

Title 25. Public Health and Environment – Environmental Control

Article 14. Control of Smoking

**Part 2. Colorado Clean Indoor Air Act**

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**25-14-201. Short title**

This part 2 shall be known and may be cited as the "Colorado Clean Indoor Air Act".

**25-14-202. Legislative declaration**

(1) The general assembly hereby finds and determines that:

(a) It is in the best interest of the people of this state to protect the public from involuntary exposure to emissions from secondhand smoke and electronic smoking devices (ESD) in most indoor areas open to the public, in public meetings, in food service establishments, and in places of employment; and

(b) ESD emissions consist of ultrafine particles that are significantly more highly concentrated than particles within conventional tobacco smoke. There is conclusive evidence that most ESDs contain and emit not only nicotine but also many other potentially toxic substances and that ESDs increase airborne concentrations of particulate matter and nicotine in indoor environments. In addition, studies show that people exposed to ESD emissions absorb nicotine at levels comparable to the levels experienced by passive smokers. Many of the elements identified in ESD emissions are known to cause respiratory distress and disease, and ESD exposure damages lung tissues. For example, human lung cells that are exposed to ESD aerosol and flavorings show increased oxidative stress and inflammatory responses.

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(2) Therefore, the general assembly hereby declares that the purpose of this part 2 is to preserve and improve the health, comfort, and environment of the people of this state by protecting the right of people to breathe clean, smoke-free air. Nothing in this part 2 is intended to inhibit a person's ability to take medicine using an inhaler or similar device, nor to prevent an employer or business owner from making reasonable accommodation for the medical needs of an employee, customer, or other person in accordance with the federal "Americans With Disabilities Act of 1990", as amended, 42 U.S.C. sec. 12101 et seq.

### **25-14-203. Definitions**

As used in this part 2, unless the context otherwise requires:

(1) Repealed.

(2) "Auditorium" means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

(3) "Bar" means any indoor area that is operated and licensed under article 3 of title 44, primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such alcohol beverages.

(4) "Cigar-tobacco bar" means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.

(4.5) "Electronic smoking device" or "ESD":

(a) Means any product, other than a product described in subsection (4.5)(c) of this section, that contains or delivers nicotine or any other substance intended for human consumption and that can be used by a person to enable the inhalation of vapor or aerosol from the product;

(b) Includes any product described in subsection (4.5)(a) of this section and any similar product or device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor; and

(c) Does not include:

(I) A humidifier or similar device that emits only water vapor; or

(II) An inhaler, nebulizer, or vaporizer that is approved by the federal food and drug administration for the delivery of medication.

(5) (a) "Employee" means any person who:

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(I) Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or

(II) Provides uncompensated work or services to a business or nonprofit entity.

(b) "Employee" includes every person described in paragraph (a) of this subsection (5), regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

(6) "Employer" means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. "Employer" includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.

(7) "Entryway" means the outside of the front or main doorway leading into a building or facility that is not exempted from this part 2 under section 25-14-205. "Entryway" also includes the area of public or private property within a specified radius outside of the doorway. The specified radius may be determined by the local authority pursuant to section 25-14-207 (2)(a), but must be at least twenty-five feet unless section 25-14-207 (2)(a)(II)(B) or (2)(a)(II)(C) applies. If the local authority has not acted, the specified radius is twenty-five feet.

(8) "Environmental tobacco smoke", "ETS", or "secondhand smoke" means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as "sidestream smoke", and smoke exhaled by the smoker.

(9) "Food service establishment" means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

(10) "Indoor area" means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

(11) "Local authority" means a county, city and county, city, or town.

(11.5) "Marijuana" shall have the same meaning as in section 16 (2)(f) of article XVIII of the state constitution.

(12) "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

(13) "Public building" means any building owned or operated by:

(a) The state, including the legislative, executive, and judicial branches of state government;

(b) Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or

(c) Any other separate corporate instrumentality or unit of state or local government.

