

CHAPTER NO. 368

HOUSE BILL NO. 235

INTRODUCED BY ELLERD, HOLMES, COONEY, DUSSAULT, VINCENT,  
KEMMIS, UNDERDAL, ROTH, HURWITZ, SCHULTZ, WYRICK

IN THE HOUSE

January 17, 1979	Introduced and referred to Committee on Human Services.
February 13, 1979	Committee recommend bill do not pass as amended. Report adopted.
	Objection raised to adverse committee report. Bill placed on second reading.
February 15, 1979	Printed and placed on members' desks.
February 16, 1979	Second reading, do pass as amended.
February 19, 1979	Correctly engrossed. Third reading, passed. Transmitted to second house.

IN THE SENATE

February 20, 1979	Introduced and referred to Committee on Public Health, Welfare, and Safety.
March 9, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 12, 1979	Second reading, concurred in.
March 15, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 16, 1979	Returned from second house. Concurred in as amended.
March 17, 1979	Second reading, amendments adopted.
March 19, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 *House* BILL NO. 235  
2 INTRODUCED BY *Allen Holmes* *Conrad* *Howard* *Vincent*  
3 *Kennie Anderson Roth* *Heriberto* *Oberto* *Wright*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE  
5 DESIGNATION OF NONSMOKING AREAS IN PUBLIC PLACES AND TO  
6 PROVIDE FOR ENFORCEMENT."

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

8 Section 1. Short title. [This act] may be cited as the  
9 "Montana Clean Indoor Air Act of 1979".

10 Section 2. Purpose. The purpose of [this act] is to  
11 protect the health of nonsmokers in public places and to  
12 provide for designated areas for those who choose to smoke.

13 Section 3. Definitions. As used in [this act], the  
14 following definitions apply:

15 (1) "Department" means the department of health and  
16 environmental sciences provided for in Title 2, chapter 15,  
17 part 21.

18 (2) "Enclosed public place" means any public  
19 transportation vehicle, health care facility, or a room  
20 other than a tavern, smoking room, private club, or private  
21 residence which is open to or used by the general public or  
22 serves as a place of work unless excluded under [section 6].

23 (3) "Tavern" means an enclosed place which sells  
24 alcoholic beverages for consumption on the premises as its

1 primary business.

2 (4) "Restaurant" means an enclosed place which sells  
3 food for consumption on the premises as its primary  
4 business.

5 (5) "Smoking" or "to smoke" means the act of smoking  
6 or carrying a lighted cigar, cigarette, pipe, or any  
7 smokable product.

8 (6) "Adequate portion" means an area large enough to  
9 accommodate nonsmoking patrons in a relatively smoke-free  
10 area.

11 Section 4. Nonsmoking area to be designated in  
12 enclosed public place. The proprietor or manager of a public  
13 place shall post a sign or signs designating an adequate  
14 portion of the enclosed place as a nonsmoking area. The  
15 signs shall be posted in a manner making them easily seen  
16 and understood.

17 Section 5. Elevators. All passenger elevators shall be  
18 designated as nonsmoking areas.

19 Section 6. Exclusions. If clearly designated as a  
20 smoking room, an office, hallway, or other public place  
21 occupied or used exclusively by persons who indicate in  
22 writing a desire to smoke or to accompany smokers, is, upon  
23 approval by any local board of health defined in 50-2-104  
24 through 50-2-107, excluded from [this act].

25 Section 7. The responsibilities of the department. (1)

1 The department may provide certificates of exclusion to  
2 local boards of health for the purposes of implementing  
3 [section 6].

4 (2) The department must provide and distribute at  
5 cost, upon request, materials to designate smoking and  
6 nonsmoking areas.

7 (3) The department shall oversee the implementation of  
8 [this act] and may promulgate rules to that end. Local  
9 boards of health are responsible for enforcement of [this  
10 act], including inspection of public places upon complaint.

