

Protecting West Virginians from Secondhand Smoke through Regulation at the Local Level

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Abstract

West Virginia's communities have made substantial progress in protecting citizens from secondhand smoke exposure (SHS) through adoption of local regulations through county boards of health. The EPA and the U.S. Surgeon General have confirmed exposure to SHS causes serious disease and death in nonsmoking adults and children. The Centers for Disease Control and Prevention recommends enactment of federal, state and local policies to reduce exposure among nonsmokers and to reduce smoking prevalence. West Virginia's local boards of health have regulated smoking in workplaces and public spaces since 1992 and their authority to do so has been affirmed in state courts. Early smoke free regulations covered primarily non-hospitality workplaces. Mounting evidence of the public health risk of SHS exposure accelerated local efforts to prohibit smoking in all workplaces

and public establishments. Every West Virginia county has adopted a smoke free regulation, though levels of protection vary. Forty-seven counties comprising 90.2% of the population, prohibit smoking in non-hospitality workplaces and restaurants. Twenty-six counties, (52% of the population), prohibit smoking in all workplaces, including restaurants, bars and gaming establishments. In the presence of strong smoking bans, the state has observed a decline in hospital admissions for acute coronary syndrome, a reduction in smoking prevalence among youth, and changes in beliefs and behaviors regarding secondhand smoke among adults. To build on West Virginia's success in this area of public health, increased state and community efforts are needed to strengthen and maintain existing smoke free policies.

Introduction

Cigarette smoking was recognized as a serious health hazard more than fifty years ago and is the major cause of preventable disease, disability and death in the U.S. today.¹ Secondhand smoke causes serious health effects to those who inhale it in homes, workplaces and public places. The human and economic toll of smoking on communities in West Virginia is enormous.²

In 1992, a key Environmental Protection Agency (EPA) report, *Respiratory Health Effects of*

*Passive Smoking*³ was released, confirming the gravity of the public health risk of exposure to secondhand tobacco smoke. This report and growing public awareness prompted many communities to enact laws restricting smoking in workplaces and public areas. The 2006 report of the Surgeon General, *The Health Consequences of Involuntary Exposure to Tobacco Smoke* (2006 SGR), confirmed that exposure to secondhand tobacco smoke causes serious disease and death in nonsmoking adults and children, attributing nearly 50,000 adult deaths in the United States to secondhand smoke exposure.¹ Both reports have guided regulatory authorities in West Virginia and worldwide in crafting progressively stronger policies to protect the public from involuntary exposure to secondhand smoke.

Among the specific conclusions reached in the 2006 SGR were:

Exposure to secondhand smoke causes heart disease and lung cancer in nonsmoking adults and sudden infant death syndrome, acute respiratory infections, middle ear disease, exacerbated asthma, respiratory symptoms, and decreased lung function in children;

No risk-free level of secondhand smoke exposure exists;

Objectives

This manuscript seeks to describe West Virginia's progress in protecting public health through enactment of local laws restricting smoking in public places and workplaces. The objectives of the article are to:

- 1) Briefly review public health risks caused by secondhand smoke exposure and the justification for regulating smoking in public areas and workplaces.*
- 2) Summarize of the types of smoke free laws present in the U.S. and in West Virginia.*
- 3) Explain the role of county boards of health in regulating indoor air quality in West Virginia.*
- 4) Provide a brief history of the growth of local smoke free laws in West Virginia.*
- 5) Describe changes in perceptions, attitudes and behaviors among West Virginians that have occurred concurrently with the implementation of smoke free laws.*

The only way to fully protect nonsmokers is to eliminate smoking in indoor spaces, including workplaces, public places such as restaurants and bars, and private places including homes and vehicles; through smoke-free laws and policies and through decreased smoking prevalence.¹

Since 1993, the United States Department of Health and Human Service, has included exposure to environmental tobacco smoke as an external cause of injury in the *International Classification of Diseases (ICD-9-CM)*.⁴

According to the Centers for Disease Control and Prevention (CDC), smoke free policies greatly reduce exposure to secondhand smoke in workplaces and public places, as well as the adverse health events associated with exposure. Particularly striking is a significant decline in acute coronary syndrome hospitalizations among nonsmokers following the adoption

of smoke free laws in communities worldwide.⁵ Furthermore, workplace smoking restriction policies reduce the prevalence of smoking among working adults.⁶ Banning smoking in public areas deters youth from initiating smoking by reducing its acceptance as a social norm.⁷ The CDC recommends enactment of comprehensive smoke free policies as a *Healthy People 2020* objective.⁸

