



2005 ASSEMBLY BILL 440

May 24, 2005 - Introduced by Representatives GOTTLIEB, WASSERMAN, BIES, BLACK, BOYLE, GIELOW, HINES, LEHMAN, OTT, PARISI and UNDERHEIM, cosponsored by Senators DARLING, ROESSLER and RISSER. Referred to Committee on State Affairs.

1 **AN ACT** *to repeal* 101.123 (1) (br), 101.123 (1) (c), 101.123 (3) (b), 101.123 (3) (f),
2 101.123 (4) (a) 1. and 101.123 (4) (a) 3.; *to renumber* 101.123 (1) (a) and 101.123
3 (4) (am) 3.; *to renumber and amend* 101.123 (1) (e), 101.123 (4) (a) 2., 101.123
4 (4) (am) 1. and 101.123 (4) (am) 2.; *to consolidate, renumber and amend*
5 101.123 (4) (b) and (bm); *to amend* 101.123 (1) (ar), 101.123 (1) (d), 101.123 (1)
6 (f), 101.123 (1) (g), 101.123 (2) (am) 1., 101.123 (2) (am) 2., 101.123 (3) (intro.),
7 101.123 (3) (d), 101.123 (4) (c) and 101.123 (4) (d); *to repeal and recreate*
8 101.123 (2) (a) 1. and 101.123 (2) (a) 5.; and *to create* 101.123 (1) (ac), 101.123
9 (1) (dj) and 101.123 (4) (aw) of the statutes; **relating to:** indoor places where
10 smoking is prohibited, designating smoking areas in indoor places where
11 smoking is generally prohibited, and smoking outside the state capitol
12 building.

Analysis by the Legislative Reference Bureau

Current law prohibits smoking in most enclosed, indoor locations that are accessible to the public unless there has been a specific area that has been designated

ASSEMBLY BILL 440

a smoking area. This bill limits the areas where any smoking areas may be designated to hospitals where the primary purpose is for treatment of mental illness, alcoholism, or drug abuse; mental health institutions; centers for the developmentally disabled; prisons; and jails. The locations where smoking areas may no longer be designated under the bill include the following:

1. Mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Inpatient health care facilities such as community-based residential facilities and licensed nursing homes.
4. Movie theaters.
5. Offices and other places of employment, as described below.
6. Restaurants that have seating capacities of more than 50 persons, except as described below.
7. Retail establishments.
8. Public waiting rooms.
9. County, city, village, state, and town buildings.

Current law provides exceptions from the prohibition against smoking 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. This bill also expands the concept of “offices” under current law to include any place of employment. The bill defines “a place of employment” to be any indoor area that employees normally frequent during the course of employment such as a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. The definition excludes any private residence unless it is an adult day care center.

Current law allows smoking in any restaurant holding an intoxicating liquor license or beer license issued by a municipality if the sale of alcoholic beverages subject to the license accounts for more than 50 percent of the restaurant’s receipts. The bill increases this percentage to 75 percent and applies this provision to all businesses operating under one of these licenses.

Current law also allows smoking in any bowling center and any restaurant that has seating for a maximum of 50 persons. This bill eliminates the capacity requirements for restaurants and prohibits smoking in bowling centers.

Current law prohibits any person from smoking at an outside location that within the immediate vicinity of the state capitol building. Current law defines “immediate vicinity” for this purpose to be six feet. The bill changes this distance to 25 feet.

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

ASSEMBLY BILL 440

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

2 101.123 (1) (ac) “Adult day care center” means a facility in which services are
3 provided for part of a day in a group setting to adults who need an enriched
4 health-supportive or social experience and who may need assistance with activities
5 of daily living, supervision, or protection.

6 **SECTION 3.** 101.123 (1) (ar) of the statutes is amended to read:

7 101.123 (1) (ar) “Immediate vicinity of the state capitol” means the area
8 directly adjacent to the state capitol building, as determined by rule of the
9 department of administration. “Immediate vicinity of the state capitol” does not
10 include any location that is more than ~~one fathom~~ 25 feet from the state capitol
11 building.

