

WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 12
[2009 Senate Bill 181]

Smoking Ban

2009 Wisconsin Act 12 makes numerous changes to the current state law restricting smoking. Act 12 provides as follows:

Areas Where Smoking is Prohibited

Under the Act, smoking is prohibited in the following enclosed places:

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).

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at:

<http://www.legis.state.wi.us/>.

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536 (608) 266-1304 •

Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us

<http://www.legis.state.wi.us/lc>

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 place" is defined as a structure or area that has a roof and more than two substantial walls. A "substantial wall" is 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.

A "place of employment" is defined as any enclosed place that employees normally frequent during the course of employment, such as an office, a work area, an elevator, an employee lounge, a restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a lobby, a common area, a vehicle, or an employee cafeteria.

A "public place" is defined as an enclosed 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 Act makes no changes to the specific prohibitions in current law on smoking outside. These places are as follows:

1. Within six feet of the State Capitol.
 2. On the premises of a day care center when children are present.
 3. On the grounds of a Type 1 juvenile correctional facility.
 4. Within 25 feet of any University of Wisconsin (UW)-System residence hall or dormitory.
- The Act also specifically prohibits smoking in sports arenas, bus shelters, and public conveyances regardless of whether they meet the definition of "enclosed place."

Designation of Smoking Areas

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

Exemptions

The Act 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 living in the room 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 day after publication of this act (June 3, 2009), 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 annual 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 Act eliminates 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 Act 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; posting “no smoking” signs; asking a person to stop smoking; asking a person who is smoking to leave; 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 Act 12, counties, cities, villages, and towns, retain their authority to enact ordinances, and school districts retain authority to adopt policies that, complying with the purpose of the Act, protect the health and comfort of the public. The Act makes one new change to this local authority. Under the Act, 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 Act establishes a forfeiture for violation of the smoking prohibition of not less than \$100 nor more than \$250 for each violation.

The Act 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 Act 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: Act 12 takes effect on July 5, 2010.