



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Senate Bill 181

**Senate Substitute
Amendment 1**

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Current Law

Areas Where Smoking is Prohibited

Current law prohibits smoking in specific enclosed, indoor locations, including the following:

1. Public conveyances (mass transit vehicles and school buses).
2. Educational facilities.
3. Inpatient health care facilities (county homes and infirmaries, community-based residential facilities, and nursing homes).
4. Indoor movie theaters.
5. Offices.
6. Passenger elevators.
7. Restaurants (with some exceptions).
8. Retail establishments.
9. Public waiting rooms.
10. Governmental buildings.
11. Motor buses.

12. Hospitals (except that an adult patient of a hospital that primarily treats mental illness or substance abuse who has physician permission, may smoke in a designated area).

13. Physician offices.

Areas Where Indoor and Outdoor Smoking is Prohibited

Current law also prohibits smoking indoors *and* outdoors, as follows:

1. Within the State Capitol or in the immediate vicinity thereof.
2. On the premises (inside or outside) of a day care center when children are present.
3. In an enclosed, indoor area, or on the grounds of a Type 1 juvenile correctional facility.
4. In or within 25 feet of any University of Wisconsin (UW)-System residence hall or dormitory.

Designation of Smoking Areas

Except for certain specified places,* a smoking area at an indoor location may be designated by the person who is in charge of that location (unless prohibited by a fire marshal, law, ordinance, or resolution). However, an entire building may not be designated as a smoking area.

Exemptions

Current law provides exemptions from the prohibition against smoking for the following places:

1. Designated smoking areas.
2. Bowling centers.
3. Taverns.
4. Halls used for private functions.
5. Rooms in which the main occupants are smokers.
6. Areas of facilities that are used to manufacture or assemble goods, products, or merchandise.
7. Certain types of correctional facilities.
8. Restaurants that have a seating capacity of 50 individuals or less, or that hold a liquor license, if the sale of alcohol beverages accounts for more than 50% of the restaurant's receipts.

* State Capitol or immediate vicinity (within one fathom of the capitol); Type 1 juvenile correctional facilities; motor buses; hospitals, physician's offices; day care centers where children are present; UW-System residence halls or dormitories.

Requirements Placed on Person in Charge

In addition to being able to designate areas where smoking is permitted, a person in charge must post notices of such designated areas and must utilize, if possible, existing physical barriers and ventilation systems when designating smoking areas. The person must also arrange seating to accommodate nonsmokers if smoking areas are adjacent to nonsmoking areas.

Local Authority to Regulate Smoking

Current law does not limit the authority of any county, city, village, or town to enact smoking ordinances that, complying with the purposes of the law, protect the public's health and comfort.

Penalties

Generally, a forfeiture of not more than \$10 is imposed for a willful violation of the law's provisions. A forfeiture of up to \$50 may be imposed for a willful violation of the law prohibiting smoking in or near the State Capitol.

Senate Substitute Amendment 1 to 2009 Senate Bill 181

Areas Where Smoking is Prohibited

Under Senate Substitute Amendment 1 (hereafter, the "substitute amendment"), smoking is prohibited at the following specific indoor locations:

1. The State Capitol.
2. Residence halls or dormitories owned or operated by a college or university.
3. Day care centers.
4. Educational facilities.
5. Inpatient health care facilities (includes hospitals, county homes and county infirmaries; nursing homes, hospices, the Wisconsin veteran's home, and treatment facilities).
6. Theaters.
7. Correctional facilities.
8. State institutions.
9. Restaurants.
10. Taverns.

11. Private clubs (a facility used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose).
12. Retail establishments.
13. Common areas of multiple unit residential properties.
14. Lodging establishments (a bed and breakfast, hotel, or tourist rooming house).
15. All enclosed places other than those listed above, that are places of employment or public places.
16. Government buildings.

An “enclosed area” is defined as a structure or area that has a roof and two or more substantial walls. A “substantial wall” is 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.

A “place of employment” is defined as any indoor place 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.

A “public place” is defined as a place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited.

Prohibition on Smoking in Outside Areas

The substitute amendment makes no changes to the specific prohibitions in current law on smoking outside.

The substitute amendment also specifically prohibits smoking in sports arenas and bus shelters, regardless of whether they meet the definition of “enclosed place.”

Designation of Smoking Areas

The substitute amendment eliminates the ability to designate smoking areas in enclosed indoor locations.

Exemptions

The bill would not prohibit smoking in the following areas:

1. Private residences.
2. Certain residence rooms in assisted living facilities, if occupied by one person, or by two or more people if each person smokes and has made a written request for permission to be placed in a smoking room. Assisted living facilities are community-based residential facilities, residential care apartment complexes, and adult family homes.

3. A retail tobacco store or tobacco bar that is in existence as of the effective date of this act, and in which only the smoking of cigars and pipes is allowed.

A tobacco bar is a tavern that generates 15% or more of its gross income from the on-premises sale of cigars and tobacco for pipes. Vending machine sales are not included in this percentage.

A tobacco store is a retail establishment that does not have a Class B liquor or beer license and generates 75% or more of its gross annual income from the sale of tobacco products and accessories. Cigarette sales are not included in this percentage.

This bill eliminates the exemptions from the prohibition against smoking in bowling centers, taverns, certain restaurants, halls used for private functions, rooms in which the main occupants are smokers, and areas of facilities that are used to manufacture or assemble goods, products, or merchandise.

Requirements Placed on Persons in Charge

The substitute amendment eliminates many of the requirements placed on persons in charge under current law, because many of those requirements relate to designating of smoking areas and posting notices to that effect.

The substitute amendment requires that persons in charge of places where smoking is prohibited enforce the prohibitions by taking certain steps to ensure compliance, such as not providing ashtrays and matches, asking a person to stop smoking, asking a person who is smoking to leave, and refusing to serve the person if the place is a restaurant, tavern, or private club, and notifying law enforcement if the person does not leave after being requested to do so.

Local Authority to Regulate Smoking

Under the substitute amendment, counties, cities, villages, towns, and school districts retain local authority to regulate smoking. The substitute amendment makes one modification to that authority. Under the substitute amendment, if a county, city, village, or town enacts any ordinance regulating or prohibiting *outside* smoking, the ordinance may apply *only* to public property under the entity's jurisdiction. In addition, the ordinance *must* provide that the person in charge of a restaurant, tavern, private club, or retail establishment location in an area subject to the ordinance may designate an outside area that is within a reasonable distance from any entrance to the establishment, where customers, employees, and other associated persons may smoke. The ordinance may not define the term "reasonable distance" or set any specified measured distance as being a "reasonable distance."

Penalties

The substitute amendment establishes a forfeiture for violation of the smoking prohibition of not less than \$100 nor more than \$250 for each violation.

The substitute amendment provides that anyone in charge who violates the "person in charge" provisions is subject to a forfeiture of \$100 for each violation. However, the substitute amendment requires that a warning notice be issued for the first violation; and provides that no forfeitures may exceed \$100 in total for all violations occurring on a single day.

The substitute amendment also provides 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

The substitute amendment has a delayed effective date of July 5, 2010.

Legislative History

On May 13, 2009, the Senate adopted Senate Substitute Amendment 1 to 2009 Senate Bill 181 on a voice vote; and passed the bill, as amended, by a vote of Ayes, 25; Noes, 8. On that same date, the Assembly concurred in the bill by a vote of Ayes, 61; Noes, 38.

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