



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 414

**Assembly Substitute
Amendment 1**

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Assembly Bill 414 modifies current law relating to smoking in restaurants and bowling centers. The bill also prohibits counties, towns, cities, and villages from enacting or enforcing smoking ordinances that do not strictly conform to state law.

Smoking in Restaurants

Under *current law*, no person may smoke in a restaurant with a seating capacity of more than 50 persons. “Restaurant” is defined as any building, room, or place where meals are prepared or served or sold to transients or the general public, and all places used in connection with it. Soft drinks, ice cream, milk, milk drinks, ices, and confections are not “meals” under the definition of “restaurant.” In addition, “restaurant” does not include a tavern that serves free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter.

The smoking prohibition in restaurants does not apply to a restaurant holding a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant’s receipts. In addition, the smoking prohibition does not apply to entire rooms or halls used for private functions, if the arrangements for the function are under the control of the sponsor of the function.

A person in charge of a restaurant or his or her agent may designate smoking areas in a restaurant unless a fire marshal, law, ordinance, or resolution prohibits smoking.

The *substitute amendment* repeals the exception to the prohibition against smoking in a restaurant holding a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant’s receipts. Therefore, these restaurants are not exempt from smoking regulations under the substitute amendment.

The substitute amendment provides, however, that the prohibition against smoking in a restaurant does *not* apply to:

- A separate room in a restaurant if the room has an independent ventilation system that is entirely separate from the rest of the restaurant.
- The bar area of a restaurant where alcohol beverages are sold for consumption on the premises if the bar area includes a counter with seating for customers and food is served in that area only incidental to the serving of alcohol beverages.

Under the substitute amendment, a person in charge or his or her agent may *not* designate an area of a restaurant as a smoking area unless the area meets one of the exceptions to smoking regulation, as described above (i.e., a room or hall being used for a private function, a room with an independent ventilation system, or the bar area of a restaurant).

The substitute amendment does not modify the definition of “restaurant,” so that, under the substitute amendment, smoking is not regulated in a restaurant with a seating capacity of 50 or fewer persons.

Smoking in Retail Establishments Including Taverns and Bowling Centers

Current law prohibits smoking in retail establishments. The definition of “retail establishment” is any store or shop in which retail sales is the principal business conducted, *except*: (a) a tavern operating under a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license; and (b) bowling centers. Therefore, smoking is *not* prohibited in taverns that do not meet the definition of “restaurant” and in bowling centers.

The *substitute amendment* prohibits smoking in bowling centers, unless specified conditions are met. “Bowling center” is defined as premises on which one or more bowling lanes are located.

A bowling center is exempt from the smoking prohibition if all of the following apply:

- The bowling center is not primarily devoted to the sale of alcohol beverages.
- The bowling center prohibits smoking on each bowling lane, including the approach to each bowling lane, and in the concourse area of the bowling center, if any, during any time when the bowling center is holding league play for persons under 18 years of age.
- The ventilation system in the bowling center is adequate to ventilate the premises and to prevent effectively, to the maximum extent practicable, tobacco smoke from entering any area where smoking is prohibited.
- The bowling center establishes periods of time when smoking is prohibited sufficient to meet the reasonable customer demand for such periods.
- The bowling center provides to nonsmoking customers in a smoke-free area the same services that it provides to smoking customers.

In addition, the substitute amendment provides that a bowling center may: (1) designate an area, including an entire room, of the bowling center as a smoking area if the bowling center posts notice of the designation of a smoking area in or near the area designated; or (2) allow smoking in the entire bowling center, or an entire room of the bowling center, for a limited period of time during which the room or bowling center is being used exclusively for a private function.

Local Ordinances Regulating Smoking

Under *current law*, a county, city, village, or town may enact ordinances and a school district may adopt policies that protect the health and comfort of the public if they comply with the purpose of state laws regulating smoking.

The *substitute amendment* repeals this provision and provides that a county, city, village, or town may *not* enact or enforce an ordinance or adopt or enforce a resolution regulating smoking unless the ordinance or resolution strictly conforms to state law regulating smoking.

Legislative History

Assembly Substitute Amendment 1 was offered by Representatives Krawczyk, Van Roy, and Fitzgerald on June 21, 2005. The Assembly adopted the substitute amendment on a vote of Ayes, 54; Noes, 41; on June 23, 2005. Also on that date, the Assembly passed the bill, as amended, on a vote of Ayes, 48; Noes, 45; Paired, 6.

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