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(14) "Public meeting" means any meeting open to the public pursuant to part 4 of article 6 of title 24, C.R.S., or any other law of this state.

(15) "Smoke-free work area" means an indoor area in a place of employment where smoking is prohibited under this part 2.

(16) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an ESD.

(17) "Tobacco" means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. "Tobacco" also includes cloves and any other plant matter or product that is packaged for smoking.

(18) "Tobacco business" means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, including ESDs, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

(19) "Work area" means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

### **25-14-204. General smoking restrictions**

(1) Except as provided in section 25-14-205, smoking is not permitted and a person shall not smoke in any indoor area, including:

- (a) Public meeting places;
- (b) Elevators;
- (c) Government-owned or -operated means of mass transportation, including, but not limited to, buses, vans, and trains;
- (d) Taxicabs and limousines;
- (e) Grocery stores;
- (f) Gymnasiums;
- (g) Jury waiting and deliberation rooms;
- (h) Courtrooms;

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(i) Child day care facilities;

(j) Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;

(k)

(I) Any place of employment that is not exempted, whether or not open to the public and regardless of the number of employees.

(II) In the case of employers who own facilities otherwise exempted from this part 2, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe secondhand smoke and emissions from electronic smoking devices.

(l) Food service establishments;

(m) Bars;

(n) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;

(o) Indoor sports arenas;

(p) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;

(q) Repealed.

(r) Bowling alleys;

(s) Billiard or pool halls;

(t) Facilities in which games of chance are conducted;

(u)

(I) The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, but not including any resident's private residential quarters.

(II) Nothing in this part 2 affects the validity or enforceability of a contract, whether entered into before, on, or after July 1, 2006, that specifies that a part or all of a facility or home specified in this paragraph (u) is a smoke-free area.

(v) Public buildings;

(w) Auditoria;

(x) Theaters;

(y) Museums;



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(z) Libraries;

(aa) To the extent not otherwise provided in section 25-14-103.5, public and nonpublic schools;

(bb) Other educational and vocational institutions;

(cc) Airports;

(dd) Hotel and motel rooms;

(ee) Assisted living facilities, including nursing facilities as defined in section 25.5-4-103 and assisted living residences as defined in section 25-27-102; and

(ff) The entryways of all buildings and facilities listed in subsections (1)(a) to (1)(ee) of this section.

(2) A cigar-tobacco bar:

(a) Shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005; and

(b) Shall prohibit entry by any person under twenty-one years of age and shall display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Persons under twenty-one years of age may not enter."

(3) A retail tobacco business:

(a) Shall prohibit entry by any person under twenty-one years of age; and

(b) Shall display signage in at least one conspicuous place and at least four inches by six inches in size stating either:

(I) "Smoking allowed. Persons under twenty-one years of age may not enter."; or

(II) In the case of a retail tobacco business that desires to allow the use of ESDs but not other forms of smoking on the premises, "Vaping allowed. Persons under twenty-one years of age may not enter."

### **25-14-205. Exceptions to smoking restrictions**

(1) This part 2 does not apply to:

(a) Private homes, private residences, and private automobiles; except that this part 2 shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(b) Limousines under private hire;

(c) Repealed.

(d) Any retail tobacco business; except that the requirements in section 25-14-204 (3) and any related penalties apply to a retail tobacco business;

(e) A cigar-tobacco bar;

(f) Repealed.

(g) The outdoor area of any business;

(h) Repealed.

(i) A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, that has annual gross income of less than five hundred thousand dollars; or

(j) and (k) Repealed.

(l) If authorized by local ordinance, license, or regulation, the licensed premises of a marijuana hospitality business licensed pursuant to section 44-10-609 or a retail marijuana hospitality and sales business licensed pursuant to section 44-10-610; except that this exception only applies to the smoking of marijuana and does not allow the smoking of tobacco within such premises.

