

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 19-0489.01 Duane Gall x4335

HOUSE BILL 19-1076

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A BILL FOR AN ACT

101 **CONCERNING UPDATES TO THE "COLORADO CLEAN INDOOR AIR**
102 **ACT", AND, IN CONNECTION THEREWITH, REMOVING CERTAIN**
103 **EXCEPTIONS AND ADDING PROVISIONS RELEVANT TO THE USE OF**
104 **ELECTRONIC SMOKING DEVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill amends the "Colorado Clean Indoor Air Act" by:
! Adding a definition of "electronic smoking device" (ESD) to include e-cigarettes and similar devices within the scope

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
April 18, 2019

HOUSE
Amended 2nd Reading
April 17, 2019

- of the act;
- ! Citing the results of recent research on ESD emissions and their effects on human health as part of the legislative declaration;
- ! Eliminating the existing exceptions for certain places of business in which smoking may be permitted, such as airport smoking concessions, businesses with 3 or fewer employees, designated smoking rooms in hotels, and designated smoking areas in assisted living facilities; and
- ! Repealing the ability of property owners and managers to designate smoking and nonsmoking areas through the posting of signs.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 25-14-202 as
 3 follows:

4 **25-14-202. Legislative declaration.** (1) The general assembly
 5 hereby finds and determines that:

6 (a) It is in the best interest of the people of this state to protect
 7 ~~nonsmokers~~ THE PUBLIC from involuntary exposure to ~~environmental~~
 8 ~~tobacco and marijuana~~ EMISSIONS FROM SECONDHAND smoke AND
 9 ELECTRONIC SMOKING DEVICES (ESD) in most indoor areas open to the
 10 public, IN public meetings, IN food service establishments, and IN places
 11 of employment; ~~The general assembly further finds and determines that~~
 12 AND

13 (b) ~~A balance should be struck between the health concerns of~~
 14 ~~nonconsumers of tobacco products and combustible marijuana and the~~
 15 ~~need to minimize unwarranted governmental intrusion into, and~~
 16 ~~regulation of, private spheres of conduct and choice with respect to the~~
 17 ~~use or nonuse of tobacco products, and combustible marijuana in certain~~
 18 ~~designated public areas and in private places~~ ESD EMISSIONS CONSIST OF
 19 ULTRAFINE PARTICLES THAT ARE SIGNIFICANTLY MORE HIGHLY

1 CONCENTRATED THAN PARTICLES WITHIN CONVENTIONAL TOBACCO
2 SMOKE. THERE IS CONCLUSIVE EVIDENCE THAT MOST ESDS CONTAIN AND
3 EMIT NOT ONLY NICOTINE BUT ALSO MANY OTHER POTENTIALLY TOXIC
4 SUBSTANCES AND THAT ESDS INCREASE AIRBORNE CONCENTRATIONS OF
5 PARTICULATE MATTER AND NICOTINE IN INDOOR ENVIRONMENTS. IN
6 ADDITION, STUDIES SHOW THAT PEOPLE EXPOSED TO ESD EMISSIONS
7 ABSORB NICOTINE AT LEVELS COMPARABLE TO THE LEVELS EXPERIENCED
8 BY PASSIVE SMOKERS. MANY OF THE ELEMENTS IDENTIFIED IN ESD
9 EMISSIONS ARE KNOWN TO CAUSE RESPIRATORY DISTRESS AND DISEASE,
10 AND ESD EXPOSURE DAMAGES LUNG TISSUES. FOR EXAMPLE, HUMAN
11 LUNG CELLS THAT ARE EXPOSED TO ESD AEROSOL AND FLAVORINGS
12 SHOW INCREASED OXIDATIVE STRESS AND INFLAMMATORY RESPONSES.

13 (2) Therefore, the general assembly hereby declares that the
14 purpose of this part 2 is to preserve and improve the health, comfort, and
15 environment of the people of this state by ~~limiting exposure to tobacco~~
16 ~~and marijuana smoke~~ PROTECTING THE RIGHT OF PEOPLE TO BREATHE
17 CLEAN, SMOKE-FREE AIR. NOTHING IN THIS PART 2 IS INTENDED TO INHIBIT
18 A PERSON'S ABILITY TO TAKE MEDICINE USING AN INHALER OR SIMILAR
19 DEVICE, NOR TO PREVENT AN EMPLOYER OR BUSINESS OWNER FROM
20 MAKING REASONABLE ACCOMMODATION FOR THE MEDICAL NEEDS OF AN
21 EMPLOYEE, CUSTOMER, OR OTHER PERSON IN ACCORDANCE WITH THE
22 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", AS AMENDED,
23 42 U.S.C. SEC. 12101 ET SEQ.

24 **SECTION 2.** In Colorado Revised Statutes, 25-14-203, **amend**
25 **(7), (16), and (18); repeal (1); and add (4.5)** as follows:

26 **25-14-203. Definitions.** As used in this part 2, unless the context
27 otherwise requires:

1 (1) ~~"Airport smoking concession" means a bar or restaurant, or~~
2 ~~both, in a public airport with regularly scheduled domestic and~~
3 ~~international commercial passenger flights, in which bar or restaurant~~
4 ~~smoking is allowed in a fully enclosed and independently ventilated area~~
5 ~~by the terms of the concession.~~

6 (4.5) "ELECTRONIC SMOKING DEVICE" OR "ESD":

7 (a) MEANS ANY PRODUCT, OTHER THAN A PRODUCT DESCRIBED IN
8 SUBSECTION (4.5)(c) OF THIS SECTION, THAT CONTAINS OR DELIVERS
9 NICOTINE OR ANY OTHER SUBSTANCE INTENDED FOR HUMAN
10 CONSUMPTION AND THAT CAN BE USED BY A PERSON TO ENABLE THE
11 INHALATION OF VAPOR OR AEROSOL FROM THE PRODUCT; ■

12 (b) INCLUDES ANY PRODUCT DESCRIBED IN SUBSECTION (4.5)(a) OF
13 THIS SECTION AND ANY SIMILAR PRODUCT OR DEVICE, WHETHER
14 MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE,
15 E-CIGAR, E-PIPE, E-HOOKAH, OR VAPE PEN OR UNDER ANY OTHER PRODUCT
16 NAME OR DESCRIPTOR; AND

17 (c) DOES NOT INCLUDE:

18 (I) A HUMIDIFIER OR SIMILAR DEVICE THAT EMITS ONLY WATER
19 VAPOR; OR

20 (II) AN INHALER, NEBULIZER, OR VAPORIZER THAT IS APPROVED BY
21 THE FEDERAL FOOD AND DRUG ADMINISTRATION FOR THE DELIVERY OF
22 MEDICATION.

23 (7) "Entryway" means the outside of the front or main doorway
24 leading into a building or facility that is not exempted from this part 2
25 under section 25-14-205. "Entryway" also includes the area of public or
26 private property within a specified radius outside of the doorway. The
27 specified radius ~~shall~~ MAY be determined by the local authority ~~or~~

1 PURSUANT TO SECTION 25-14-207 (2)(a), BUT MUST BE AT LEAST
2 TWENTY-FIVE FEET UNLESS SECTION 25-14-207 (2)(a)(II)(B) OR
3 (2)(a)(II)(C) APPLIES. If the local authority has not acted, the specified
4 radius shall be fifteen IS TWENTY-FIVE feet.

5 (16) "Smoking" means ~~the burning of a lighted cigarette, cigar,~~
6 ~~pipe, or any other matter or substance that contains tobacco or marijuana~~
7 INHALING, EXHALING, BURNING, OR CARRYING ANY LIGHTED OR HEATED
8 CIGAR, CIGARETTE, OR PIPE OR ANY OTHER LIGHTED OR HEATED TOBACCO
9 OR PLANT PRODUCT INTENDED FOR INHALATION, INCLUDING MARIJUANA,
10 WHETHER NATURAL OR SYNTHETIC, IN ANY MANNER OR IN ANY FORM.
11 "SMOKING" ALSO INCLUDES THE USE OF AN ESD.

12 (18) "Tobacco business" means a sole proprietorship,
13 corporation, partnership, or other enterprise engaged primarily in the sale,
14 manufacture, or promotion of tobacco, tobacco products, or smoking
15 devices or accessories, INCLUDING ESDS, either at wholesale or retail, and
16 in which the sale, manufacture, or promotion of other products is merely
17 incidental.

18 **SECTION 3.** In Colorado Revised Statutes, 25-14-204, **amend**
19 (1) introductory portion, (1)(k), (1)(u)(I), (1)(bb), (1)(cc), and (2); **repeal**
20 (1)(q); and **add** (1)(dd), (1)(ee), (1)(ff), and (3) as follows:

21 **25-14-204. General smoking restrictions.** (1) Except as
22 provided in section 25-14-205, ~~and in order to reduce the levels of~~
23 ~~exposure to environmental tobacco and marijuana smoke,~~ smoking shall
24 IS not be permitted and ~~no~~ A person shall NOT smoke in any indoor area,
25 including: ~~but not limited to:~~

26 (k) (I) Any place of employment that is not exempted, WHETHER
27 OR NOT OPEN TO THE PUBLIC AND REGARDLESS OF THE NUMBER OF

1 EMPLOYEES.

2 (II) In the case of employers who own facilities otherwise
3 exempted from this part 2, each such employer shall provide a smoke-free
4 work area for each employee requesting not to have to breathe
5 ~~environmental tobacco~~ SECONDHAND smoke Every employee shall have
6 ~~a right to work in an area free of environmental tobacco smoke~~ AND
7 EMISSIONS FROM ELECTRONIC SMOKING DEVICES.

8 (q) ~~Restrooms, lobbies, hallways, and other common areas in~~
9 ~~hotels and motels, and in at least seventy-five percent of the sleeping~~
10 ~~quarters within a hotel or motel that are rented to guests;~~

11 (u) (I) The common areas of retirement facilities, publicly owned
12 housing facilities, ~~and except as specified in section 25-14-205 (1)(k),~~
13 nursing homes, ~~but not including any resident's private residential~~
14 ~~quarters. or areas of assisted living facilities specified in section~~
15 ~~25-14-205 (1)(k).~~

16 (bb) Other educational and vocational institutions; ~~and~~

17 (cc) ~~The entryways of all buildings and facilities listed in~~
18 ~~paragraphs (a) to (bb) of this subsection (1).~~ AIRPORTS;

19 (dd) HOTEL AND MOTEL ROOMS;

20 (ee) ASSISTED LIVING FACILITIES, INCLUDING NURSING FACILITIES
21 AS DEFINED IN SECTION 25.5-4-103 AND ASSISTED LIVING RESIDENCES AS
22 DEFINED IN SECTION 25-27-102; AND

23 (ff) THE ENTRYWAYS OF ALL BUILDINGS AND FACILITIES LISTED IN
24 SUBSECTIONS (1)(a) TO (1)(ee) OF THIS SECTION.

25 (2) A cigar-tobacco bar:

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

1 ~~cigar-tobacco bar~~ AND
2 (b) Shall PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS
3 OF AGE AND SHALL display signage in at least one conspicuous place and
4 at least four inches by six inches in size stating: "Smoking allowed.
5 Children under eighteen years of age ~~must be accompanied by a parent or~~
6 ~~guardian~~ MAY NOT ENTER."

7 (3) A RETAIL TOBACCO BUSINESS:
8 (a) SHALL PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN
9 YEARS OF AGE; AND

10 (b) SHALL DISPLAY SIGNAGE IN AT LEAST ONE CONSPICUOUS PLACE
11 AND AT LEAST FOUR INCHES BY SIX INCHES IN SIZE STATING EITHER:

12 (I) "SMOKING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF
13 AGE MAY NOT ENTER."; OR

14 (II) IN THE CASE OF A RETAIL TOBACCO BUSINESS THAT DESIRES TO
15 ALLOW THE USE OF ESDS BUT NOT OTHER FORMS OF SMOKING ON THE
16 PREMISES, "VAPING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE
17 MAY NOT ENTER."

18 **SECTION 4.** In Colorado Revised Statutes, 25-14-205, **amend**
19 (1) introductory portion, (1)(g), and (1)(i); and **repeal** (1)(d), (1)(f),
20 (1)(h), and (1)(k) as follows:

21 **25-14-205. Exceptions to smoking restrictions.** (1) This part 2
22 shall DOES not apply to:

23 (c) ~~A hotel or motel room rented to one or more guests if the total~~
24 ~~percentage of such hotel or motel rooms in such hotel or motel does not~~
25 ~~exceed twenty-five percent;~~

26 ~~(d) A retail tobacco business that does not sell or dispense~~
27 ~~any form of tobacco product;~~
(f) ~~An airport smoking concession;~~

- 1 (g) The outdoor area of any business; OR
- 2 (h) A place of employment that is not open to the public and that
3 is under the control of an employer that employs three or fewer
4 employees;
- 5 (i) A private, nonresidential building on a farm or ranch, as
6 defined in section 39-1-102, C.R.S., that has annual gross income of less
7 than five hundred thousand dollars. or
- 8 (k) (H) The areas of assisted living facilities:
- 9 (A) That are designated for smoking for residents;
- 10 (B) That are fully enclosed and ventilated; and
- 11 (C) To which access is restricted to the residents or their guests.
- 12 (H) As used in this paragraph (k), "assisted living facility" means
13 a nursing facility, as that term is defined in section 25.5-4-103, C.R.S.,
14 and an assisted living residence, as that term is defined in section
15 25-27-102.

16 SECTION 5. In Colorado Revised Statutes, 25-14-206, amend
17 (1); and repeal (2) as follows:

18 25-14-206. Optional prohibitions. (1) The owner or manager
19 of any place not specifically listed in section 25-14-204, including a place
20 otherwise exempted under section 25-14-205 may post signs prohibiting
21 smoking. or providing smoking and nonsmoking areas. Such posting shall
22 have the effect of including such place or the designated nonsmoking
23 portion thereof, in the places where smoking is prohibited or restricted
24 pursuant to this part 2.

25 (2) If the owner or manager of a place not specifically listed in
26 section 25-14-204, including a place otherwise exempted under section
27 25-14-205, is an employer and receives a request from an employee to

1 ~~create a smoke-free work area as contemplated by section 25-14-204~~
2 ~~(1)(k)(II), the owner or manager shall post a sign or signs in the~~
3 ~~smoke-free work area as provided in subsection (1) of this section.~~

4 **SECTION 6.** In Colorado Revised Statutes, 25-14-207, **amend**
5 (2)(a) as follows:

6 **25-14-207. Other applicable regulations of smoking - local**
7 **counterpart regulations authorized.** (2) (a) (I) A local authority may,
8 pursuant to article 16 of title 31, ~~C.R.S.~~, a municipal home rule charter,
9 or article 15 of title 30, ~~C.R.S.~~, enact, adopt, and enforce smoking
10 regulations that cover the same subject matter as the various provisions
11 of this part 2; ~~no EXCEPT THAT, UNLESS OTHERWISE AUTHORIZED UNDER~~
12 ~~SUBSECTION (2)(a)(II)(B) OR (2)(a)(II)(C) OF THIS SECTION,~~ A local
13 authority may NOT adopt ~~any~~ A local regulation of smoking that is less
14 stringent than the provisions of this part 2. ~~except that~~

15 (II) (A) A local authority ~~may~~ IS SPECIFICALLY AUTHORIZED TO
16 specify a radius of ~~less~~ MORE than ~~fifteen~~ TWENTY-FIVE feet for the area
17 included within an entryway.

18 (B) A LOCAL REGULATION THAT WAS ADOPTED BY A LOCAL
19 AUTHORITY BEFORE JANUARY 1, 2019, AND THAT SPECIFIES A RADIUS OF
20 LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN AN
21 ENTRYWAY REMAINS VALID AND MUST BE GIVEN EFFECT AFTER THE
22 EFFECTIVE DATE OF THIS SECTION, AS AMENDED.

23 (C) IF A PERSON OWNS OR LEASES BUSINESS PREMISES THAT WERE
24 UNDER CONSTRUCTION OR RENOVATION ON JULY 1, 2019, AND THAT
25 COMPLIED WITH A LOCAL REGULATION OF SMOKING THAT SPECIFIED A
26 RADIUS OF LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN
27 AN ENTRYWAY, AND, AS OF JULY 1, 2019, HAS APPLIED FOR OR RECEIVED

1 FROM THE MUNICIPALITY, CITY AND COUNTY, OR COUNTY IN WHICH THE
2 PREMISES ARE LOCATED, A CERTIFICATE OF OCCUPANCY FOR THE
3 STRUCTURE TO BE USED FOR THE BUSINESS PREMISES, THE PERSON IS
4 DEEMED IN COMPLIANCE WITH ALL LOCAL REGULATIONS SPECIFYING THE
5 RADIUS OF THE AREA INCLUDED WITHIN AN ENTRYWAY.

6 **SECTION 7.** In Colorado Revised Statutes, 25-14-208, **amend**
7 (3) as follows:

8 **25-14-208. Unlawful acts - penalty - disposition of fines and**
9 **surcharges.** (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION
10 25-14-208.5, a person who violates this part 2 is guilty of a class 2 petty
11 offense and, upon conviction thereof, shall be punished by a fine not to
12 exceed two hundred dollars for a first violation within a calendar year, a
13 fine not to exceed three hundred dollars for a second violation within a
14 calendar year, and a fine not to exceed five hundred dollars for each
15 additional violation within a calendar year. Each day of a continuing
16 violation shall be deemed a separate violation.

17 **SECTION 8.** In Colorado Revised Statutes, **add** 25-14-208.5 as
18 follows:

19 **25-14-208.5. Signage violations - limitation on fines.** (1) FOR
20 A VIOLATION OF SECTION 25-14-204 (2), THE PENALTY SHALL BE AS
21 FOLLOWS:

22 (a) A WRITTEN WARNING FOR A FIRST VIOLATION COMMITTED
23 WITHIN A TWENTY-FOUR-MONTH PERIOD; AND

24 (b) FINES AS SPECIFIED IN SECTION 25-14-208 (3) FOR A SECOND OR
25 SUBSEQUENT VIOLATION WITHIN A TWENTY-FOUR-MONTH PERIOD.

26 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, NO FINE
27 FOR A VIOLATION OF SECTION 25-14-204 (2) SHALL BE IMPOSED UPON A

1 PERSON THAT CAN ESTABLISH AS AN AFFIRMATIVE DEFENSE THAT, PRIOR
2 TO THE DATE OF THE VIOLATION, IT:

3 (a) HAD ADOPTED AND ENFORCED A WRITTEN POLICY AGAINST
4 ALLOWING PERSONS UNDER EIGHTEEN YEARS OF AGE TO ENTER THE
5 PREMISES;

6 (b) HAD INFORMED ITS EMPLOYEES OF THE APPLICABLE LAWS
7 REGARDING THE PROHIBITION OF PERSONS UNDER EIGHTEEN YEARS OF AGE
8 TO ENTER OR REMAIN IN AREAS WHERE SMOKING IS PERMITTED;

9 (c) REQUIRED EMPLOYEES TO VERIFY THE AGE OF PERSONS ON THE
10 PREMISES BY WAY OF PHOTOGRAPHIC IDENTIFICATION; AND

11 (d) HAD ESTABLISHED AND IMPOSED DISCIPLINARY SANCTIONS FOR
12 NONCOMPLIANCE.

13 (3) THE AFFIRMATIVE DEFENSE ESTABLISHED IN SUBSECTION (2)
14 OF THIS SECTION MAY BE USED ONLY TWICE AT EACH LOCATION WITHIN
15 ANY TWENTY-FOUR-MONTH PERIOD.

16 **SECTION 9.** In Colorado Revised Statutes, 30-15-401, **amend**
17 (1.5) as follows

18 **30-15-401. General regulations - definitions.** (1.5) In addition
19 to any other powers, the board of county commissioners has the power to
20 adopt a resolution or an ordinance:

21 (a) Prohibiting minors from possessing cigarettes or tobacco
22 products, as defined by section 39-28.5-101 (5); ~~C.R.S.~~ AND

23 (b) LIMITING SMOKING, AS DEFINED IN SECTION 25-14-203 (16), IN
24 ANY MANNER THAT IS NO LESS RESTRICTIVE THAN THE LIMITATIONS SET
25 FORTH IN THE "COLORADO CLEAN INDOOR AIR ACT", PART 2 OF ARTICLE
26 14 OF TITLE 25.

27 **SECTION 10. Effective date.** (1) Except as provided in

1 subsection (2) of this section, this act takes effect July 1, 2019.

2 (2) Section 25-14-204 (2) and (3), as amended and enacted,
3 respectively, in section 3 of this act, take effect October 1, 2019.

4 **SECTION 11. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.