While thirty-six states currently have statewide laws prohibiting smoking in many workplaces, the level of protection varies from coverage of non-hospitality work environments only, to progressive levels of coverage such as restaurants, bars and/or gambling venues. Twenty-four states have adopted comprehensive laws that prohibit smoking in all enclosed workplaces and public establishments. Currently, nearly four thousand communities in the United States have local laws in effect that restrict smoking.⁹ Many states that have passed strong smoke free laws have done so only

after numerous successful policies were implemented at the local level.¹

Emphasis on Local Smoke Free Regulations

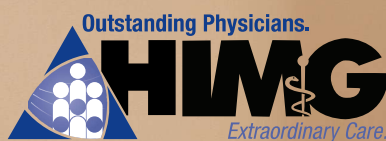
West Virginia's public health advocates have primarily sought the adoption of local smoke free regulations through county boards of health as a means to protect nonsmokers from secondhand smoke. While not immune from tobacco industry influence,¹⁰ appointed boards of health, such as those in West Virginia, are intended to be able to pass health regulations without the political pressures that influence legislators.¹¹ Local smoke free policies often provide higher levels of protection than state laws and are more easily adapted to meet the needs of local communities. Compliance monitoring can be managed within existing health department inspection protocols. In West Virginia, the authority of local boards of health to regulate indoor air quality has been repeatedly affirmed within the state's judicial system.^{12 14}

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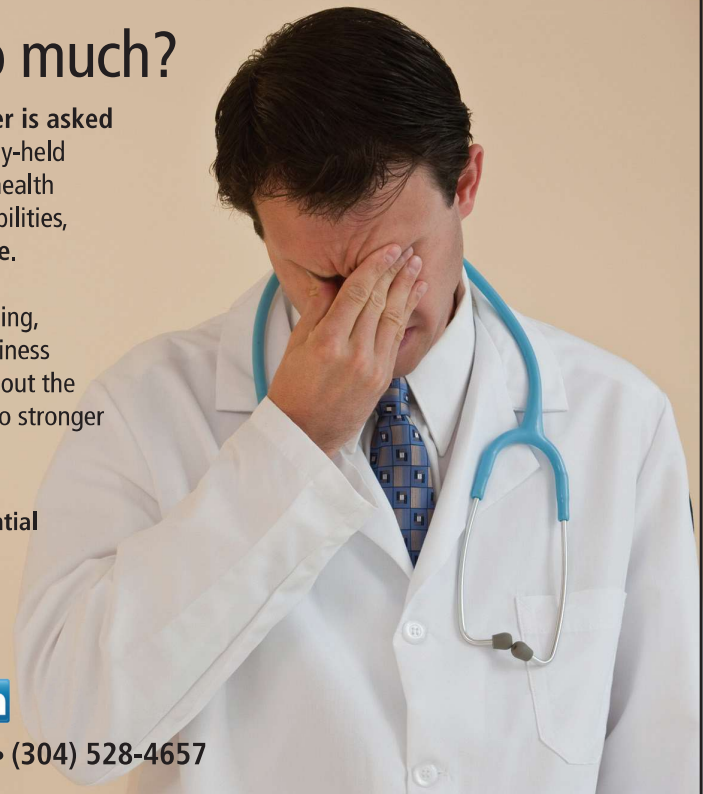
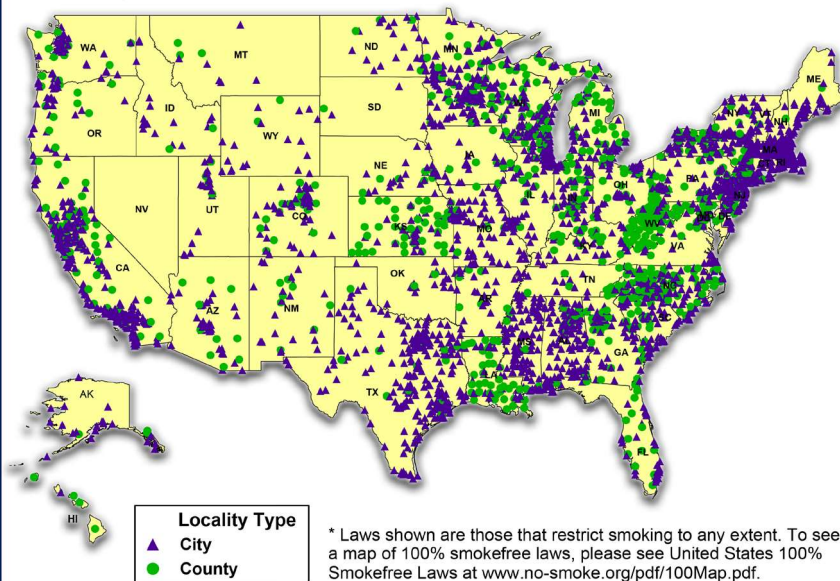


