



# Legislative Library of British Columbia

---

Background Brief 2008: 01 / April 2008

## **SMOKING IN CARS WITH CHILDREN**

British Columbia is one of several jurisdictions to recently propose or pass bans against smoking in cars carrying children. The trend raises questions about similar non-smoking rules, including those in homes, and highlights concerns over health, privacy and the effectiveness of bans.

Prepared by Emily Yearwood-Lee  
Reference Librarian  
Legislative Library of British Columbia

# **LEGISLATIVE LIBRARY OF BRITISH COLUMBIA BACKGROUND PAPERS AND BRIEFS**

---

## **ABOUT THE PAPERS**

Staff of the Legislative Library prepare background papers and briefs on aspects of provincial history and public policy. All papers can be viewed on the library's website at <http://www.llbc.leg.bc.ca/>

## **SOURCES**

All sources cited in the papers are part of the library collection or available on the Internet. The Legislative Library's collection includes an estimated 300,000 print items, including a large number of BC government documents dating from colonial times to the present. The library also downloads current online BC government documents to its catalogue.

## **DISCLAIMER**

The views expressed in this paper do not necessarily represent the views of the Legislative Library or the Legislative Assembly of British Columbia. While great care is taken to ensure these papers are accurate and balanced, the Legislative Library is not responsible for errors or omissions. Papers are written using information publicly available at the time of production and the Library cannot take responsibility for the absolute accuracy of those sources. Inclusions of websites or other sources should not be taken as an endorsement of any kind.

## **CONTACT THE LIBRARY**

Legislative Library of British Columbia  
Parliament Buildings  
Victoria, BC  
V8V 1X4  
Tel: 250-387-6510  
Email: [LLBC.Ref@leg.bc.ca](mailto:LLBC.Ref@leg.bc.ca)

British Columbia is one of several jurisdictions to recently propose or pass bans against smoking in cars carrying children. The trend raises questions about similar non-smoking rules, including those in homes, and highlights concerns over health, privacy and the effectiveness of bans.

### **CAR SMOKING BANS – CANADIAN JURISDICTIONS**

Wolfville, Nova Scotia, was called the first Canadian jurisdiction to prohibit tobacco use in vehicles carrying children when the town council passed its bylaw in November 2007.<sup>1</sup> Drivers or passengers breaking the rule could be fined.<sup>2</sup> The Province of Nova Scotia followed in December when a private member's bill amended the *Smoke-free Places Act*. The change made it illegal to smoke in a vehicle when someone younger than 19 years was present, "regardless of whether any window, sunroof, cartop, door or other feature of the vehicle is open."<sup>3</sup>

Private members in both British Columbia and Ontario introduced bills in 2007 to create similar bans.<sup>4</sup> The B.C. bill did not move beyond first reading, but the government's 2008 Speech from the Throne promised "new legislation will ban smoking in vehicles when children are present."<sup>5</sup> In March 2008, the Ontario government said it would propose a new law during its spring session prohibiting smoking in cars with children.<sup>6</sup>

### **CAR SMOKING BANS – INTERNATIONAL JURISDICTIONS**

Some American states have similar laws. Louisiana and Arkansas both introduced bans in 2006.<sup>7</sup> California's law took effect Jan. 1, 2008. It attaches a \$100 fine to smoking in a vehicle with someone aged 17 years or younger.<sup>8</sup> Bangor, Maine, introduced a \$50 fine for drivers or passengers who smoke with a person younger than 18 in the vehicle.<sup>9</sup>

Certain Australian states prohibit smoking with young people in the car. South Australia introduced a ban in 2007, followed by Tasmania in 2008.<sup>10</sup> Interestingly, a recent study traced the roots of the Australian bans back to the mid-1990s. The authors called a 1995 survey of a sample of Australians one of the earliest attempts anywhere to measure public support for regulating smoking in cars carrying children.<sup>11</sup>

### **OTHER BANS ON SMOKING IN VEHICLES AND PRIVATE SPACES**

#### **Vehicles**

Smoking in vehicles used for work or by the public – such as buses and cabs – is banned in some jurisdictions. For example, the *B.C. Tobacco Control Act* includes vehicles as places where smoking is no longer allowed if it is a workplace or "fully or substantially enclosed and is a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry."<sup>12</sup> Alberta's *Tobacco Reduction Act* and the *Smoke Free Ontario Act* have similar rules.<sup>13</sup>

## **Private Spaces**

There are some instances where smoking has been banned in homes.