11 (4) Upon complaint a local board of health may  
12 contest, pursuant to Title 2, chapter 4, the adequacy of a  
13 nonsmoking area.

14 Section 8. Penalty for violation. A local health  
15 officer may after 5 days' warning charge the manager of a  
16 public place a fine of no more than \$50 for each day that  
17 signs are not posted in accordance with [section 4].

18 Section 9. Repeated violations. A local health  
19 officer, in cases of repeated violations of [section 4] may:

20 (1) seek an order pursuant to Title 2, chapter 4; or  
21 (2) seek to enjoin for up to 90 days the operation of  
22 the public place.

23 Section 10. Severability. If a part of this act is  
24 invalid, all valid parts that are severable from the invalid  
25 part remain in effect. If a part of this act is invalid in

1 one or more of its applications, the part remains in effect  
2 in all valid applications that are severable from the  
3 invalid applications.

-End-

Human Services  
Objection Raised to  
Adverse Committee Report

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23        other---than---a---tavern---smoking---room---private---club---or---private  
24        residence---which---is---open---to---or---used---by---the---general---public---or  
25        serves---as---a---place---of---work---unless---excluded---under---[section---6].

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2                    alcohol--beverages--for--consumption--on--the--premises--as--its  
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9                    smokable--product  
10                  {67--"Adequate--portion"--means--an--area--large--enough--to  
11                  accommodate--nonsmoking--patrons--in--a--relatively--smoke--free  
12                  area  
13                  Section--4--Nonsmoking--area--to--be--designated--in  
14                  enclosed--public--place--the--proprietor--or--manager--of--a  
15                  public--place--shall--post--a--sign--or--signs--designating--an  
16                  adequate--portion--of--the--enclosed--place--as--a--nonsmoking--area--  
17                  the--signs--shall--be--posted--in--a--manner--making--them--easily  
18                  seen--and--understood  
19                  Section--5--Elevators--All--passenger--elevators--shall  
20                  be--designated--as--nonsmoking--areas  
21                  Section--6--Exclusions--If--clearly--designated--as--a  
22                  smoking--room--or--office--hallway--or--other--public--place  
23                  occupied--or--used--exclusively--by--persons--who--indicate--in  
24                  writing--a--desire--to--smoke--or--to--accompany--smokers--is--upon  
25                  approval--by--any--local--board--of--health--defined--in--50--2--194

1 through-50-2-107v-excluded-from-[this-act]v

2 Section-7---The--responsibilities--of--the--departments--  
3 ~~tit~~--The-department-may-provide-certificates-of-exclusion-to  
4 local-boards-of-health--for--the--purposes--of--implementing  
5 [section-6j]v

6 ~~tit~~--The-department--must--provide--and--distribute-at  
7 cost--upon--request--materials--to--designate-smoking--and  
8 nonsmoking-areas

9 ~~tit~~--The-department-shall-oversee-the-implementation-of  
10 [this-act]--and--may--promulgate--rules--to--that--and--local  
11 boards-of-health-are-responsible-for--enforcement--of--~~this~~  
12 act]v--including--inspection-of-public-places-upon-complaints  
13 ~~tit~~--Upon--complaint--a--local--board--of--health--may  
14 contest--pursuant--to-Tittle-2v--chapter-4v--the--adequacy--of--a  
15 nonsmoking-areas

16 Section-8---Penalty--for--violations---A--local--health  
17 officer--may--after--5-days--warning-charge-the-manager-of-a  
18 public-place-a-fine-of-no-more-than-650--for--each--day--that  
19 signs-are-not-posted-in-accordance-with-[section-4]v

20 Section-9---Repeated---violations----A---local--health  
21 officers--in-cases-of-repeated-violations-of-[section-4]v--may--  
22 ~~tit~~--seek--an-order-pursuant-to-Tittle-2v--chapter--4t--or  
23 ~~tit~~--seek--to-enjoin-for-up-to-90-days-the-operation-of  
24 the-public-places