Figure 1: The Power of Local Control: Smoking Control Laws*

April 1, 2014

As of 04/01/2014

Note: Some laws shown are not yet in effect. American Indian and Alaska Native sovereign tribal laws are not reflected on this map.



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Advocates also support county health board policies due to concerns that regulation of smoking through legislation might result in a state law with weaker provisions; or language preempting local health authorities from passing or maintaining stronger local laws. In the area of smoke free policy, the CDC defines preemption as a statute or judicial opinion that prevents local jurisdictions from enacting smoking restrictions that would differ from state law.¹³ For example, a state might enact preemptive legislation prohibiting smoking in government work sites and restaurants, but exempt bars. Such a law would prohibit local communities from adopting more restrictive policies to protect bar employees and patrons. Historically, preemptive language in state laws addressing tobacco use has been introduced by tobacco industry interests in order to block community efforts to reduce tobacco use.¹¹⁰ In the field of tobacco control, there is broad consensus that preemption inhibits

efforts to protect the public from tobacco related death and disease. For this reason, a *Healthy People 2020* objective calls for eliminating state laws that preempt any type of local tobacco control law.⁸ Thirteen of the thirty-six states that have passed laws restricting smoking included partial or full preemptive language.¹⁴

As a result of the enactment of local smoke free regulations, involuntary exposure to secondhand smoke in workplaces and enclosed public spaces has declined steadily in West Virginia since 1990. That year, the Morgantown City Council, followed by the Monongalia County Board of Health, passed the state's first laws restricting smoking. The new laws placed limits on smoking in non-hospitality workplaces and restaurants. The Hampshire County Board of Health passed the state's first regulation to prohibit smoking in restaurants in 1994. The same year, the West Virginia Attorney General issued an opinion supporting the authority of local boards of health to "promulgate regulations restricting

smoking in all public places,¹² spurring a flurry of WV communities to restrict smoking in workplaces and public places. West Virginia emerged as a national leader in the adoption of local smoke free regulations.

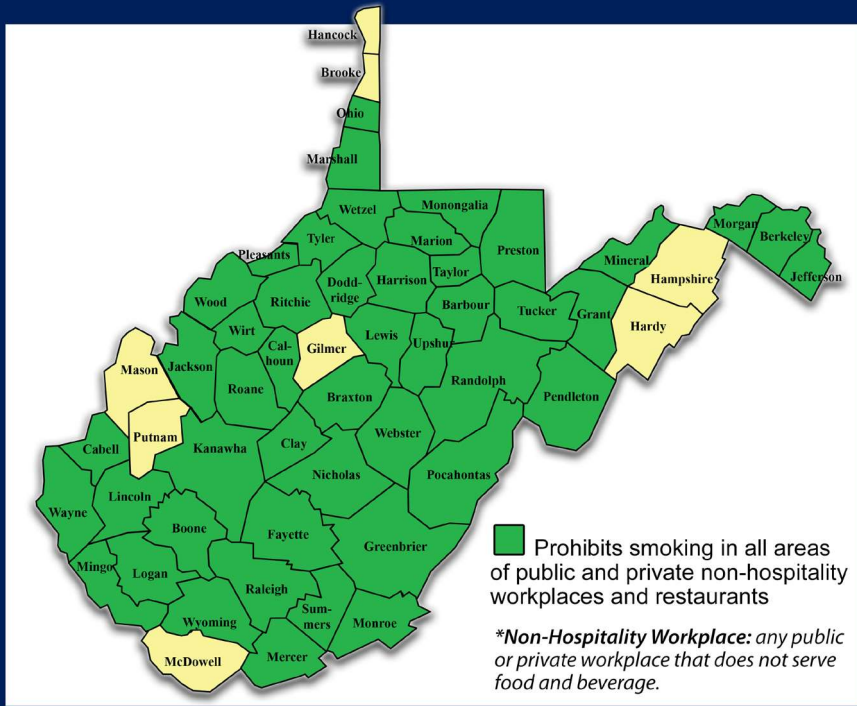
By 1995, local boards of health in sixteen of West Virginia's fifty-five counties had regulated smoking in worksites and public places. While these first generation regulations did not eliminate smoking in all workplaces, typically exempting or providing weak regulations for hospitality establishments, they laid a strong precedent for local boards of health to regulate smoking. This foundation was essential for the later growth in comprehensive regulations which prohibit smoking in all enclosed workplaces and public spaces, including restaurants and bars.