*Foster Care Homes:* In Alberta, smoking has not been permitted since 2006 in homes where children in foster care are housed.<sup>14</sup> Some American states, such as Maine and Washington state, have also banned smoking in foster care homes.<sup>15</sup> A report by the B.C. provincial health officer called in 2006 for a policy of non-smoking in foster homes.<sup>16</sup>

*Health Workers:* The *Smoke-Free Ontario Act* gives home health-care workers meeting legislated criteria the right to ask a person to not smoke while providing services.<sup>17</sup> “Where a person refuses to comply with the request not to smoke, the home health-care worker has the right to leave without providing any further services, unless to do so would present an immediate serious danger to the health of any person.”<sup>18</sup> The same law allows designated controlled smoking areas in residential care facilities for patients considered able to smoke safely “without assistance from an employee.”<sup>19</sup>

*Public Housing Authorities:* Recent newspaper reports suggest that a number of public housing authorities in the United States have adopted non-smoking policies.<sup>20</sup> One housing authority official quoted in an article cited concern for tenant health as a reason to introduce a smoke-free policy.<sup>21</sup>

*Private Housing:* There are also examples of private homes where non-smoking policies have been introduced. For example, one Winnipeg-based company adopted a non-smoking policy for some of its apartments in 2006.<sup>22</sup> A California city recently adopted an ordinance disallowing smoking in “individual units and their patio/yard areas of multi-unit, multi-story residences (apartments, condominiums, and townhouses) which share common floors and/or ceilings with at least one other such unit.”<sup>23</sup>

## **CAR SMOKING BANS – JUSTIFICATION**

Ban proponents argue that smoking in vehicles is harmful, particularly to children. A 2004 position paper by the Ontario Medical Association stated: “Research has shown that [second-hand smoke] can reach very high levels in vehicles.”<sup>24</sup> The paper also suggested children have higher respiratory rates and metabolisms than adults, which “makes [second-hand smoke] exposure in vehicles a serious problem for children.”<sup>25</sup> The association’s paper included a recommendation to ban tobacco use in vehicles transporting children. A 2008 Canadian Cancer Society press release referenced young passengers’ respiratory rates, along with immature immune systems, as reasons that “children are more severely affected by exposure to second-hand smoke than adults.”<sup>26</sup> The press release linked second-hand smoke to increased risk of “asthma and ear infection in children and is related to sudden infant death syndrome and respiratory health.”<sup>27</sup>

Both the OMA and Canadian Cancer Society also noted survey data which they argued showed public preference for a ban on smoking in vehicles with children present.<sup>28</sup>

Ban supporters have also argued that young children exposed to a caregiver's smoke cannot ask the person to stop smoking<sup>29</sup> and some proponents draw parallels to well-established seatbelt laws requiring passengers to buckle up.<sup>30</sup> As one person wrote in a *British Medical Journal* editorial:

“Cars are an intriguing and symbolically important interface between public and private worlds. While the interior of cars is considered by many to be a ‘private space’, the law has long regarded cars as effectively public spaces. Their occupants are subjected to legal requirements regarding seat belts, car standards, driving conduct, and mobile phone use designed to protect public safety (harm to others) and the safety of the occupants (via the benevolent paternalism inherent in seatbelt legislation).”<sup>31</sup>

### **CAR SMOKING BANS – OBJECTIONS**

Critics of a smoking ban in personal cars argue it is an invasion of privacy that could lead to regulating people's tobacco usage in their own homes.<sup>32</sup> In a letter to the Ontario premier published on her group's website, the president of MyChoice.ca wrote that she agreed with arguments that bans were “clearly being used to create a justification for imposing a law against smoking in private homes.”<sup>33</sup> A Illinois legislator opposed to a proposed ban in his state asked during debate: “Are we going to have the smoke police come to your house?”<sup>34</sup>

Others have questioned the effectiveness of the approach. A proposed ban in Illinois was labeled an “enforcement nightmare” by a member during debate.<sup>35</sup> Similarly, a New South Wales legislator in 1999 predicted a ban on smoking in a car with someone under the age of 18 “was likely to be extremely difficult” and questioned how police would ascertain the age of teenaged passengers in a car.<sup>36</sup> This concern was echoed by a lobbyist for a police organization in the days before California's law was passed. “While we support the concept because we're concerned about things that are cancer-producing, it's almost impossible to enforce,” the lobbyist was quoted as saying in a newspaper report.<sup>37</sup>