25 Section-10---Severability--If-a-part-of--this--act--is

1 invalid--or--void--parts--that--are--severable--from--the--invalid--  
2 part--remain-in--effect--if-a-part-of--this--act--is--invalid--in  
3 one--or--more--of--its--applications--the--part--remains--in--effect  
4 in--all--valid--applications--that--are--severable--from--the  
5 invalid--applications

6 121. "ENCLOSED PUBLIC PLACE" MEANS ANY INDOOR AREA,  
7 ROOMS, OR VEHICLE USED BY THE GENERAL PUBLIC OR SERVING AS A  
8 PLACE OF WORK, INCLUDING BUT NOT LIMITED TO RESTAURANTS,  
9 STORES, OFFICES, TRAINS, BUSES, EDUCATIONAL OR HEALTH CARE  
10 EQUIPMENTS, AUDITORIUMS, ARENAS, ASSEMBLY, AND MEETING  
11 ROOMS.

12 131. "ESTABLISHMENT" MEANS AN ENTERPRISE UNDER ONE ROBE  
13 THAT SERVES THE PUBLIC AND FOR WHICH A SINGLE PERSON,  
14 AGENCY, CORPORATION, OR LEGAL ENTITY IS RESPONSIBLE.

15 141. "SMOKING" OR "TO SMOKE" INCLUDES THE ACT OF  
16 LIGHTING, SMOKING, OR CARRYING A LIGHTED CIGAR, CIGARETTE,  
17 PIPE, OR ANY SMOKABLE PRODUCT.

18 151. "WORKING AREA" MEANS AN ENCLOSED ROOM WHERE MORE  
19 THAN ONE EMPLOYEE WORKS.

20 SECTION 4. THERE IS A NEW MCA SECTION THAT READS:  
21 Designation or reservation of smoking or nonsmoking  
22 areas -- notice. (1) Except for those public places provided  
23 for in [section 5 of this act], the proprietor or manager of  
24 a public place shall:

25 (a) designate nonsmoking areas with signs;

1       (b) reserve a part of the public place for nonsmokers  
 2 and post signs designating a smoking area; or

3       (c) designate the entire area as a smoking area.

4       (2) The proprietor or manager of an establishment  
 5 containing public places shall post a sign in a conspicuous  
 6 place at all public entrances to the establishment stating,  
 7 in a manner that can be easily read and understood, whether  
 8 or not areas within the establishment have been reserved for  
 9 nonsmokers.

10       SECTION 5. THERE IS A NEW MCA SECTION THAT READS:

11       Smoking prohibited in certain areas. Smoking is  
 12 prohibited in elevators, museums, galleries, kitchens, and  
 13 libraries of any establishment doing business with the  
 14 general public.

15       SECTION 6. THERE IS A NEW MCA SECTION THAT READS:

16       Requirements of health care facilities. (1) Health care  
 17 facilities shall:

18       (a) ask all in-patients, prior to admission, to  
 19 designate their preference for a nonsmoking or smoking  
 20 patient room and, when possible, accommodate such a  
 21 preference;

22       (b) prohibit smoking in all kitchens, laboratories,  
 23 and corridors;

24       (c) prohibit smoking in storage areas for supplies or  
 25 materials and wherever flammable liquids, gases, or oxygen

1       is stored or in use;

2       (d) provide a nonsmoking area in all waiting rooms;

3       (e) prohibit employees from smoking in patient rooms;  
 4 and

5       (f) require visitors to obtain express approval from  
 6 all patients in the patient room, or from the patients'  
 7 physicians, prior to smoking.

8       (2) Nothing in this section shall prohibit a health  
 9 care facility from banning smoking on all or a part of its  
 10 premises.

11       (3) All areas of a health care facility not  
 12 specifically referred to in this section may be considered  
 13 smoking areas unless posted otherwise.

14       SECTION 7. THERE IS A NEW MCA SECTION THAT READS:

15       Exemptions. Except for working areas in enclosed public  
 16 places, the following shall be exempt from [this act]:

17       (a) restrooms;

18       (b) taverns or bars where meals are not served;

19       (c) vehicles seating six or fewer members of the  
 20 public.

