

HOUSE BILL NO. HB0141

Smoking in public places.

Sponsored by: Representative(s) Zwonitzer, Dn., Blake, Davison, Dockstader, Harvey, Jaggi, Jorgensen, Millin, Petersen, Warren and Zwonitzer, Dv. and Senator(s) Cooper, Hastert and Massie

A BILL

for

1 AN ACT relating to public health and safety; prohibiting  
2 smoking in certain public places and places of employment  
3 as specified; providing exceptions; providing penalties;  
4 and providing for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 35-29-101 through 35-29-110 are  
9 created to read:

10

11

CHAPTER 29

12

SMOKING IN PUBLIC PLACES

13

14

**35-29-101. Definitions.**

15

1           (a) As used in this chapter:

2

3           (i) "Business" means any legal entity including,  
4 but not limited to, a sole proprietorship, partnership,  
5 joint venture, corporation or other business entity whether  
6 formed for profit-making or nonprofit purposes, including  
7 retail establishments where goods or services are sold, as  
8 well as professional corporations and other entities where  
9 legal, medical, dental, engineering, architectural or other  
10 professional services are delivered;

11

12           (ii) "Employee" means any person who is employed  
13 by an employer in consideration for direct or indirect  
14 monetary wages or profit, and a person who volunteers his  
15 services for a nonprofit entity;

16

17           (iii) "Employer" means a person, business,  
18 partnership, association, corporation, trust, nonprofit  
19 entity or a municipal corporation that employs the services  
20 of one (1) or more individual persons;

21

22           (iv) "Enclosed area" means all space between a  
23 floor and ceiling that is enclosed on all sides by solid

1 walls or windows, exclusive of doorways, which extend from  
2 the floor to the ceiling;

3

4 (v) "Health care facility" means an office or  
5 institution providing care or treatment of diseases,  
6 whether physical, mental or emotional, or other medical,  
7 physiological or psychological conditions including, but  
8 not limited to, hospitals, rehabilitation hospitals or  
9 other clinics, including weight control clinics, nursing  
10 homes, homes for the aging or chronically ill,  
11 laboratories, and offices of surgeons, chiropractors,  
12 physical therapists, physicians, dentists and all  
13 specialists within these professions. This definition shall  
14 include all waiting rooms, hallways, private rooms, semi-  
15 private rooms and wards within health care facilities;

16

17 (vi) "Outdoor patio" means an outdoor area, open  
18 to the air at all times, that is either:

19

20 (A) Enclosed by a roof or other overhead  
21 covering and not more than two (2) walls or other side  
22 coverings; or

23

1                   (B) Has no roof or other overhead covering  
2 at all regardless of the number of walls or other side  
3 coverings.

4

5                   (vii) "Performance hall" means any area or  
6 facility that is primarily used for the exhibition of any  
7 motion picture, stage, drama, lecture, musical recital or  
8 other similar performances including, but not limited to,  
9 concert halls and theaters;

10

11                   (viii) "Place of employment" means an area under  
12 the control of an employer which is intended for occupancy  
13 by employees during the course of employment including, but  
14 not limited to, work areas, employee lounges, restrooms,  
15 conference rooms, meeting rooms, classrooms, employee  
16 cafeterias, waiting areas, offices, stairways and hallways.  
17 A private residence is not a "place of employment" unless  
18 it is used as a licensed child care, licensed adult day  
19 care, health care or preschool facility, or for any other  
20 business;

21

22                   (ix) "Private club" means those organizations or  
23 entities defined as a "club" in W.S. 12-1-101(a)(iii),  
24 which are not open to the public;

1

2           (x) "Public place" means an enclosed area to  
3 which the public is invited or in which the public is  
4 permitted including, but not limited to, banks and other  
5 financial institutions, publicly funded buildings, public  
6 conveyances, recreational facilities, taverns, lounges,  
7 bars, educational facilities, health care facilities,  
8 laundries, public transportation facilities, reception  
9 areas, restaurants, retail food production and marketing  
10 establishments including grocery stores, supermarkets and  
11 stores where food items are sold for on-premises or off-  
12 premises consumption, retail service establishments, retail  
13 stores, shopping malls, sports arenas, theaters and waiting  
14 rooms. A private residence is not a "public place" unless  
15 it is used as a licensed child care, licensed adult day  
16 care, health care or preschool facility or for any other  
17 business;

18

19           (xi) "Public transportation vehicle" means, but  
20 is not limited to, any enclosed mode of public  
21 transportation, including a taxi, train, passenger bus,  
22 school bus or other vehicle used to transport pupils, or a  
23 vehicle that is owned by, or operated by a business and is  
24 open to the public, including tour vehicles, passenger

1 buses or vans regularly used to transport customers. A  
2 private vehicle not open to the public or not used for the  
3 transportation of the public during the times of use,  
4 including a private passenger vehicle, a private charter or  
5 rental of a limousine, bus or van, shall not be considered  
6 a public transportation vehicle;

7

8 (xii) "Publicly owned youth athletic facilities"  
9 includes, but is not limited to, facilities where youth  
10 soccer, baseball, skateboarding and any other youth  
11 activities occur, whether the facility is enclosed or not;

