

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

Unofficial Preamended 2.0

Contains proposed amendments HB1076_L.002, L.006, L.007, L.008, and L.009, not yet adopted

LLS NO. 19-0489.01 Duane Gall x4335

HOUSE BILL 19-1076

HOUSE SPONSORSHIP

Michaelson Jenet and Larson, Caraveo, Cutter, Jackson, Mullica

SENATE SPONSORSHIP

Priola and Donovan, Ginal

House Committees
Health & Insurance

Senate Committees

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.

- 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.

18 **SECTION 2.** In Colorado Revised Statutes, 25-14-203, **amend**
19 **(7), (16), and (18); repeal (1); and add (4.5)** as follows:

20 **25-14-203. Definitions.** As used in this part 2, unless the context
21 otherwise requires:

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

27 (4.5) "ELECTRONIC SMOKING DEVICE" OR "ESD":

1 (a) MEANS ANY PRODUCT THAT CONTAINS OR DELIVERS NICOTINE
2 OR ANY OTHER SUBSTANCE INTENDED FOR HUMAN CONSUMPTION AND
3 THAT CAN BE USED BY A PERSON TO ENABLE THE INHALATION OF VAPOR
4 OR AEROSOL FROM THE PRODUCT; AND

5 (b) INCLUDES ANY PRODUCT DESCRIBED IN SUBSECTION (4.5)(a) OF
6 THIS SECTION AND ANY SIMILAR PRODUCT OR DEVICE, WHETHER
7 MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE,
8 E-CIGAR, E-PIPE, E-HOOKAH, OR VAPE PEN OR UNDER ANY OTHER PRODUCT
9 NAME OR DESCRIPTOR.

10 (7) "Entryway" means the outside of the front or main doorway
11 leading into a building or facility that is not exempted from this part 2
12 under section 25-14-205. "Entryway" also includes the area of public or
13 private property within a specified radius outside of the doorway. The
14 specified radius ~~shall~~ MAY be determined by the local authority or
15 PURSUANT TO SECTION 25-14-207 (2)(a), BUT MUST BE AT LEAST
16 TWENTY-FIVE FEET UNLESS SECTION 25-14-207 (2)(a)(II)(B) OR
17 (2)(a)(II)(C) APPLIES. If the local authority has not acted, the specified
18 radius ~~shall be fifteen~~ IS TWENTY-FIVE feet.

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

26 (18) "Tobacco business" means a sole proprietorship, corporation,
27 partnership, or other enterprise engaged primarily in the sale,

1 manufacture, or promotion of tobacco, tobacco products, or smoking
2 devices or accessories, INCLUDING ESDs, either at wholesale or retail, and
3 in which the sale, manufacture, or promotion of other products is merely
4 incidental.

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

8 25-14-204. General smoking restrictions. (1) Except as
9 provided in section 25-14-205, and in order to reduce the levels of
10 exposure to environmental tobacco and marijuana smoke, smoking shall
11 IS not be permitted and no A person shall NOT smoke in any indoor area,
12 including: but not limited to:

13 (k) (I) Any place of employment that is not exempted, WHETHER
14 OR NOT OPEN TO THE PUBLIC AND REGARDLESS OF THE NUMBER OF
15 EMPLOYEES.

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

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

25 (u) (I) The common areas of retirement facilities, publicly owned
26 housing facilities, and except as specified in section 25-14-205 (1)(k);
27 nursing homes, but not including any resident's private residential

1 quarters. ~~or areas of assisted living facilities specified in section~~
2 ~~25-14-205 (1)(k):~~

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

4 (cc) ~~The entryways of all buildings and facilities listed in~~
5 ~~paragraphs (a) to (bb) of this subsection (1): AIRPORTS;~~

6 (dd) HOTEL AND MOTEL ROOMS;

7

8 (ee) ASSISTED LIVING FACILITIES, INCLUDING NURSING FACILITIES
9 AS DEFINED IN SECTION 25.5-4-103 AND ASSISTED LIVING RESIDENCES AS
10 DEFINED IN SECTION 25-27-102; AND

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

13 (2) A cigar-tobacco bar:

14 (a) Shall not expand its size or change its location from the size
15 and location in which it existed as of December 31, 2005; A
16 cigar-tobacco bar AND

17 (b) Shall PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS
18 OF AGE AND SHALL display signage in at least one conspicuous place and
19 at least four inches by six inches in size stating: "Smoking allowed.
20 Children under eighteen years of age must be accompanied by a parent or
21 guardian MAY NOT ENTER."

