



THE COLORADO CLEAN INDOOR AIR ACT

by Jessika Shipley

Concern over the detrimental effects of secondhand smoke (also known as environmental tobacco smoke) on non-smokers has grown in recent years. The U.S. Environmental Protection Agency classified secondhand smoke as a known cause of cancer in humans in a December 1992 report. In an effort to reduce the risk of smoke-related health problems in Colorado, the General Assembly passed House Bill 06-1175, the Colorado Clean Indoor Air Act, which prohibits smoking in indoor areas throughout the state. Twenty-two other states and the District of Columbia have a statewide ban on smoking in public areas. Twelve states have a partial ban in place.

This *Issue Brief* discusses the organizations, businesses, and structures affected by the smoking ban. It also lists those that are specifically exempted by the act. Additionally, it explains the offenses created by the act and the penalties for committing those offenses.

Affected Entities

Effective July 1, 2006, smoking is not permitted in the following indoor areas throughout the state:

- public meeting places;
- elevators;
- government-owned or operated means of mass transportation;
- taxis and limousines not under private hire;
- grocery stores;
- courtrooms and jury waiting and deliberation rooms;
- child day care facilities;
- health care facilities;
- any place of employment that is not exempted (see the next section for exemptions);
- food service establishments;
- bars;
- limited gaming facilities and licensed casinos;¹
- indoor sports arenas and gymnasiums;
- common areas in:
 - all public and private residential buildings,
 - hotels and motels, including 75 percent of the sleeping quarters, and
 - retirement facilities, nursing homes, and publicly-owned housing facilities;
- bowling alleys and billiard or pool halls;
- facilities where games of chance (bingo, pachengo, slot machines, etc.) are conducted;
- theaters and auditoriums;
- public buildings;
- museums and libraries;
- public and nonpublic schools, vocational institutions, and any other educational institutions; and
- the entryways of all previously listed buildings and facilities.

¹ Licensed casinos were originally exempt from the provisions of the Colorado Clean Indoor Air Act, but the exemption was removed by House Bill 07-1269.

Exemptions

The following facilities or areas are exempt from the statewide smoking ban:

- private residences or automobiles, except those used in the course of child day care;
- limousines under private hire;
- a hotel or motel room rented to one or more guests (must be no more than 25 percent of the total guest rooms in the hotel or motel);
- any retail tobacco business;
- a cigar-tobacco bar;
- designated smoking areas of Denver International Airport;
- the outdoor area of any business;
- a place of employment that employs three or fewer individuals and is not open to the public;
- a private, nonresidential building on a farm or ranch that has annual gross income of less than \$500,000; or
- the areas of assisted living facilities:
 - that are designated for smoking for residents,
 - that are fully enclosed and ventilated, and
 - to which access is restricted to the residents or their guests.

Cigar-tobacco bar. A cigar-tobacco bar is defined as a bar that generates at least 5 percent of its gross annual income or \$50,000 in annual sales from the on-site sale of tobacco products and the rental of on-site humidors. The sales threshold does not include any sales from vending machines. A bar that fails to generate the sales threshold in any given year loses the designation of a cigar-tobacco bar permanently, regardless of future sales figures.

Cigar-tobacco bars must have been established and met the income threshold by December 31, 2005. Additionally, they are not permitted to expand in size or change location from the size and location in which they existed as of that date. The law requires a conspicuous sign to be placed in a cigar-tobacco bar stating: "Smoking allowed. Children under 18 years of age must be accompanied by a parent or guardian."

Since the Colorado Clean Indoor Air Act was implemented in 2006, three bills have *unsuccessfully* attempted to change the cigar-bar exemption. Senate Bill 07-250 would have repealed the cigar-tobacco bar exemption completely. House Bill 07-1108 would have clarified that humidors rentals are an integral component of the cigar-tobacco bar exemption. It would have limited the exemption to establishments that generated income from on-site humidors during calendar year 2005. It also would have excluded cigarette sales from income figures. Finally, Senate Bill 08-225 would have prohibited a cigar-tobacco bar from permitting or using gaming equipment anywhere on the premises.

Other provisions. Any employee of an establishment that is exempted from the ban or not specifically included in the ban, who requests a smoke-free work environment, must be accommodated with such an area by the employer. The owner or manager of any business exempted by the act or not specifically included may choose to prohibit smoking completely or to provide designated smoking and nonsmoking areas.

Penalties

It is unlawful for the owner, manager, or operator of a facility subject to the smoking ban to permit smoking within the establishment. Likewise, it is unlawful for individuals to smoke in buildings or structures that are subject to the ban.

A violation of the smoking ban is a class 2 petty offense, punishable by a fine that is no more than \$200 for the first violation within a calendar year. A second violation within a calendar year is punishable by a fine not to exceed \$300. Each additional violation beyond the second offense is punishable by a fine not to exceed \$500. Each day of continuing violation is considered a separate offense. Seventy-five percent of a fine is remitted to the local government jurisdiction in which the offense occurred. The remaining 25 percent is transferred to the state.