After West Virginia's Mid-Ohio Valley Health Department withstood a 1996 legal challenge to the board's authority to regulate smoking in public places,¹² a number of county boards of health expressed interest in upgrading regulations to cover more public areas. Several boards of health and their health department staff requested assistance in the writing, implementation and enforcement of smoke free policies. In response, the West Virginia Tobacco Prevention Program (TPP) funded the Smoke-free Initiative of West Virginia (SFIWV) to provide direct technical assistance to health departments and other entities interested in enacting smoke free policies to protect public health. In 1998, West Virginia's local boards of health were recognized by the American Nonsmokers' Rights Foundation for adoption of the highest number of local smoke free regulations during that year. Seven additional regulations had been passed, bringing the total to thirty West Virginia Counties covered by a smoke free regulation.

The number of regulations steadily grew. By 2002, forty-four counties had enacted some type of regulation limiting smoking primarily in non-hospitality venues. Legal cases filed against some county health departments resulted in action by the West Virginia Supreme

Figure 2: WV Counties (47) Prohibiting Smoking in Non-Hospitality* Workplaces and Restaurants

June 2014



Court of Appeals. In 2003, the court upheld the authority of local boards of health to develop and implement regulations restricting smoking in public places.¹⁵ This fueled growth in the number of county boards of health adopting regulations and strengthening levels of protection in existing laws to cover hospitality establishments.

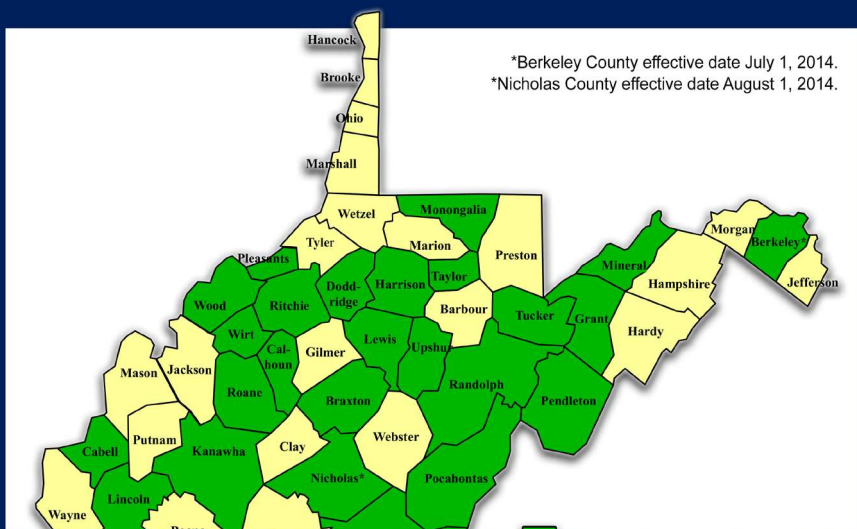
As numerous studies were released confirming the gravity of the public health risk of exposure to secondhand smoke, an emerging nationwide trend of prohibiting smoking in all enclosed workplaces and public areas gained ground. In 2002, the boards of health in Lincoln and Tucker Counties adopted the first comprehensive regulations in West Virginia, eliminating smoking in all workplaces, including restaurants and bars.

In 2003, West Virginia's Tobacco Prevention Program, now known as the Division of Tobacco Prevention (DTP) established a Regional Tobacco Prevention Network, by providing funding to establish ten regional coordinators throughout the state. The coordinators were charged with developing local grassroots coalitions dedicated to public health education, tobacco prevention and the pursuit of adoption or improvement of existing smoking regulations. A key objective of the program was to expand the adoption of highly protective regulations similar to those in Lincoln and Tucker Counties. The regional approach led to greater engagement in tobacco prevention efforts at the community level and helped to support local boards of health in adopting smoke free policies. The West Virginia Prevention Research Center located at West Virginia University provided evaluation services and guidance on the CDC's recommended practices for state tobacco control programs.