The same New South Wales legislator cited above suggested a long-term educational strategy would likely be more significant in reducing young people's exposure to environmental tobacco smoke. “Rather than focusing on one environment in which a child may be exposed to environmental tobacco smoke, such campaigns, in conjunction with campaigns to encourage adults to quit, take a broad approach to the problem and, consequently, will lead to more significant improvements in the health of young people.”<sup>38</sup>

---

<sup>1</sup> “N.S. town bans smoking in car if child is onboard; Historic Bylaw,” *National Post*, Nov. 20, 2007, p. A6; Melanie Patten, “N.S. town bans smoking in vehicles carrying children; Health First bylaw of its kind in Canada,” *Telegraph-Journal*, Nov. 20, 2007, p. A3; *Smoke Free Vehicles By-Law*, Town of Wolfville [Nova Scotia] Bylaws and Regulations, Bylaw 89, <http://www.town.wolfville.ns.ca/bylaws/smokefreevehicles.pdf>

<sup>2</sup> *Smoke Free Vehicles By-Law*, Town of Wolfville [Nova Scotia] Bylaws and Regulations, Bylaw 89, Sec. 5, <http://www.town.wolfville.ns.ca/bylaws/smokefreevehicles.pdf>

<sup>3</sup> *An Act to Amend Chapter 12 of the Acts of 2002, the Smoke-free Places Act*, SNS 2007, c. 54

<http://www.gov.ns.ca/legislature/legc/PDFs/annual%20statutes/2007%20Fall/c054.pdf>; James Keller, “N.S. bans smoking in vehicles with kids; Health: Legislation expected to be enacted into law next month,” *Telegraph-Journal*,

December 14, 2007, p. A6; Charles Mandel, "Nova Scotia Bans Smoking In Car With Children; First Province," *National Post*, December 14, 2007, p. A10.

<sup>4</sup> *Smoke Free Cars Act*, British Columbia Bills 2007, Bill M232, [http://www.leg.bc.ca/38th3rd/1st\\_read/m232-1.htm](http://www.leg.bc.ca/38th3rd/1st_read/m232-1.htm); *Protecting Children and Youth from Second-Hand Smoke in Automobiles Act*, Ontario Bills 2007, Bill 11, [http://www.ontla.on.ca/bills/bills-files/39\\_Parliament/Session1/b011.pdf](http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b011.pdf)

<sup>5</sup> Steven L. Point, 2008, "Speech from the Throne", February 12, *Debates of the Legislative Assembly*, Fourth Session, 38<sup>th</sup> Parliament, Vol. 26 (2008). <http://www.leg.bc.ca/38th4th/4-8-38-4.htm>

<sup>6</sup> Ontario, Office of the Premier, "New law would ban smoking in cars with kids," [press release dated March 5, 2008], Ontario: The Office, 2008. <http://www.premier.gov.on.ca/news/Product.asp?ProductID=2014&Lang=EN>

<sup>7</sup> Associated Press, "Kids in car? Don't smoke or face fine – Ark. Police will use discretion in apply new secondhand law," *The Commercial Appeal*, May 1, 2006, p.B10; Jake Bleed, "Lighting up with young kids in vehicle banned under bill," *The Arkansas Democrat Gazette*, April 8, 2006, p. 1; Ed Anderson, "New state laws take effect," *Times-Picayune*, August 15, 2006, p.1; Jan Moller, "Smoking ban with kids in car signed," *Times-Picayune*, July 7, 2006, p.2.

<sup>8</sup> California, Department of Public Health, "New Smoke-Free Cars with Minors Law Protects California's Children from Secondhand Smoke in Cars" [press release dated Jan. 3, 2008], California: The Department, 2008. <http://www.cdph.ca.gov/HealthInfo/news/Pages/PH08-01.aspx>

<sup>9</sup> *Smoking in Motor Vehicles*, City of Bangor [Maine], Code of Bangor, Vehicles and Traffic, Ch. 291: 70-71. See city Code of Ordinances on City of Bangor website <http://www.bangormaine.gov>; Meg Haskell, "Council supports smoking ban in cars," *Bangor Daily News*, Jan. 9, 2007. <http://bangordailynews.com/news/t/news.aspx?articleid=144999>

<sup>10</sup> Government of South Australia, "News: Ban on children smoking in cars from May" [press release dated March 28, 2007], South Australia: The Government, 2007; Tasmania, Minister for Health and Human Services, "New vehicles for promoting smoke-free cars law," Tasmania: The Minister, 2008. <http://www.media.tas.gov.au/release.php?id=23359> ; Australian Associated Press, "*Tas: Parents butt out as car smoking bans start*," December 31, 2007.