21       SECTION 8. THERE IS A NEW MCA SECTION THAT READS:

22       Enforcement. The provisions of [this act] shall be  
 23 supervised and enforced by the local boards of health under  
 24 the direction of the department.

25       SECTION 9. SEVERABILITY. IF A PART OF THIS ACT IS

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-End-

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-End-

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22 ~~smoking--room--an--office--hallway--or--other--public--place~~  
23 ~~occupied--or--used--exclusively--by--persons--who--indicate--in~~  
24 ~~writing--a--desire--to--smoke--or--to--accompany--smokers--is--upon~~  
25 ~~approval--by--any--local--board--of--health--defined--in--50--2--104~~

1 through-50-2-+07,-excluded-from-[this-act]»

2       Section-7--The--responsibilities--of--the--departments

3       +--+The-department-may-provide-certificates-of-exclusion-to

4       local-boards-of-health--for--the--purposes--of--implementing

5       [section-6]»

6       +2+--The--department--must--provide--and--distribute-at

7       costs-upon-request--materials--to--designate-smoking--and

8       nonsmoking-areas.

9       +3+--The-department-shall-oversee-the-implementation-of

10      [this-act]--and--may--promulgate--rules--to--that-end--local

11      boards-of-health-are-responsible-for--enforcement--of--[this

12      act]--including-inspection-of-public-places-upon-complaints.

13       +4+--Upon--complaint--a--local--board--of--health--may

14      contest--pursuant--to--Title-2--chapter-4--the--adequacy--of--a

15      nonsmoking-area.

16       Section-8--Penalty--for--violations---A--local--health

17      officer--may--after--5-days--warning--charge--the--manager--of--a

18      public-place--a--fine--of--no--more--than--\$50--for--each--day--that

19      signs--are--not--posted--in--accordance--with-[section-4]»

20       Section-9--Repeated--violations----A--local--health

21      officer--in--cases--of--repeated--violations--of-[section-4]--may+

22       +5+--seek--an--order--pursuant--to--Title-2--chapter--4+--or

23       +6+--seek--to--enjoin--for--up--to--90--days--the--operation--of

24      the--public--places.

25       Section-10--Severability--if-a-part-of--this--act--is

1       invalid+--att--valid-parts--that--are--severable--from--the--invalid

2       part--remain-in--effect--if-a-part--of--this--act--is--invalid--in

3       one--or--more--of--its--applications--the--part--remains--in--effect

4       in--att--valid--applications--that--are--severable--from--the

5       invalid--applications.

6       121. "ENCLOSED PUBLIC PLACE" MEANS ANY INDOOR AREA,

7       ROOM, OR VEHICLE USED BY THE GENERAL PUBLIC OR SERVING AS A

8       PLACE OF WORK, INCLUDING BUT NOT LIMITED TO RESTAURANTS,

9       STORES, OFFICES, TRAINS, BUSES, EDUCATIONAL OR HEALTH CARE

10      FACILITIES, AUDITORIUMS, ARENAS, ASSEMBLY, AND MEETING

11      ROOMS.

12       131. "ESTABLISHMENT" MEANS AN ENTERPRISE UNDER ONE ROOF

13       THAT SERVES THE PUBLIC AND FOR WHICH A SINGLE PERSON,

14       AGENCY, CORPORATION, OR LEGAL ENTITY IS RESPONSIBLE.

15       141. "SMOKING" OR "TO SMOKE" INCLUDES THE ACT OF

16       LIGHTING, SMOKING, OR CARRYING A LIGHTED CIGAR, CIGARETTE,

17       PIPE, OR ANY SMOKABLE PRODUCT.

18       151. "WORKING AREA" MEANS AN ENCLOSED ROOM WHERE MORE

19       THAN ONE EMPLOYEE WORKS.

20       SECTION 4. THERE IS A NEW MCA SECTION THAT READS:

21       Designation or reservation of smoking or nonsmoking

22       areas -- notice. (1) Except for those ENCLOSED public places

23       provided for in [section 5 of this act], the proprietor or

24       manager of a AN ENCLOSED public place shall:

25        (a) designate nonsmoking areas with EASILY READABLE

1 signs; OR

2 (b) reserve a part of the public place for nonsmokers  
 3 and post EASILY READABLE signs designating a smoking area;  
 4 or  
 5 (c) designate the entire area as a smoking area.