**25-14-206. Optional prohibitions**

(1) The owner or manager of any place otherwise exempted under section 25-14-205 may post signs prohibiting smoking. Such posting shall have the effect of including such place in the places where smoking is prohibited or restricted pursuant to this part 2.

(2) Repealed.

**25-14-207. Other applicable regulations of smoking - local counterpart regulations authorized**

(1) This part 2 shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law.

(2) (a) (I) A local authority may, pursuant to article 16 of title 31, a municipal home rule charter, or article 15 of title 30, enact, adopt, and enforce smoking regulations that cover the same subject matter as the various provisions of this part 2; except that, unless otherwise authorized under subsection (2)(a)(II)(B) or (2)(a)(II)(C) of this section, a local authority may not adopt a local regulation of smoking that is less stringent than the provisions of this part 2.

(II) (A) A local authority is specifically authorized to specify a radius of more than twenty-five feet for the area included within an entryway.

(B) A local regulation that was adopted by a local authority before January 1, 2019, and that specifies a radius of less than twenty-five feet for the area included within an entryway remains valid and must be given effect after July 1, 2019.

(C) If a person owns or leases business premises that were under construction or renovation on July 1, 2019, and that complied with a local regulation of smoking that specified a radius of less than twenty-five feet for the area included within an entryway, and, as of July 1, 2019, has applied for or received from the

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municipality, city and county, or county in which the premises are located, a certificate of occupancy for the structure to be used for the business premises, the person is deemed in compliance with all local regulations specifying the radius of the area included within an entryway.

(b) The municipal courts or their equivalent in any city, city and county, or town have jurisdiction over violations of smoking regulations enacted by any city, city and county, or town under this section.

### **25-14-208. Unlawful acts - penalty - disposition of fines and surcharges**

(1) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises subject to this part 2 to violate any provision of this part 2.

(2) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this part 2.

(3) Except as otherwise provided in section 25-14-208.5, a person who violates this part 2 is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

(4) All judges, clerks of a court of record, or other officers imposing or receiving fines collected pursuant to or as a result of a conviction of any persons for a violation of any provision of this part 2 shall transmit all such moneys so collected in the following manner:

(a) Seventy-five percent of any such fine for a violation occurring within the corporate limits of a city, town, or city and county shall be transmitted to the treasurer or chief financial officer of said city, town, or city and county, and the remaining twenty-five percent shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(b) Seventy-five percent of any fine for a violation occurring outside the corporate limits of a city or town shall be transmitted to the treasurer of the county in which the city or town is located, and the remaining twenty-five percent shall be transmitted to the state treasurer, who shall credit the same to the general fund.

### **25-14-208.5. Violations relating to signage and admission of persons under twenty-one years of age - limitation on fines**

(1) For a violation of section 25-14-204 (2) or (3), the penalty shall be as follows:

(a) A written warning for a first violation committed within a twenty-four-month period; and

(b) Fines as specified in section 25-14-208 (3) for a second or subsequent violation within a twenty-four-month period.

(2) Notwithstanding subsection (1) of this section, a fine for a violation of section 25-14-204 (2) or (3) shall not be imposed upon a retailer that can establish as an affirmative defense that, prior to the date of the violation, the retailer:

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(a) Had adopted and enforced a written policy against allowing persons under twenty-one years of age to enter the premises;

(b) Had informed the retailer's employees of the applicable laws regarding the prohibition against persons under twenty-one years of age entering or remaining in areas where smoking is permitted;

(c) Required employees to verify the age of persons on the premises by way of photographic identification; and

(d) Had established and imposed disciplinary sanctions for noncompliance.

(3) The affirmative defense established in subsection (2) of this section may be used only twice at each location within any twenty-four-month period.

### **25-14-209. Severability**

If any provision of this part 2 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this part 2 that can be given effect without the invalid provision or application, and to this end the provisions of this part 2 are declared to be severable.