12

13

14 (xiii) "Restaurant" means an eating  
15 establishment including, but not limited to, coffee shops,  
16 cafeterias, and public and private school cafeterias, which  
17 gives or offers for sale food to the public, guests or  
18 employees, as well as kitchens and catering facilities in  
19 which food is prepared on the premises and served  
20 elsewhere. The term "restaurant" shall include any tavern,  
21 lounge or bar area within the restaurant;

22

23 (xiv) "Retail sales establishment" means an  
24 establishment engaged in the sale of goods or merchandise

1 to the general public for personal or household consumption  
2 and rendering services incidental to the sale of those  
3 goods. A retail sales establishment is usually a place of  
4 business and is engaged in activity to attract the general  
5 public to make purchases;

6

7 (xv) "Shopping mall" means an enclosed public  
8 walkway or hall area that serves to connect retail sales or  
9 professional service establishments;

10

11 (xvi) "Smoke" or "smoking" means the inhaling,  
12 exhaling, burning or carrying of any lighted tobacco  
13 product, weed, plant or other combustible product in a  
14 smoking instrument or the placement of smoking instruments  
15 containing a lighted tobacco product, weed, plant or other  
16 combustible product in an ashtray or other receptacle and  
17 allowing smoke to diffuse into the air. This definition  
18 does not include incense;

19

20 (xvii) "Smoking instrument" means any cigar,  
21 cigarette, pipe, hookah or water pipe, or any other smoking  
22 device;

23

1           (xviii) "Sports arena" means sports pavilions,  
2 stadiums, gymnasiums, health spas, swimming pools, roller  
3 and ice rinks, bowling alleys and other similar places  
4 where members of the general public assemble to engage in  
5 physical exercise, participate in athletic competition or  
6 witness sports or other events;

7

8           (xix) "Tavern, lounge or bar" means any  
9 establishment open to the public whose primary source of  
10 revenue is from the sale of alcoholic liquor and malt  
11 beverages for consumption by guests on the premises and in  
12 which the serving of food is only incidental to the  
13 consumption of those beverages including, but not limited  
14 to, taverns, nightclubs, cocktail lounges and cabarets;

15

16           (xx) "Youth" means any person who has not  
17 attained eighteen (18) years of age.

18

19           **35-29-102. Application of chapter to government owned**  
20 **facilities.**

21

22 All enclosed areas, including buildings and vehicles owned,  
23 leased or operated by the state of Wyoming or any city,



1 town, county or other governmental entity, shall be subject  
2 to the provisions of this chapter.

3

4 **35-29-103. Prohibition of smoking in public places.**

5

6 (a) Smoking is prohibited in all enclosed areas of  
7 public places within this state including, but not limited  
8 to, the following:

9

10 (i) Galleries, libraries and museums;

11

12 (ii) Areas available to and customarily used by  
13 the general public in businesses and for-profit or  
14 nonprofit entities patronized by the public including, but  
15 not limited to, professional offices, banks, laundries,  
16 hotels and motels;

17

18 (iii) Bingo or pull tab gaming premises;

19

20 (iv) Convention facilities;

21

22 (v) Elevators;

23

24 (vi) Taverns, lounges or bars;

1

2 (vii) Health care facilities;

3

4 (viii) Licensed child care, adult day care and  
5 preschool facilities;

6

7 (ix) Lobbies, hallways and other common areas in  
8 apartment buildings, condominiums, trailer parks,  
9 retirement facilities, nursing homes and other multiple-  
10 unit residential facilities;

11

12 (x) Performance halls;

13

14 (xi) Election polling places;

15

16 (xii) Private clubs;

17

18 (xiii) Restaurants;

19

20 (xiv) Restrooms, lobbies, reception areas,  
21 hallways and other common-use areas;

22

23 (xv) Retail sales establishments;

24

1           (xvi) Rooms, chambers, places of meeting or  
2 public assembly, including school buildings, under the  
3 control of any governmental agency, board, commission,  
4 committee or governing body;

5

6           (xvii) Shopping malls;

7

8           (xviii) Sports arenas and convention halls,  
9 including bowling facilities;

10

11           (xix) Public transportation vehicles;

12

13           (xx) Publicly owned youth athletic facilities.

14

15           **35-29-104. Prohibition of smoking in places of**  
16 **employment.**

17

18           (a) Smoking is prohibited in all enclosed areas  
19 within places of employment including, but not limited to,  
20 common work areas, auditoriums, classrooms, conference and  
21 meeting rooms, elevators, hallways, medical facilities,  
22 cafeterias, employee lounges, stairs, restrooms, public  
23 transportation vehicles and all other enclosed facilities.

24

1           (b) Employers affected by this chapter shall  
2 communicate the provisions of this chapter to all existing  
3 employees on July 1, 2007, and to all prospective employees  
4 on their application for employment.

5

6           **35-29-105. Distance to be observed from all entryways**  
7 **where smoking is prohibited.**

8

9 In order to prevent secondhand smoke from entering a public  
10 place or place of employment where smoking is prohibited,  
11 every person who is smoking shall smoke a distance of at  
12 least ten (10) feet from all public entranceways,  
13 passageways, operable windows or ventilation systems of any  
14 enclosed area where smoking is prohibited. Any person who  
15 fails to comply with this provision after an oral request  
16 to cease smoking by the owner, operator, manager or other  
17 person having control of the smoke-free establishment or  
18 enclosed area shall be in violation of the provisions of  
19 this chapter.

20

21           **35-29-106. Declaration of establishment as**  
22 **nonsmoking.**

23

1 Notwithstanding any other provision of this chapter, an  
2 owner, operator, manager or other person in control of an  
3 establishment, facility or outdoor area may declare that  
4 entire establishment, facility or outdoor area as a  
5 nonsmoking place.

6

7 **35-29-107. Where smoking is not regulated.**

8

9 (a) Notwithstanding any other provision of this  
10 chapter to the contrary, the following areas shall be  
11 exempt from the provisions of W.S. 35-29-103 and 35-29-104:

12

13 (i) Private residences, except when used as a  
14 licensed child care, licensed adult day care, preschool or  
15 health care facilities or for any other business;

16

17 (ii) Hotel and motel rooms that are rented to  
18 guests and are designated as smoking rooms;

19

20 (iii) Outdoor places of employment, except those  
21 areas where smoking is restricted under W.S. 35-29-105;

22

23 (iv) Private offices, provided that the private  
24 office is not open to the public, the public is not

1 invited, and the office is not intended for occupancy by  
2 employees during the course of their employment;

3

4 (v) Outside patios. The opening of any sliding  
5 or folding windows or doors or other windows or doors from  
6 any part of the border to an outdoor patio shall be closed  
7 to prevent the migration of smoke into the enclosed area.  
8 If sliding or folding windows or doors or other windows or  
9 doors do not prevent the migration of smoke into the  
10 enclosed building area, the outdoor patio shall be  
11 considered an extension of the enclosed area and subject to  
12 the prohibitions of this chapter;

13

14 (vi) Private or business vehicles, except those  
15 used for public transportation;

16

17 (vii) Retail tobacco shops, consisting of any  
18 enclosed indoor workplace dedicated to or predominantly for  
19 the retail sale of tobacco products, and accessories for  
20 such products, in which the sale of other products or  
21 services is incidental.

22

23 **35-29-108. Nonretaliation.**

24

1 No person or employer shall discharge, refuse to hire, or  
2 in any manner retaliate against an employee, applicant for  
3 employment or customer because that employee, applicant or  
4 customer exercises any rights afforded by this chapter or  
5 reports or attempts to prosecute a violation of this  
6 chapter.

7

8 **35-29-109. Violations and penalties.**

9

10 (a) A person who violates the provisions of this  
11 chapter by smoking in a prohibited area is guilty of a  
12 misdemeanor punishable by a fine of not more than:

13

14 (i) Fifty dollars (\$50.00) for a first  
15 violation;

16

17 (ii) Two hundred fifty dollars (\$250.00) for a  
18 second violation committed within a twenty-four (24) month  
19 period;

20

21 (iii) Seven hundred fifty dollars (\$750.00) for  
22 a third or subsequent violation committed within a twenty-  
23 four (24) month period.

24

1           (b) Failure of the owner, manager, operator or  
2 employee of an establishment to orally inform a person who  
3 smokes in an area where smoking is prohibited by the  
4 provisions of this chapter shall not constitute a defense  
5 to a violation under subsection (a) of this section.

6

7           (c) A person who owns, manages, operates or otherwise  
8 controls a public place or place of employment and who  
9 knowingly fails to comply with the provisions of this  
10 chapter is guilty of a misdemeanor punishable by a fine of  
11 not more than:

12

13                   (i) Fifty dollars (\$50.00) for a first  
14 violation;

15

16                   (ii) Two hundred fifty dollars (\$250.00) for a  
17 second violation committed within a twenty-four (24) month  
18 period;

19

20                   (iii) Seven hundred fifty dollars (\$750.00) for  
21 a third or subsequent violation committed within a twenty-  
22 four (24) month period.

23



1           (d) For purposes of subsection (c) of this section,  
2 each day of continued violation shall be deemed a separate  
3 offense.

4

5           **35-29-110. Applicability.**

6

7           (a) This chapter shall constitute a statewide  
8 prohibition on smoking in public places and places of  
9 employment and shall supersede any conflicting local  
10 ordinance, provided:

11

12           (i) Any county, by unanimous vote of its board  
13 of county commissioners, may opt out of the provisions of  
14 this chapter for a period of two (2) years. The decision  
15 to opt out of the provisions of this chapter may be  
16 extended thereafter for additional periods of two (2) years  
17 each by unanimous vote of the board of county  
18 commissioners;

19

20           (ii) Nothing in this chapter shall prevent a  
21 city, town or county from imposing additional restrictions  
22 upon smoking in public places or places of employment, or  
23 imposing greater penalties for violations than those  
24 provided in this chapter.

1

2       **Section 2.** This act is effective July 1, 2007.

3

4

(END)