22 (3) A RETAIL TOBACCO BUSINESS SHALL PROHIBIT ENTRY BY ANY
23 PERSON UNDER EIGHTEEN YEARS OF AGE AND SHALL DISPLAY SIGNAGE IN
24 AT LEAST ONE CONSPICUOUS PLACE AND AT LEAST FOUR INCHES BY SIX
25 INCHES IN SIZE STATING: "SMOKING ALLOWED. CHILDREN UNDER
26 EIGHTEEN YEARS OF AGE MAY NOT ENTER."

27 **SECTION 4.** In Colorado Revised Statutes, 25-14-205, amend

1 (1) introductory portion, (1)(c), (1)(g), and (1)(i); and repeal (1)(c),
2 (1)(f), (1)(h), and (1)(k) as follows:

3 **25-14-205. Exceptions to smoking restrictions.** (1) This part 2
4 shall DOES not apply to:

5 (c) ~~A hotel or motel room rented to one or more guests if the total~~
6 ~~percentage of such hotel or motel rooms in such hotel or motel does not~~
7 ~~exceed twenty-five percent ANY PREMISES THAT IS LICENSED UNDER PART~~
8 ~~4 OF ARTICLE 12 OF TITLE 44 OR AUTHORIZED BY ANY APPLICABLE~~
9 ~~MUNICIPAL ORDINANCE OR PERMIT, AT WHICH MARIJUANA IS OFFERED TO~~
10 ~~PURCHASERS OR PROSPECTIVE PURCHASERS FOR SALE OR SAMPLING;~~

11

12 (f) ~~An airport smoking concession;~~

13 (g) ~~The outdoor area of any business; OR~~

14 (h) ~~A place of employment that is not open to the public and that~~
15 ~~is under the control of an employer that employs three or fewer~~
16 ~~employees;~~

17 (i) ~~A private, nonresidential building on a farm or ranch, as~~
18 ~~defined in section 39-1-102, C.R.S., that has annual gross income of less~~
19 ~~than five hundred thousand dollars. or~~

20 (k) (I) ~~The areas of assisted living facilities:~~

21 (A) ~~That are designated for smoking for residents;~~

22 (B) ~~That are fully enclosed and ventilated; and~~

23 (C) ~~To which access is restricted to the residents or their guests.~~

24 (H) ~~As used in this paragraph (k), "assisted living facility" means~~
25 ~~a nursing facility, as that term is defined in section 25.5-4-103, C.R.S.,~~
26 ~~and an assisted living residence, as that term is defined in section~~
27 ~~25-27-102.~~

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

3 **25-14-206. Optional prohibitions.** (1) The owner or manager of
4 any place not specifically listed in section 25-14-204, including a place
5 otherwise exempted under section 25-14-205 may post signs prohibiting
6 smoking, or providing smoking and nonsmoking areas. Such posting shall
7 have the effect of including such place or the designated nonsmoking
8 portion thereof, in the places where smoking is prohibited or restricted
9 pursuant to this part 2.

10 (2) If the owner or manager of a place not specifically listed in
11 section 25-14-204, including a place otherwise exempted under section
12 25-14-205, is an employer and receives a request from an employee to
13 create a smoke-free work area as contemplated by section 25-14-204
14 (1)(k)(II), the owner or manager shall post a sign or signs in the
15 smoke-free work area as provided in subsection (1) of this section.