12 **SECTION 4.** 101.123 (1) (br) of the statutes is repealed.

13 **SECTION 5.** 101.123 (1) (c) of the statutes is repealed.

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

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

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

20 101.123 (1) (dj) “Place of employment” means any indoor area that employees
21 normally frequent during the course of employment, including a work area, an
22 employee lounge, a restroom, a conference room, a meeting room, a classroom, a
23 hallway, a vehicle, and or a cafeteria that is provided by the employer. “Place of
24 employment” does not include any of the following:

25 1. A private residence unless it is used as an adult day care center.

ASSEMBLY BILL 440**SECTION 7**

1 2. A business operating under a “Class B” intoxicating liquor license or a Class
2 “B” fermented malt beverage license if the sales of intoxicating liquors or fermented
3 malt beverages or both accounts for more than 75 percent of the business’ receipts.

4 **SECTION 8.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and
5 amended to read:

6 101.123 (1) (cm) ~~“Public conveyance”~~ “Passenger vehicle” means a mass transit
7 vehieles vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01
8 (31), and a school buses bus as defined by in s. 340.01 (56).

9 **SECTION 9.** 101.123 (1) (f) of the statutes is amended to read:

10 101.123 (1) (f) “Restaurant” means an establishment as defined in s. 254.61 (5)
11 ~~with a seating capacity of more than 50 persons.~~

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

13 101.123 (1) (g) “Retail establishment” means any store or shop in which retail
14 sales is the principal business conducted, except a ~~tavern~~ business operating under
15 a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license,
16 ~~and except bowling centers~~ if the sales of intoxicating liquors or fermented malt
17 beverages or both accounts for more than 75 percent of the business’ receipts.

18 **SECTION 11.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

19 101.123 (2) (a) 1. Passenger vehicles.

20 **SECTION 12.** 101.123 (2) (a) 5. of the statutes is repealed and recreated to read:

21 101.123 (2) (a) 5. Places of employment.

22 **SECTION 13.** 101.123 (2) (am) 1. of the statutes is amended to read:

23 101.123 (2) (am) 1. Notwithstanding par. (a) and sub. (3) and except as provided
24 in subd. 2., no person may smoke ~~in a motor bus~~, in a hospital or in a physician’s office.

25 **SECTION 14.** 101.123 (2) (am) 2. of the statutes is amended to read:

ASSEMBLY BILL 440

1 101.123 (2) (am) 2. Notwithstanding subd. 1., a person who is an adult patient
2 of a hospital or unit of a hospital that has as its primary purpose the care and
3 treatment of mental illness, alcoholism or drug abuse and who has the written
4 permission of a physician may smoke in a room that is designated as a smoking area
5 under sub. (4) (a) 2.

6 **SECTION 15.** 101.123 (3) (intro.) of the statutes is amended to read:

7 101.123 (3) EXCEPTIONS. (intro.) The regulation of smoking in sub. (2) (a) does
8 not apply to any of the following places:

9 **SECTION 16.** 101.123 (3) (b) of the statutes is repealed.

10 **SECTION 17.** 101.123 (3) (d) of the statutes is amended to read:

11 101.123 (3) (d) Restaurants holding a “Class B” intoxicating liquor or Class “B”
12 fermented malt beverage license if the sale of intoxicating liquors or fermented malt
13 beverages or both accounts for more than ~~50%~~ 75 percent of the restaurant’s receipts.

14 **SECTION 18.** 101.123 (3) (f) of the statutes is repealed.

15 **SECTION 19.** 101.123 (4) (a) 1. of the statutes is repealed.