<sup>11</sup> Becky Freeman, Simon Chapman, Philip Storey, "Banning smoking in cars carrying children: an analytical history of a public health advocacy campaign," *Australian and New Zealand Journal of Public Health* 32, Issue 1, February 2008, p. 60-65. <http://www.blackwell-synergy.com/doi/pdf/10.1111/j.1753-6405.2008.00167.x>

<sup>12</sup> *Tobacco Sales (Banning Tobacco and Smoking in Public Places and Schools) Amendment Act*, British Columbia Bills 2007, Bill 10 – Third Reading [http://www.leg.bc.ca/38th3rd/3rd\\_read/gov10-3.htm](http://www.leg.bc.ca/38th3rd/3rd_read/gov10-3.htm)

<sup>13</sup> *Tobacco Reduction Act*, S.A. 2005, c. T-3.8. <http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=Search+all+CanLII+Databases&path=/ab/laws/sta/t-3.8/20080314/whole.html>; Peter Green, "Smoking ban angers truckers; Cabs must be smoke-free," *Calgary Herald*, January 12, 2008, p. A1; *Smoke-Free Ontario Act* S.O. 1994, ch. 10 [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_94t10\\_e.htm#BK16](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_94t10_e.htm#BK16); Ontario, Ministry of Health Promotion, "Smoke Free Ontario Act: How the Act Affects Enclosed Public Spaces," Toronto: The Ministry, 2007; Ontario, Ministry of Health Promotion, "Smoke-Free Ontario Act: How the Act Affects Employers and Employees," Toronto: The Ministry, 2007.

<sup>14</sup> Alberta, Alberta Children's Services, "10.24: Children and Exposure to Second-Hand Smoke," *Enhancement Act Policy Manual, Revised March 2007*, Edmonton: Alberta Children's Services, 2007, p. 1 of 2. [http://www.child.alberta.ca/home/documents/ministry/Enhancement\\_Act\\_Policy\\_Manual\\_Mar\\_071.pdf](http://www.child.alberta.ca/home/documents/ministry/Enhancement_Act_Policy_Manual_Mar_071.pdf)

<sup>15</sup> Maine, Department of Health and Human Services, *Summary: Maine Laws and Rules Related to Secondhand Smoke: November 2007* [pamphlet dated November 2007], Maine: The Department, 2007.

<http://www.tobaccofreemaine.org/documents/25-128-07%20LawSummry.pdf> ; Emily Bazar, "Laws prohibit smoking around children," *USA Today*, November 28, 2006. [http://www.usatoday.com/news/health/2006-11-27-smoking-bans\\_x.htm](http://www.usatoday.com/news/health/2006-11-27-smoking-bans_x.htm)

<sup>16</sup> British Columbia, Office of the Provincial Health Officer, *Executive summary : joint special report : health and well-being of children in care in British Columbia : report 1 on health services utilization and mortality*, Victoria: The Office, 2006, p. iv. <http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/405623/ExSumm.pdf>

<sup>17</sup> For criteria, see section 9.1.5 of *Smoke Free Ontario Act*, S.O. 1994 Ch. 10. [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_94t10\\_e.htm#BK16](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_94t10_e.htm#BK16)

<sup>18</sup> *Smoke Free Ontario Act*, S.O. 1994 Ch. 10, Sec. 9.1.2. [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_94t10\\_e.htm#BK16](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_94t10_e.htm#BK16)

<sup>19</sup> *Smoke Free Ontario Act*, S.O. 1994 Ch. 10, Sec. 7. [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_94t10\\_e.htm#BK16](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_94t10_e.htm#BK16)

<sup>20</sup> Emily Bazar, "Public housing kicks smoking habit," *USA Today*, April 4, 2007, p. 3a; Staci Semrad, "A new arena in the fight over smoking: home," *New York Times*, November 5, 2007.

[http://www.nytimes.com/2007/11/05/us/05smoke.html?\\_r=1&scp=1&sq=smoking+public+housing&st=nyt&oref=slog in](http://www.nytimes.com/2007/11/05/us/05smoke.html?_r=1&scp=1&sq=smoking+public+housing&st=nyt&oref=slog in);

<sup>21</sup> Emily Bazar, "Public housing kicks smoking habit," *USA Today*, April 4, 2007.

<sup>22</sup> "Rental agency backed in ban on smoking in apartments," *Winnipeg Free Press*, Feb. 24, 2007, pB2; David Square, "Winnipeg apartment rental agency stirs debate with smoking ban," *Medical Post*, Oct. 24, 2006, p. 41.