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

18 **25-14-207. Other applicable regulations of smoking - local
19 counterpart regulations authorized.** (2) (a) (I) A local authority may,
20 pursuant to article 16 of title 31, C.R.S.; a municipal home rule charter,
21 SECTION 44-12-309, or article 15 of title 30, C.R.S.; enact, adopt, and
22 enforce smoking regulations that cover the same subject matter as the
23 various provisions of this part 2; ~~no EXCEPT THAT, UNLESS OTHERWISE~~
24 ~~AUTHORIZED UNDER SUBSECTION (2)(a)(II)(B) OR (2)(a)(II)(C) OF THIS~~
25 ~~SECTION, A local authority may NOT adopt any A local regulation of~~
26 ~~smoking that is less stringent than the provisions of this part 2. except that~~

27 (II) (A) A local authority may IS SPECIFICALLY AUTHORIZED TO

1 specify a radius of ~~less~~ MORE than ~~fifteen~~ TWENTY-FIVE feet for the area
2 included within an entryway.

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

8 (C) IF A PERSON OWNS OR LEASES BUSINESS PREMISES THAT WERE
9 UNDER CONSTRUCTION OR RENOVATION ON JULY 1, 2019, AND THAT
10 COMPLIED WITH A LOCAL REGULATION OF SMOKING THAT SPECIFIED A
11 RADIUS OF LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN
12 AN ENTRYWAY, AND, AS OF JULY 1, 2019, HAS APPLIED FOR OR RECEIVED
13 FROM THE MUNICIPALITY, CITY AND COUNTY, OR COUNTY IN WHICH THE
14 PREMISES ARE LOCATED, A CERTIFICATE OF OCCUPANCY FOR THE
15 STRUCTURE TO BE USED FOR THE BUSINESS PREMISES, THE PERSON IS
16 DEEMED IN COMPLIANCE WITH ALL LOCAL REGULATIONS SPECIFYING THE
17 RADIUS OF THE AREA INCLUDED WITHIN AN ENTRYWAY.

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

20 **25-14-208. Unlawful acts - penalty - disposition of fines and**
21 **surcharges.** (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION
22 25-14-208.5, a person who violates this part 2 is guilty of a class 2 petty
23 offense and, upon conviction thereof, shall be punished by a fine not to
24 exceed two hundred dollars for a first violation within a calendar year, a
25 fine not to exceed three hundred dollars for a second violation within a
26 calendar year, and a fine not to exceed five hundred dollars for each
27 additional violation within a calendar year. Each day of a continuing

1 violation shall be deemed a separate violation.

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

4 **25-14-208.5. Signage violations - limitation on fines.** (1) FOR
5 A VIOLATION OF SECTION 25-14-204 (2), THE PENALTY SHALL BE AS
6 FOLLOWS:

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

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

11 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, NO FINE
12 FOR A VIOLATION OF SECTION 25-14-204 (2) SHALL BE IMPOSED UPON A
13 PERSON THAT CAN ESTABLISH AS AN AFFIRMATIVE DEFENSE THAT, PRIOR
14 TO THE DATE OF THE VIOLATION, IT:

15 (a) HAD ADOPTED AND ENFORCED A WRITTEN POLICY AGAINST
16 ALLOWING PERSONS UNDER EIGHTEEN YEARS OF AGE TO ENTER THE
17 PREMISES;

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

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

23 (d) HAD ESTABLISHED AND IMPOSED DISCIPLINARY SANCTIONS FOR
24 NONCOMPLIANCE.

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

1 **SECTION 9.** In Colorado Revised Statutes, 30-15-401, amend
2 (1.5) as follows

3 **30-15-401. General regulations - definitions.** (1.5) In addition
4 to any other powers, the board of county commissioners has the power to
5 adopt a resolution or an ordinance:

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

8 (b) LIMITING SMOKING, AS DEFINED IN SECTION 25-14-203 (16), IN
9 ANY MANNER THAT IS NO LESS RESTRICTIVE THAN THE LIMITATIONS SET
10 FORTH IN THE "COLORADO CLEAN INDOOR AIR ACT", PART 2 OF ARTICLE
11 14 OF TITLE 25.

12 **SECTION 10. Effective date.** (1) Except as provided in
13 subsection (2) of this section, this act takes effect July 1, 2019.

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

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