restaurant Association fought to have included in the legislation.

"This law preserves a restaurant's or tavern's ability to have an outdoor smoking area," Hanson said. In fact, there is a pre-emption clause within the

law that prohibits a local government from stepping in and making outdoor smoking areas illegal.

What kind of outdoor smoking areas are restaurants and bars creating?

Hanson said the form of the smoking areas can vary widely. Some establishments are putting in patios or gazebos with cigarette receptacles; others may choose to do an awning off the side of their building with outdoor heaters. “Some possibilities are more elaborate, like free-standing smoking shanties,” Hanson said.

Do I have any options if I don't have the space or budget for a patio or the like?

Establishments in tight quarters, such as a downtown area, still have options. “Under the new law, they have the ability to have a smoking area out front on the public sidewalk,” Hanson said. “That was one of the things we fought for—that every establishment would be able to have an outdoor smoking area.” In some unique situations, however, there could be practical issues to wrestle with at the local level when using public spaces, such as the concerns of neighboring businesses.

What are the requirements for an outdoor smoking area?

“It can't be an enclosed area,” Hanson said. “It can have a roof and two solid walls, but it can't have more than two solid walls—two walls have to have at least 25 percent of their area that allows air flow,” he said. The air flow

can be provided through open windows, screens, etc. The smoking area must also be a “reasonable distance” from any entrance to the establishment.

What is a “reasonable distance?”

That, Hanson said, has already become an area of debate. The language is ambiguous, which means it is likely to be decided in the courts eventually. Hanson said WRA is confident that freestanding structures will be okay, but is advising business owners to be very cautious about building costly additions to their main structure that may not pass muster in the courts.

“A ‘reasonable distance’ has to be something; it's definitely not zero,” Hanson said. “We are trying to encourage our members to be safe in what they are doing and not spend an extraordinary amount of money on something that might not be allowed. If a year later the courts decide their smoking area is illegal, they would have wasted a great deal of money,” he said.

How can I make this transition go smoothly with my smoking patrons?

From a practical and business relations viewpoint, Hanson said the most important thing you can do is talk to your customers. Ask them questions about what they like best about your restaurant and what outdoor accommodations they would like to see. You may find out eliminating smoking isn't that big of a deal to them (keep in mind approximately 80% of the population doesn't smoke) or they may give you direction as to what kind of

outdoor space would suit them best. At the least, communicating your concern to them and the value you place on their business is just good customer relations.

“If they know you're consulting with them and trying to accommodate them, they are very likely to stick with you. Remember, your regular customers are there for the food, atmosphere and people—not for the smoking. They can smoke at home in front of their

WRA's push for a level playing field

Over the last decade-plus, Wisconsin has been peppered with local ordinances that restrict smoking in restaurants and bars due to concerns about second-hand smoke and public health. Three years ago, WRA joined other advocates to push for a statewide smoke-free law. WRA's goal was a law that would “level the playing field”—create a consistent law for restaurants and taverns and eliminate advantages and disadvantages between establishments based on municipal boundaries.

The smoke-free workplace law was signed by Gov. Jim Doyle in May 2009. When it takes effect July 5, Wisconsin will be the last of our neighboring states to implement such a law. “Illinois, Iowa and Minnesota are already smoke-free, and Michigan goes smoke-free in May—prior to Wisconsin,” said Hanson. The relatively long time between the signing and effective date of the bill was something WRA pushed for to give bar and restaurant owners time to prepare for the change by talking to their customers and, if desired, to construct outside smoking accommodations.

WRA also achieved its other chief objectives in the final bill: allowance of outdoor smoking areas and protection of those areas from stricter local ordinances; a bill without any exemptions that would affect the hospitality industry; and a uniform effective date for restaurants and taverns.

“We got in there and got what we needed,” said Pete Hanson, WRA's Director of Government Relations.



Photo provided by Calcana Industries

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– Pete Hanson

television set,” Hanson said. “Actually, many restaurants have gone smoke-free ahead of the smoking ban and have had positive results—some even seeing an increase in business.”

Who should a restaurant or tavern consult before building accommodations for smokers?

Hanson said before building anything, a business owner should talk to their local zoning department to get all the proper building permits and make sure they are meeting local building requirements. He also highly encourages them to give WRA a call and speak to him about the state smoke-free law requirements.

“If we have any member who is going to spend thousands of dollars to build something, I’d like to spend some time talking with them to help make sure they have all the information available that may affect their situation,” Hanson said.

Will I be able to serve food and alcohol in the outdoor smoking area?

The smoke-free workplace legislation does not change current laws regarding food or alcohol service. Those with liquor licenses should keep in mind that there may be questions regarding local ordinances and designated licensed premises when it comes to customers drinking in outdoor areas. **WR**

Smoking Ban Resource Center at the Wisconsin Restaurant Expo

Looking for ideas to accommodate your smoking guests? Visit the Smoking Ban Resource Center at the Wisconsin Restaurant Expo March 8-10 in Milwaukee. From cigarette receptacles to construction companies that can build an outbuilding to accommodate your smoking patrons, you are likely to find the ideas, products and resources you are looking for at the Expo.



TAVERNS CLEARING THE AIR



Smoke-Free But Still Not Clear?

Are you ready for the changes in the law for designated smoking areas?

Bar & Restaurant owners are bound to have questions about what is permitted for outdoor smoking areas. Do you have the answers?

- Indoor smoking will be prohibited beginning on July 5, 2010
- Outdoor smoking areas may not be 100% enclosed
- Outdoor smoking areas must be a reasonable distance from entrances and cannot be 100% enclosed

Taverns Clearing the Air will be at the Restaurant Expo with more information about the law and information about implementation.

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