



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 253

**Assembly Substitute
Amendment 1**

Memo published: May 12, 2009

Contact: Richard Sweet, Senior Staff Attorney (266-2982)

2009 Assembly Bill 253 and Assembly Substitute Amendment 1 relate to prohibiting smoking in specified areas. The following are the differences between the bill and the substitute amendment:

Definition of “Enclosed Place”

Assembly Bill 253 and the substitute amendment prohibit smoking in certain enumerated enclosed places and other places. Under the bill, “enclosed place” is defined as a structure or area that has a roof or overhead covering, and has two or more substantial walls, regardless of whether the walls are removed and replaced on a temporary basis. Under the substitute amendment, “enclosed place” is defined as a structure or area that has a roof and has more than two substantial walls.

Under the bill, “substantial wall” is defined as a wall where at least 25% of the surface area is not part of an opening that may be used to allow air in from the outside. Under the substitute amendment, “substantial wall” is defined as 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.

Retail Tobacco Stores and Tobacco Bars

Assembly Bill 253 provides no exception to the prohibition on smoking in retail tobacco stores or in tobacco bars.

The substitute amendment provides that the prohibition on smoking does not apply to a retail tobacco store or tobacco bar, in which only the smoking of pipes or cigars is allowed, if the retail tobacco store or tobacco bar existed on the day after publication of the bill as an Act. For purposes of the substitute amendment, “retail tobacco store” is defined as a retail establishment that does not have a “Class B” intoxicating liquor license or a Class “B” fermented malt beverage license, and that generates 75% or more of its gross annual income from the retail sale of tobacco products and accessories. [“Tobacco product” is defined as any form of tobacco prepared in a manner suitable for smoking, but

not including a cigarette.] “Tobacco bar” is defined as a tavern that generates 15% 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.

Lodging Establishments

Assembly Bill 253 prohibits smoking in lodging establishments, a term that is defined to mean a bed and breakfast establishment, a hotel, or a tourist rooming house. However, the bill provides that the owner of a lodging establishment may designate not more than 25% of the guest rooms as rooms in which smoking is permitted. Also, if a lodging establishment has fewer than four rooms, the owner may designate one guest room as a room in which smoking is permitted.

The substitute amendment deletes the provision allowing the owner of a lodging establishment to designate guest rooms in which smoking is permitted.

Outdoor Locations

Assembly Bill 253 lists several outdoor locations at which smoking is prohibited. One of the provisions in the bill states that a person may not smoke at a location that is less than a reasonable distance from any of the following: (1) an operable entrance to or from an enclosed place listed in the statutes or a sports arena; (2) an openable window that is part of an enclosed place listed in the statutes or a sports arena; or (3) an opening through which air enters, for the purpose of ventilation into an enclosed place listed in the statutes or a sports arena.

The substitute amendment deletes the prohibition on smoking at the outdoor location described in the previous paragraph.

Local Ordinances

Current law states that the statutory section prohibiting smoking does not limit the authority of any county, city, village, or town to enact ordinances or of any school district to adopt policies that, complying with the purposes of the statute, protect the health and comfort of the public.

Assembly Bill 253 makes no substantive changes in current law with regard to local ordinances.

The substitute amendment retains current law with respect to local ordinances but adds language stating that if a county, city, village, or town enacts an ordinance, or if a school district adopts a policy, regulating or prohibiting outside smoking in certain areas, the ordinance may apply only to public property under the jurisdiction of the county, city, village, town, or school district. In addition, language is added stating that the ordinance must provide that the person in charge of a restaurant, tavern, private club, or retail establishment located in areas subject to the ordinance may designate an outside area that is a reasonable distance from any entrance where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke. The ordinance may not define the term “reasonable distance” or set any specified measured distance as being a reasonable distance.

Penalties

Current law provides that a person who willfully violates the law prohibiting smoking after being advised by an employee of the facility that smoking in the area is prohibited, or any person in charge of a place in which smoking is prohibited or his or her agent who willfully fails to comply with duties set forth in the law, must forfeit not more than \$10. However, current law provides that any person smoking in the State Capitol or the immediate vicinity of the State Capitol after being advised by an employee of that facility that smoking is prohibited must forfeit not more than \$50. In addition, current law states that a violation of the statutes restricting smoking does not constitute negligence as a matter of law.

Assembly Bill 253 replaces the above penalties with a forfeiture for a person who violates the prohibition on smoking—not less than \$25 nor more than \$50 for a first violation; not less than \$50 nor more than \$100 for a second violation; and not less than \$100 nor more than \$250 for a third or any subsequent violation. In addition, the bill specifies that any person in charge of the place where smoking is prohibited who violates responsibilities set forth in the bill is subject to a forfeiture—not less than \$50 nor more than \$100 for a first violation; not less than \$100 nor more than \$200 for a second violation; and not less than \$200 nor more than \$500 for a third or subsequent violation. The bill also specifies that each day of violation of the statute setting forth the responsibilities of the person in charge is a separate violation.

The substitute amendment states that any person who violates the prohibition on smoking is subject to a forfeiture of not less than \$100 nor more than \$250 for each violation. In addition, a person in charge who violates responsibilities set forth in the substitute amendment is subject to a forfeiture of \$100 for each violation, except that the person may not be required to forfeit more than \$100 in total for all violations occurring on a single day. In addition, the substitute amendment specifies that if the person in charge has not previously received a warning notice for a violation, the law enforcement officer must issue the person a warning notice and may not issue a citation. The substitute amendment also states that neither a municipality nor the Department of Revenue may consider an arrest or conviction for a violation of the law setting forth the responsibilities of persons in charge in any action to revoke, suspend, or refuse to renew a Class “B” or “Class B” license or permit.

Effective Date

Assembly Bill 253 takes effect on the first day of the third month beginning after publication of the bill as an Act.

The substitute amendment takes effect on July 5, 2010.

Legislative History

The Assembly Committee on Health and Healthcare Reform recommended adoption of the substitute amendment, and passage of the bill as amended, both by votes of Ayes, 11; Noes, 2.

RNS:jal