- 
- <sup>23</sup> City of Belmont [California], "Smoking ordinance becomes effective Friday" [press release dated November 8, 2007], Belmont: The City, 2007. [http://www.belmont.gov/SubContent.asp?CatId=240001678&C\\_ID=240002718](http://www.belmont.gov/SubContent.asp?CatId=240001678&C_ID=240002718); Douglas Morino, "Smoking ban gets mixed response," *Oakland Tribune*, November 10, 2007; Steve Rubenstein, "Divided council approves strict new smoking law," *San Francisco Chronicle*, October 11, 2007, p. B1.
- <sup>24</sup> Ontario Medical Association, *Exposure to Second-Hand Smoke: Are We Protecting Our Kids: A Position Paper by the Ontario Medical Association*, [Toronto]: [The Association], 2004, p. 6.
- <sup>25</sup> Ontario Medical Association, *Exposure to Second-Hand Smoke: Are We Protecting Our Kids: A Position Paper by the Ontario Medical Association*, [Toronto]: [The Association], 2004, p. 6.
- <sup>26</sup> Canadian Cancer Society, "Overwhelming majority of Canadians support ban on smoking in cars with kids," [press release dated January 16, 2008], Toronto: The Association, 2008.
- <sup>27</sup> Canadian Cancer Society, "Overwhelming majority of Canadians support ban on smoking in cars with kids," [press release dated January 16, 2008], Toronto: The Association, 2008.
- <sup>28</sup> Canadian Cancer Society, "Overwhelming majority of Canadians support ban on smoking in cars with kids," [press release dated January 16, 2008], Toronto: The Association, 2008; Ontario Medical Association, *Exposure to Second-Hand Smoke: Are We Protecting Our Kids: A Position Paper by the Ontario Medical Association*, [Toronto]: [The Association], p. 6.
- <sup>29</sup> Lee Greenberg, "McGuinty nixes curb on smoking in cars," *The Windsor Star*, Feb. 8, 2007, p. B1.
- <sup>30</sup> Lee Greenberg, "McGuinty nixes curb on smoking in cars," *The Windsor Star*, Feb. 8, 2007, p. B1; Chinta Puxley, "Banning smoking in cars with kids gains momentum," *The Canadian Press*, December 6, 2007.
- <sup>31</sup> Simon Chapman, "Editorials: The future of smoke-free legislation," *British Medical Journal* 335, 2007, p. 521-22.
- <sup>32</sup> Janine DeFao, "Proposed car-smoking ban angers foes of 'nanny' laws," *San Francisco Chronicle*, March 26, 2007, p.A1; MyChoice.ca, "MyCoice.ca open letter to Premier Dalton McGuinty," [press release dated March 5, 2008], [Ottawa]: MyChoice.ca, 2008; "Against an in-car ban," [Editorial], *Globe and Mail*, February 26, 2008.
- <sup>33</sup> MyChoice.ca, "MyCoice.ca open letter to Premier Dalton McGuinty," [press release dated March 5, 2008]
- <sup>34</sup> Representative Black, 2007, "House Bill 1769, a Bill for an Act concerning Transportation," State of Illinois 95<sup>th</sup> General Assembly House of Representative Transcription Debate, March 29, 2007. <http://www.ilga.gov/house/transcripts/htrans95/09500033.pdf>
- <sup>35</sup> Representative Black, 2007, "House Bill 1769, a Bill for an Act concerning Transportation," State of Illinois 95<sup>th</sup> General Assembly House of Representative Transcription Debate, March 29, 2007. <http://www.ilga.gov/house/transcripts/htrans95/09500033.pdf>
- <sup>36</sup> Hon. Janelle Saffin, 1999, *Public Health Amendment (Smoking in Vehicles) Bill*, October 14, 1999, [Hansard] (1999). <http://www.parliament.nsw.gov.au/prod/parlment/hanstrans.nsf/V3ByKey/LC19991014>
- <sup>37</sup> Janine DeFao, "Proposed car-smoking ban angers foes of 'nanny' laws," *San Francisco Chronicle*, March 26, 2007, p.A1.
- <sup>38</sup> Hon. Janelle Saffin, 1999, *Public Health Amendment (Smoking in Vehicles) Bill*, October 14, 1999, [Hansard] (1999). <http://www.parliament.nsw.gov.au/prod/parlment/hanstrans.nsf/V3ByKey/LC19991014>