16 **SECTION 20.** 101.123 (4) (a) 2. of the statutes is renumbered 101.123 (4) (a) and
17 amended to read:

18 101.123 (4) (a) Hospitals. A person in charge of a hospital or his or her agent
19 may not designate ~~an entire building as a smoking area or designate any smoking~~
20 ~~areas in the state capitol building, in the immediate vicinity of the state capitol, in~~
21 ~~a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional~~
22 ~~facility, in a motor bus, hospital, or physician’s office or on the premises, indoors or~~
23 ~~outdoors, of a day care center when children who are receiving day care services are~~
24 ~~present, in a residence hall or dormitory that is owned or operated by the Board of~~
25 ~~Regents of the University of Wisconsin System or in any location that is 25 feet or~~

ASSEMBLY BILL 440**SECTION 20**

1 ~~less from such a residence hall or dormitory, except that in a hospital or a unit of a~~
2 ~~hospital that has as its primary purpose the care and treatment of mental illness,~~
3 ~~alcoholism, or drug abuse a person in charge or his or her agent may designate a~~
4 ~~portion of one or more enclosed rooms with outside ventilation as smoking areas for~~
5 ~~the use of adult patients who have the written permission of a physician. Subject to~~
6 ~~this subdivision and sub. (3) (b), a person in charge or his or her agent may not~~
7 ~~designate an entire room as a smoking area for the purpose of allowing smoking as~~
8 ~~specified in sub. (2) (am) 2.~~

9 **SECTION 21.** 101.123 (4) (a) 3. of the statutes is repealed.

10 **SECTION 22.** 101.123 (4) (am) 1. of the statutes is renumbered 101.123 (4) (as)
11 and amended to read:

12 101.123 (4) (as) *State institutions.* The secretary of health and family services
13 or his or her designee agent may designate areas where smoking is permitted in a
14 state institution other than a prison, ~~unless a fire marshal, law or resolution~~
15 ~~prohibits smoking in the area.~~ The secretary of corrections or his or her designee
16 agent may designate areas where smoking is permitted in a prison, ~~unless a fire~~
17 ~~marshal, law or resolution prohibits smoking in the area.~~ Either secretary or his or
18 her designee agent may designate an entire room as a smoking area in a state
19 institution administered by the secretary's department.

20 **SECTION 23.** 101.123 (4) (am) 2. of the statutes is renumbered 101.123 (4) (ar)
21 and amended to read:

22 101.123 (4) (ar) *Jails; lockup facilities.* A person in charge of a jail or lockup
23 facility, or his or her agent, may designate areas where smoking is permitted in the
24 jail or lockup facility, ~~unless a fire marshal, law or resolution prohibits smoking in~~

ASSEMBLY BILL 440

1 the area. The person in charge or his or her agent may designate an entire room in
2 the jail or lockup facility as a smoking area.

3 **SECTION 24.** 101.123 (4) (am) 3. of the statutes is renumbered 100.123 (4) (at).

4 **SECTION 25.** 101.123 (4) (aw) of the statutes is created to read:

5 101.123 (4) (aw) *Fire laws.* No person may designate an area where smoking
6 is permitted if a fire marshal, law, or resolution prohibits smoking in that area.

7 **SECTION 26.** 101.123 (4) (b) and (bm) of the statutes are consolidated,
8 renumbered 101.123 (4) (b) and amended to read:

9 101.123 (4) (b) *Posting.* The person in charge authorized to designate a
10 smoking area under par. (a), (ar), or (as), or his or her agent, shall post notice of the
11 designation of a smoking area in or near the area designated. If an entire room is
12 designated a smoking area, the person in charge so authorized, or his or her agent,
13 shall post notice of the designation conspicuously on or near all entrances to the room
14 normally used by the public. ~~This paragraph does not apply to a place described in~~
15 ~~par. (bm).~~ (bm) The person in charge of a state institution, jail or lockup facility or
16 his or her agent, shall post notice of the designation of a smoking area under par. (am)
17 in or near the area designated. ~~If an entire room is designated a smoking area, the~~
18 ~~person in charge or his or her agent shall post notice of the designation conspicuously~~
19 ~~on or near all normally used entrances to the room.~~ If an entire building in a prison,
20 jail, or lockup facility is designated a smoking area, the person in charge so
21 authorized, or his or her agent, shall post notice of the designation on or near all
22 normally used entrances to the building, but need not post notice of the designation
23 on or near entrances to rooms within the building.

24 **SECTION 27.** 101.123 (4) (c) of the statutes is amended to read:

