

Montana

Smoking Restrictions

Overall Summary of Smoking Restrictions

Smoking is prohibited in enclosed public places, which are defined as an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including restaurants, bars and non-tribal gaming facilities. For specific places covered, see the definition under Montana Code Annotated section 50-40-103.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Exceptions to the Law

Exceptions to the law include: 1) a private residence unless it is licensed and used as a family day-care home, group day-care home, adult foster care home or a health care facility; 2) a private motor vehicle; 3) not more than 35 percent of hotel/motel rooms rented to guests; and 4) a site that is being used in connection with the practice of cultural activities by American Indians.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Stronger Local Laws on Smoking

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws/ordinances further restricting smoking.

Government Buildings

Smoking is prohibited in enclosed public places the definition of which includes all buildings or portions of buildings occupied by state and local government.

MONT. CODE ANN. §§ 50-40-104 & 50-40-201 (2005).

Private Workplaces

Smoking is prohibited in enclosed public places, the definition of which includes all places of work. Places of work are defined as an enclosed room where one or more people work.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Schools

An individual may not use a tobacco product in a public school building or on public school property. This does not apply to the use of a tobacco product 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.

MONT. CODE ANN. § 20-1-220 (2005).

Smoking is also prohibited in community college facilities and facilities of the Montana university system.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Child Care Facilities

Smoking is prohibited in all enclosed public places, the definition of which includes child care facilities. Home-based group day-care and family day-care homes as well as adult foster care homes are specifically included.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Health Care Facilities

Smoking is prohibited in all enclosed public places, the definition of which includes health care facilities. Home-based health care facilities are specifically included.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Restaurants

Smoking is prohibited in enclosed public places, the definition of which includes restaurants.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Bars

Smoking is prohibited in enclosed public places, the definition of which includes bars.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Penalties/Enforcement

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 that smoking in the enclosed public place is prohibited. The provisions of this part must be supervised and enforced by the Department of Public Health and Human Services and the department's designees, local boards of health, and the boards' designees under the direction of the department. A person who smokes in a place where smoking is prohibited is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the above provisions is guilty of a misdemeanor after a third violation within a 3-year period and shall receive a warning for a first violation, receive a written

reprimand for a second violation, be subject to a \$100 fine for a third violation, a \$200 fine for a fourth violation and \$500 for a fifth or subsequent violation.

MONT. CODE ANN. §§ 50-40-101 et seq. (2011).

Tobacco Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.70

Date last changed: January 1, 2005 -- from 70 cents to \$1.70

Year first enacted: 1947

MONT. CODE ANN. § 16-11-111 (2005).

Use of Cigarette Tax Revenue - Summary

Cigarette tax revenue is dedicated to several purposes, including 44 percent to a state special revenue fund to the credit of the Health and Medicaid Initiatives Account, as well a portion going to the state general fund.

MONT. CODE ANN. § 16-11-119 (2011).

Use of Cigarette Tax Revenue - Detailed Information

Cigarette tax revenue is distributed as follows: 8.3 percent or \$2 million, whichever is greater, for the operation and maintenance of state veterans' nursing homes; until June 20, 2015, 1.2 percent for the construction of a state veterans' home in southwestern Montana; 2.6 percent to the Long-Range Building Program Account; 44 percent to the state special revenue fund to the credit of the Health and Medicaid Initiatives Account; and the remainder to the general fund. The Health and Medicaid Initiatives Account is intended to provide revenue for an increase in enrollment in the state children's health insurance program; a new need-based prescription drug program; increased Medicaid services and Medicaid provider rates; and fund new tax credits or programs to assist small businesses in providing health insurance for their employees.

MONT. CODE ANN. § 16-11-119 (2011).

Taxes on Other Tobacco Products

Moist snuff: 85 cents/oz. and a proportionate rate on all fractional parts of an ounce;

All other tobacco products: 50% of the wholesale price.

MONT. CODE ANN. § 16-11-111 (2005).

Use of Other Tobacco Products Tax Revenue - Summary

The revenue from the taxes on tobacco products other than cigarettes is distributed as follows: 50 percent to the general

fund and 50 percent to the state special revenue fund to the credit of the Health and Medicaid Initiatives Account.

MONT. CODE ANN. § 16-11-119 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected in Fiscal Year 2012 (July 1, 2011 to June 30, 2012): \$76,878,000

Tobacco Control Program Funding

Source of funding

State funding for Montana's tobacco control program comes from the state's annual Master Settlement Agreement payment.

State Funding Details

Montana appropriated \$5,400,000 for tobacco prevention and cessation programs in FY2015 (July 1, 2014 to June 30, 2015). In FY2014, the same amount was appropriated. This is the second year of the FY2014-FY2015 biennium.

FY2014-FY2015 Biennial Budget (H.B. 2) enacted 5/3/13 and effective 7/1/13 (FY2014) & 7/1/14 (FY2015).

Funding for Tobacco Control Programs

FY2015 State Funding for Tobacco Control Programs: \$5,400,000

FY2015 Federal Funding for State Tobacco Control Programs: \$1,083,389*

FY2015 Total Funding for State Tobacco Control Programs: \$6,483,389

Funding Level Recommended by CDC: \$14,600,000

Percentage of CDC-Recommended Level: 44.4%

*Includes regular and supplemental quitline funding from the Centers for Disease Control and Prevention and state youth access contract funding from the U.S. Food and Drug Administration.

Laws Restricting Youth Access to Tobacco Products

Compliance/Enforcement

The Department of Public Health and Human Services shall conduct inspections of persons selling or distributing tobacco products, alternative nicotine products or vapor products to determine compliance with sections 16-11-301 et seq. of the Montana Code. Inspections may be conducted directly by the department or may be provided for by contract let by the

department. The Department of Public Health and Human Services shall provide documentation to the Department of Revenue regarding alleged violations of licensing, sales or distribution of tobacco products, alternative nicotine products or vapor products to persons under age 18 or minimum cigarette sales amounts provisions. An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for possession of, or attempt to purchase, a tobacco product, alternative nicotine product or vapor product.

MONT. CODE ANN. §§ 16-11-309 & 16-11-310 (2016).

Penalties for Sales to Minors

A person may not sell or distribute a tobacco product, alternative nicotine product or vapor product to a person under 18 years of age whether over the counter, by vending machine or otherwise. The first through third offenses at any one location within a three-year period is punishable by a verbal notification of violation. The fourth offense is punishable by a written notice of violation to be sent by the Department of Public Health and Human Services to the owner of the establishment. The fifth offense is punishable by an assessment of a tobacco education fee of \$500 against the owner of the establishment who may request a hearing to dispute the assessment. The employee or other person who sold the tobacco product alternative nicotine product or vapor product, the establishment manager, and the owner, if the owner is a sole proprietor or partner, shall read and review tobacco education material as specified. The sixth offense is punishable by a three-month license suspension, and the seventh and subsequent violations are punishable by a one-year license suspension. Upon the sixth and subsequent violations of this section, the Department of Revenue shall review the record of violations and if they decline to initiate suspension proceedings, the violation may not be charged against the licensee. Two years after the first violation, if a person has not received notice of any further violation, a second violation is considered a first violation. In addition, the first and subsequent violations are punishable by a tobacco education fee of \$25 for the employee who sold the tobacco product, alternative nicotine product and vapor product if not the owner of the establishment.

MONT. CODE ANN. §§ 16-11-305(1) & 16-11-308 (2016).

Sign Posting Requirements

Retail sellers of tobacco products, alternative nicotine products or vapor products as defined shall conspicuously display at each place on the premises where these products are displayed and sold stating: 'MONTANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE.' Failure to do so is punishable by a civil penalty of \$100.

MONT. CODE ANN. §§ 16-11-304 & 16-11-308 (2016).

Purchase/Possession of Tobacco Products by Minors

A person under 18 years of age who knowingly possesses or consumes a tobacco product, alternative nicotine product or vapor product commits the offense of possession or consumption of such product. Violators shall be fined \$50 for the first offense, between \$75 and \$100 for the second offense and between \$100 and \$250 for subsequent offenses, or may be adjudicated on a petition alleging the person to be a youth in need of supervision under the provisions of the Montana Youth Court Act. In addition, the violator may be required to perform community service or to attend a tobacco cessation program.

MONT. CODE ANN. § 45-5-637(1-3) (2016).

A person under 18 years of age who knowingly attempts to purchase a tobacco product, alternative nicotine product or vapor product commits the offense of attempting to purchase such product. Violation is subject to a fine of \$50 and possible community service for the first offense and a fine of not more than \$100 and possible community service for the second and subsequent offenses.

MONT. CODE ANN. § 45-5-637(4) (2016).

Placement of Tobacco Products

No state law/regulation.

Internet Sales of Tobacco Products

Prior to delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a statement with the Department of Revenue detailing specific information about themselves. By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products into this state during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department setting out specified information about the sale. Common carriers are also required to report certain information to the department on all shipments made in the state. MONT. CODE ANN. §§ 16-11-104 & 16-11-128 (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Youth Access Laws

Stronger local law/ordinances further restricting youth access to tobacco products are not allowed, see below.

A local government may by ordinance adopt regulations on the subjects of Montana Code 16-11-301 through 16-11-308 that are no more stringent than as outlined in those code sections.

MONT. CODE ANN. § 16-11-311 (1993).

Photo Identification Requirements to Buy Tobacco Products

If there is a reasonable doubt as to an individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual.

MONT. CODE ANN. § 16-11-305(2) (2016).

Minimum Sales Age for Tobacco Products

Tobacco Product Samples/Minimum Sales Amounts for Tobacco Products

Tobacco Product Samples

A person may not distribute a tobacco product, alternative nicotine product or vapor product as defined to a person under 18 years of age. Violations are punishable by the same penalties for over-the-counter sales of such products to persons under 18, including the tobacco education fee assessed against the person who made the sale.

MONT. CODE ANN. §§ 16-11-305(1) & 16-11-308 (2016).

Minimum Tobacco Products Sales Amounts

A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. Single cigarettes may not be sold. Penalties are the same as for selling or distributing tobacco products to minors.

MONT. CODE ANN. §§ 16-11-307(1) & 16-11-308 (2001).

The sale of cigarettes in a package containing fewer than 20 cigarettes or rolling tobacco in a package containing less than 0.6 ounces net weight of tobacco is prohibited. Violations are punishable by a civil penalty of \$100. The third violation is also subject to a license suspension for 3 months; and the fourth and subsequent violations are subject to a license suspension of 1 year.

MONT. CODE ANN. §§ 16-11-307(2) & 16-11-308 (2001).

A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards that must be on the container or individual package. Violation is subject to a fine of up to \$10,000.

MONT. CODE ANN. § 16-10-306 (1999).

State Preemption of Local Samples Laws

Stronger local law/ordinances further restricting sampling or minimum sales amounts of tobacco products are not allowed, see below.

A local government may by ordinance adopt regulations on the subjects of Montana Code 16-11-301 through 16-11-308 that are no more stringent than as outlined in those code sections.

MONT. CODE ANN. § 16-11-311 (1993).

Sales of Tobacco Products from Vending Machines

Vending Machine Placement

Tobacco product, alternative nicotine product and vapor product vending machines are restricted to places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. Vending machines may be located in a restaurant if the

restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the above requirements. Tobacco products, alternative nicotine products and vapor products must be in a vending machine that contains only such products.

MONT. CODE ANN. § 16-11-306 (2016).

Penalties for Vending Machine Violations

No specific penalty given for violating restrictions on placement of tobacco product vending machines.

Sign Posting Requirements for Vending Machines

No state law/regulation

State Preemption of Local Vending Machine Laws

Stronger local law/ordinances further restricting the placement of and/or required sign posting on tobacco product vending machines are not allowed, see below.

A local government may by ordinance adopt regulations on the subjects of Montana Code 16-11-301 through 16-11-308 that are no more stringent than as outlined in those code sections.

MONT. CODE ANN. § 16-11-311 (1993).

Licensing Requirements for Tobacco Products

Overall Summary of Licensing Requirements

A person may not sell tobacco products, alternative nicotine products or vapor products at retail, including from vending machines without obtaining a license from the Department of Revenue. Failure to obtain a license is subject to a civil penalty of \$100.

MONT. CODE ANN. §§ 16-11-303 & 16-11-308 (2016).

Wholesalers and retailers must obtain a license to sell tobacco products from the Department of Revenue. A person who operates 10 or more cigarette vending machines on premises or locations not his own is treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines on premises or locations not his own is considered a retailer. A license is required for each place of business. Licenses must be renewed annually.

MONT. CODE ANN. §§ 16-11-120 & 16-11-122 (1997).

License Fees

Wholesaler license: \$50 annually;

Tobacco Product Vendors License: \$50 annually;

Retail license for tobacco products, alternative nicotine products or vapor products: \$5 annually.

MONT. CODE ANN. § 16-11-122 (2016).

License Suspension for Sales to Minors

Selling or distributing tobacco products, alternative nicotine products or vapor products to to persons under age 18 upon the sixth offense within three years is punishable by a three-month license suspension, and the seventh and subsequent violations within three years are punishable by a one-year license suspension. The Department of Revenue shall review the record of violations and if they decline to initiate suspension proceedings, the violation may not be charged against the licensee.

MONT. CODE ANN. § 16-11-308 (2016).

License Required for Retailers of Cigarettes

Yes

License Required for Retailers of Other Tobacco Products

Yes

License Required for Wholesalers/Distributors of Cigarettes

Yes

License Required for Wholesalers/Distributors of Other Tobacco Products

Yes

Smoking Protection Laws

Smoking Protection Law

An employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during non-work hours. This does not apply to use of a lawful product that affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees, or conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment; an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public. However, an employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product with stipulations. The person against whom a violation is committed may file a civil action

against an employer within one year of the alleged violation. Prior to filing a civil action, an employee shall within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action.

MONT. CODE ANN. §§ 39-2-313 & 39-2-314 (1993).

Advertising & Promotion

Advertising & Promotion

No state law/regulation.

Product Disclosure

Product Disclosure

No state law/regulation.

Divestment

Divestment

No state law/regulation.

Liability

Tobacco Industry Liability

Use of Tobacco Settlement Dollars

Use of Tobacco Settlement Dollars - Summary

Referendum C-35 passed by voters in 2000 and Statutory Initiative 146, approved by voters in 2002, govern how annual Master Settlement Agreement payments are supposed to be allocated although the legislature can override these allocations under certain circumstances. Thirty-two percent of the payments are dedicated to tobacco prevention and cessation programs.

MONT. CODE ANN. §§ 17-6-601 to 17-6-603 (2007), 17-6-606 (2007) & MT CONSTITUTION Art. XII § 4 (2000).

Use of Tobacco Settlement Dollars - Detailed Information

Statutory Initiative 146, approved by voters in November 2002, re-designated how Master Settlement Agreement payments would be spent: 32 percent is deposited in a state special revenue account and may only be used to fund state tobacco control programs; 17 percent is deposited in a state special revenue fund and is used to help fund the state Children's Health Insurance Program and programs of the Montana Comprehensive Health Association; 40 percent is dedicated to the Tobacco Trust Fund per the constitutional referendum in 2000 (see below); and the remaining 11 percent is deposited in the state general fund. These allocations will apply to MSA payments received after June 30, 2003. The legislature retained the authority to override these allocations.

MONT. CODE ANN. § 17-6-602 & 17-6-606 (2007).

Referendum C-35 was passed by the voters of Montana in November 2000 to amend Article XII of the state constitution by adding a new section Four. It directs the legislature to dedicate not less than 40 percent of settlement proceeds received on or after January 1, 2001, to a trust fund, 90 percent of the interest and income of which may be appropriated. Ten percent of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and 10 percent of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes. Appropriations of the interest, income, or principal from the trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999 providing benefits, services, or coverage of the health care needs of the people of Montana.

MONT. CODE ANN. §§ 17-6-601 to 17-6-603 (2007) & MT CONSTITUTION Art. XII § 4 (2000).

Fire Safety Standards for Cigarettes

Law Setting Fire Safety Standard for Cigarettes

To help prevent cigarette-caused fires, no cigarettes shall be sold or offered for sale in Montana or offered for sale or sold to persons located in Montana unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standards specified in section 50-65-102 Montana Code; 2) a written certification has been filed by the manufacturer with the state Fire Marshal as specified in section 50-65-103 Montana Code; and the cigarettes have been marked as specified in section 50-65-104 Montana Code. This law shall not apply if a preemptive federal reduced cigarette ignition propensity standard is adopted and becomes effective.

MONT. CODE ANN. §§ 50-65-101 to 50-65-121 (2008).

Penalties for Fire Safety Violations

A manufacturer, wholesale dealer, agent or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above is subject to a civil penalty not to exceed \$10,000 for each sale for the first offense, and not to exceed \$25,000 for each such sale for subsequent offenses. However, the penalty shall not exceed \$100,000 in any 30-day period. A retailer that knowingly sells cigarettes in violation of the above is subject to a civil penalty not to exceed \$100 the first offense and not to exceed \$400 for subsequent offenses for each sale and offer for sale of less than 1,000 cigarettes; and a civil penalty not to exceed \$1,000 for the first offense and not to exceed \$5,000 for subsequent offenses for each sale and offer for sale of more than 1,000 cigarettes. The penalty against any one retailer may

not exceed \$25,000 in a 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty not to exceed \$75,000 for a first offense and not to exceed \$250,000 for each subsequent offense in addition to any other penalty.

MONT. CODE ANN. §§ 50-65-101 to 50-65-121 (2008).

Preemption

Summary of all Preemptive Tobacco Control Laws

Enactment of stronger local youth access laws/ordinances concerning Montana Code sections 16-11-301 to 16-11-308 are not allowed.

Activity

Recent Legislative Activity

Tobacco Control Program Funding: Appropriated \$4,700,000 for tobacco prevention and cessation programs in FY2012. FY2012-FY2013 Biennial Budget (H.B. 2) enacted 5/12/11 and effective 7/1/11 (FY2012) & 7/1/12 (FY2013).

Smokefree Air/Smoking Restrictions: Clarifies that the definition of smoking in the state smokefree workplace law applies to marijuana smoked for medicinal purposes.

H.B. 19 enacted and effective 3/16/11.

Tobacco Taxes: Extends the dedication of a small portion of cigarette tax revenue for construction of state veterans' home in southwestern Montana until June 30, 2015.

H.B. 296 enacted 5/6/11 and effective 7/1/11.