The release of the 2006 report of the Surgeon General, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, led to an acceleration of state and local efforts to ban smoking in bars and restaurants. By 2007, the number of West Virginia counties adopting comprehensive smoke

Figure 3: WV Counties (26) Prohibiting Smoking in All Enclosed Work and Public Places

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free regulations had increased from two to eight. This number nearly doubled in 2008 when six counties served by the Mid-Ohio Valley Health Department adopted and implemented smoking bans covering workplaces, restaurants, and bars.

Current status, impact and trends of smoke free policies in West Virginia

Today, West Virginia is the only state in the U.S. to have adopted a regulation in each of its counties (55) prohibiting smoking at a minimum, in most non-hospitality workplaces (Figure 1). Forty-seven counties, comprising 90.2% of the state's population, prohibit smoking in all restaurants and non-hospitality venues (Figure 2). Twenty-six prohibit smoking entirely in all workplaces, including restaurants, bars and gaming establishments (Figure 3). As a result, 52% (963,000) of West Virginians now reside in the counties that provide 100% protection from secondhand smoke exposure in workplaces.¹⁶ Voluntary policies are also on the rise with over 90% of West Virginia adults reporting that smoking is not permitted indoors where they work.¹⁷

Concurrent with the growth in local smoke free policies, West Virginia has documented a significant decline (37%) in hospital admissions for acute coronary syndrome among nonsmokers in Kanawha County¹⁸ and a marked reduction in smoking prevalence among youth. According to the 2011 WV Youth Tobacco Survey, smoking prevalence declined among high school students from 38.5% to 22.4% between 2000 and 2011. Additionally, there was a 96% increase in the percentage of high school students who report they have never tried cigarettes over the same time period.¹⁹ Moreover, efforts to educate West Virginians about the hazards of secondhand smoke appear to be influencing perceptions, attitudes and behaviors. Over 90% of West Virginians report knowing that secondhand smoke is harmful to nonsmokers, 71.4% believe that smoking should never be allowed in the workplace,

and 71.7% report prohibiting smoking within their homes.¹⁶

Emerging regulatory trends by local authorities in West Virginia include strengthening existing regulations by removing exemptions for bars, video lottery establishments and bingo halls; and adopting smoke free policies for outdoor areas such as parks, sports arenas and fairgrounds.

While these gains can be considered successes for West Virginia's Tobacco Prevention Program, increased state and community efforts are needed to expand the number of comprehensive smoke free policies and to maintain those that are in place. Pressure from organized opposition groups or a simple change in the membership of a board of health can place a regulation in jeopardy. In 1995, Mercer County adopted and then repealed a regulation after organized opposition to the regulation emerged, coupled with a change in the composition of the board of health. A similar action occurred in Marion County in 2009.

Conclusion

Adoption of local smoke free policies continues to progress steadily in West Virginia with comprehensive regulations protecting over half of the state's population. However, to further this trend, it is essential that state tobacco prevention and control programs continue, that communities express their support for public areas to become smoke free and that coalitions and public health advocates remain vigilant to oppose any new efforts to weaken existing regulations or to eliminate local public health regulatory control.

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CME Post-Test

11. What is the name of at least one major report that has guided public health authorities in regulating secondhand smoke exposure?
 - a. 2006 Surgeon General Report, (*The Health Consequences of Involuntary Exposure to Tobacco Smoke*)
 - b. January 10, 2014 CDC Morbidity and Mortality Report: *Lung Cancer Incident Trends Among Men and Women*
 - c. U.S. DHHS Clinical Practice Guideline: *Treating Tobacco Use and Dependence, 2008 Update*
 - d. 1992 EPA Report, *Respiratory Health Effects of Passive Smoking*
12. Illness caused by exposure to secondhand smoke includes:
 - a. Heart disease
 - b. Lung cancer
 - c. Sudden infant death syndrome
 - d. Acute respiratory infections
 - e. All of the above
13. What government authorities have been primarily responsible for passing laws to regulate human exposure to secondhand smoke in West Virginia?
 - a. City Councils
 - b. WV County Boards of Health
 - c. WV House of Delegates
 - d. WV Senate

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