

## 2005 Montana Legislature

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HOUSE BILL NO. 643  
INTRODUCED BY DOWELL, ROBERTS, MCALPIN, WARD, WANZENRIED

AN ACT PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION AFTER SEPTEMBER 30, 2009; ESTABLISHING PENALTIES; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA; AND PROVIDING A TERMINATION DATE.

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 20-1-220, MCA, is amended to read:

**"20-1-220. Use of tobacco product in public school building or on public school property prohibited.** (1) An individual may not use a tobacco product in a public school building or on public school property ~~during school hours.~~

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

~~(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member;~~

~~(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or~~

~~(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district.~~

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) A violation of this section is subject to the penalties provided in [section 8].

~~(4)~~(5) For the purposes of this section, the following definitions apply:

(a) "Public school building or public school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

**Section 2.** Section 50-40-102, MCA, is amended to read:

**"50-40-102. Intent -- purpose.** ~~The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature's intent that the requirements of this part provide adequate~~

~~remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke. The legislature finds and declares that the purposes of this part are as follows:~~

(1) to protect the public health and welfare by prohibiting smoking in public places and places of employment;

(2) to recognize the right of nonsmokers to breathe smoke-free air; and

(3) to recognize that the need to breathe smoke-free air has priority over the desire to smoke."

**Section 3.** Section 50-40-103, MCA, is amended to read:

**"50-40-103. Definitions.** As used in this part, the following definitions apply:

(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.

~~(1)~~(2) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2)~~(3) "Enclosed public place" means an indoor area, room, or vehicle ~~used by that~~ the general public is allowed to enter or ~~servng that serves~~ as a place of work, including but not limited to the following:

(a) restaurants;

(b) stores;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;  
educational or

(e) health care facilities;

(f) auditoriums, arenas, and assembly facilities; and

(g) meeting rooms open to the public;

(h) bars;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

~~(3)(4)~~ "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

~~(4)(6)~~ "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

~~(5)(7)~~ "Place of work" means an enclosed room where ~~more than one employee or more individuals works work.~~

~~(6)(8)~~ "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

~~(7) "Smoking area" means a designated area in which smoking is permitted."~~

**Section 4.** Section 50-40-104, MCA, is amended to read:

**"50-40-104. Designation or reservation of smoking or nonsmoking areas -- notice Smoking in enclosed public places prohibited -- notice to public -- places where prohibition inapplicable.** (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

(1) The proprietor or manager of an enclosed public place shall:

~~—(a) designate nonsmoking areas with easily readable signs;~~

~~—(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;~~

~~—(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or~~

~~—(d) designate and reserve the entire area as a nonsmoking area.~~

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can

be easily read and understood, ~~whether or not areas within the establishment have been reserved for nonsmokers~~ that smoking in the enclosed public place is prohibited.

~~(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.~~

~~(4)~~<sup>(3)</sup> The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

(4) The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted.

(5) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;

(b) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

(c) a private motor vehicle;

(d) school property in which smoking is allowed pursuant to the exception in 20-1-220;

(e) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and

(f) a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

**Section 5.** Section 50-40-108, MCA, is amended to read:

**"50-40-108. Enforcement.** The provisions of this part ~~shall~~ must be supervised and enforced by the department and the department's designees, local boards of health, and the boards' designees under the direction of the department."

**Section 6.** Section 50-40-201, MCA, is amended to read:

**"50-40-201. ~~Reservation of smoking and nonsmoking areas in work areas in local~~ Local government buildings -- smoking prohibited.** (1) ~~In offices and work areas in all parts of buildings maintained by a political subdivision, except a school or community college facility designated as tobacco free by the board of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area.~~

~~—(2) The governing body of a political subdivision may designate any building maintained by it as smoke free smoking is prohibited as provided in this section.~~

(2) Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) ~~Restrictions authorized by~~ contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public."

**Section 7. Part preemptive of stricter ordinance.** The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation.

**Section 8. Penalties.** (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:

- (a) a warning for the first violation;
- (b) a written reprimand for a second violation; and
- (c) within any 3-year period, a fine of:
  - (i) \$100 for a third violation;
  - (ii) \$200 for a fourth violation; and
  - (iii) \$500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401 or by the department of justice for the purposes of 23-5-119, 23-5-177, or 23-5-611(1)(a) or (1)(c).

**Section 9. Rulemaking required.** The department shall adopt rules to implement this part.

**Section 10. Repealer.** Sections 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, and 50-40-207, MCA, are repealed.

**Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

**Section 12. Codification instruction.** [Sections 7 through 9] are intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to [sections 7 through 9].

**Section 13. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

**Section 14. Termination.** [Section 7] terminates September 30, 2009.

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**Latest Version of HB 643** (*HB0643.ENR*)

Processed for the Web on April 8, 2005 (2:48pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

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