

1 SENATE BILL NO. 122

2 INTRODUCED BY S. MALEK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA CLEAN INDOOR AIR ACT TO PROHIBIT
5 THE USE OF INHALANT DELIVERY SYSTEMS IN PUBLIC PLACES AND PLACES OF EMPLOYMENT;
6 PROVIDING FOR AN EXCEPTION THAT AN INHALANT DELIVERY SYSTEM MAY BE USED IN A PUBLIC
7 SCHOOL BUILDING OR ON PUBLIC SCHOOL PROPERTY FOR CERTAIN EDUCATIONAL PURPOSES;
8 PROVIDING DEFINITIONS; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, AND
9 50-40-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

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

14 **"20-1-220. Use of tobacco product in public school building or on public school property**
15 **prohibited.** (1) An individual may not use a tobacco product or inhalant delivery system in a public school building
16 or on public school property.

17 (2) Subsection (1) does not apply to the use of a tobacco product or inhalant delivery system in a
18 classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by
19 a school administrator or faculty member concerning the risks associated with use of a tobacco product or
20 inhalant delivery system.

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

23 (4) A violation of this section is subject to the penalties provided in 50-40-115.

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

25 (a) "Inhalant delivery system" has the meaning provided in 50-40-103.

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

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

30 (ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities,

1 gymnasiums, locker rooms, and school buses.

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

4

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

6 **"50-40-102. Intent -- purpose.** The legislature finds and declares that the purposes of this part are as
7 follows:

8 (1) to protect the public health and welfare by prohibiting smoking and the use of inhalant delivery
9 systems in public places and places of employment;

10 (2) to recognize the right of nonsmokers to breathe ~~smoke-free~~ air that is free of smoke and certain
11 exhaled small particulate matter and other exhaled toxins; and

12 (3) to recognize that the need to breathe ~~smoke-free~~ air that is free of smoke and certain exhaled small
13 particulate matter and other exhaled toxins has priority over the desire to smoke or use an inhalant delivery
14 system."

15

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

17 **"50-40-103. Definitions.** As used in this part, the following definitions apply:

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

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

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

25 (a) restaurants;

26 (b) stores;

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

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

30 (e) health care facilities;

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

2 (g) meeting rooms open to the public;

3 (h) bars;

4 (i) community college facilities;

5 (j) facilities of the Montana university system; and

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

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

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

11 (6) "Inhalant delivery system" means a device that can be used to deliver nicotine, cannabinoids, or any
12 other substance in the form of a vapor or aerosol, including but not limited to an electronic cigarette, electronic
13 cigar, vape pen, electronic hookah, or other vapor product as defined in 16-11-302.

14 ~~(6)(7)~~ "Person" means an individual, partnership, corporation, association, political subdivision, or other
15 entity.

16 ~~(7)(8)~~ "Place of work" means an enclosed room where one or more individuals work.

17 ~~(8)(9)~~ "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette,
18 pipe, or any smokable product and includes the use of marijuana for a debilitating medical condition as provided
19 for in Title 50, chapter 46.

20 (10) "Using" or "to use" an inhalant delivery system means the act of inhaling the aerosol or vapor from
21 an inhalant delivery system."

22

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

24 **"50-40-104. Smoking and using inhalant delivery system in enclosed public places prohibited --**
25 **notice to public -- places where prohibition inapplicable.** (1) Except as otherwise provided in this section,
26 smoking or using an inhalant delivery system in an enclosed public place is prohibited.

27 (2) The proprietor or manager of an establishment containing enclosed public places shall post a sign
28 in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read
29 and understood, that smoking or using an inhalant delivery system in the enclosed public place is prohibited.

30 (3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking or using

1 an inhalant delivery system in all parts of the bus.

2 (4) The ~~prohibition~~ prohibitions in subsection (1) ~~does~~ do not apply to the following places, whether or
3 not the public is allowed access to those places:

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

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

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

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

10 (b) a private motor vehicle;

11 (c) school property in which smoking or using an inhalant delivery system is allowed pursuant to the
12 exception in 20-1-220;

13 (d) a hotel or motel room designated ~~as a smoking room~~ for smoking or using an inhalant delivery system
14 and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated
15 ~~as smoking rooms~~ for smoking or using an inhalant delivery system; and

16 (e) a site that is being used in connection with the practice of cultural activities by American Indians that
17 is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a."
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19 **Section 5.** Section 50-40-115, MCA, is amended to read:

20 **"50-40-115. Penalties.** (1) It is unlawful for a person to smoke or use an inhalant delivery system in any
21 area where smoking or using an inhalant delivery system is prohibited under 20-1-220 or 50-40-104. A person
22 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
23 or more than \$100.

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

27 (a) a warning for the first violation;

28 (b) a written reprimand for a second violation; and

29 (c) within any 3-year period, a fine of:

30 (i) \$100 for a third violation;

1 (ii) \$200 for a fourth violation; and

2 (iii) \$500 for a fifth or subsequent violation.

3 (3) Penalties imposed under this section may not be considered by the department of revenue for the
4 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)
5 or (1)(c)."

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7 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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