6 (2) The proprietor or manager of an establishment  
 7 containing ENCLOSED public places shall post a sign in a  
 8 conspicuous place at all public entrances to the  
 9 establishment stating, in a manner that can be easily read  
 10 and understood, whether or not areas within the  
 11 establishment have been reserved for nonsmokers.

12 SECTION 5a. THERE IS A NEW MCA SECTION THAT READS:

13 Smoking--prohibited NO SMOKING SIGNS in certain areas  
 14 PLACES. Smoking--is--prohibited NO SMOKING SIGNS SHALL BE  
 15 CONSPICUOUSLY POSTED in elevators, museums, galleries,  
 16 kitchens, and libraries of any establishment doing business  
 17 with the general public.

18 SECTION 6a. THERE IS A NEW MCA SECTION THAT READS:

19 Requirements of health care facilities. (1) Health care  
 20 facilities shall:

21 (a) ask all in-patients, prior to admissions, to  
 22 designate their preference for a nonsmoking or smoking  
 23 patient room and, when possible, accommodate such a  
 24 preference;

25 (b) prohibit smoking in all kitchens, laboratories,

1 and corridors;

2 (c) prohibit smoking in storage areas for supplies or  
 3 materials and wherever flammable liquids, gases, or oxygen  
 4 is stored or in use;

5 (d) provide a nonsmoking area in all waiting rooms;  
 6 (e) prohibit employees from smoking in patient rooms;  
 7 and  
 8 (f) require visitors to obtain express approval from  
 9 all patients in the patient room, or from the patients'  
 10 physicians, prior to smoking.

11 (2) Nothing in this section shall prohibit a health  
 12 care facility from banning smoking on all or a part of its  
 13 premises.

14 (3) All areas of a health care facility not  
 15 specifically referred to in this section may be considered  
 16 smoking areas unless posted otherwise.

17 SECTION 7a. THERE IS A NEW MCA SECTION THAT READS:

18 Exemptions. Except-for-working-areas-in-enclosed-public  
 19 places--the THE following shall be exempt from [this act]:

20 (a) restrooms;  
 21 (b) taverns or bars where meals are not served;  
 22 (c) vehicles OR ROOMS seating six or fewer members of  
 23 the public.

24 SECTION 8a. THERE IS A NEW MCA SECTION THAT READS:

25 Enforcement. The provisions of [this act] shall be

1 supervised and enforced by the local boards of health under  
2 the direction of the department.

3 SECTION 9. SEVERABILITY. IF A PART OF THIS ACT IS  
4 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID  
5 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN  
6 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT  
7 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE  
8 INVALID APPLICATIONS.

-End-

March 9, 1979

SENATE STANDING COMMITTEE REPORT  
(Public Health, Welfare & Safety)

That House Bill No. 235 be amended as follows:

1. Page 1, line 14.

Following: "areas"

Insert: "in some public places"

2. Page 4, line 25.

Following: "with"

Insert: "easily readable"

Following: "signs;"

Insert: "or"

3. Page 5, line 2.

Following: "post"

Insert: "easily readable"

4. Page 5, line 11.

Following: line 10

Strike: "Smoking prohibited"

Insert: "No smoking signs"

Following: "certain"

Strike: remainder of line 11 in its entirety

Insert: "places. No smoking signs shall be conspicuously posted"

5. Page 5, line 12.

Strike: "prohibited"