

# **The Colorado Clean Indoor Air Act**

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... and other unintended consequences

# **chaos**

- Local patchwork
- Bars vs. restaurants
- VFW vs. commercial bingo vs. casinos
- Ah-nold

# 2005

First step, false step

- Based on 2004 Delaware law
- No state agency in charge of enforcement, exemptions
- Petty offense / \$200 fine on 1st violation
- Exemptions:
  - ▶ Private home or car unless used for day care
  - ▶ Private limousine
  - ▶ Hotel/motel up to 25% of available rooms
  - ▶ Retail tobacco business
  - ▶ Outdoor patio (unless posted as nonsmoking)

# Sleeper!

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

# Sleeper!

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

(k) (I) Any place of employment that is not exempted.

(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 environmental tobacco smoke. *Every employee shall have a right to work in an area free of environmental tobacco smoke.*

# **Strong medicine**

Enforcement provisions that didn't survive the initial draft --  
designed to protect those asserting their rights under the Act  
or reporting violations

- Employment
- Housing
- Places of public accommodation

# **A Bill For An Act**

## **CONCERNING**

The prohibition of smoking in certain food service establishments, and, in connection therewith, prohibiting smoking in food service establishments that do not serve alcohol beverages and in those that possess hotel and restaurant licenses to sell alcohol beverages.

## **Second verse**

Same as the first, except ...

- Cigar bars ("cigar-tobacco bars");
- An airport smoking concession;
- A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;
- A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars;
- The retail floor plan, as defined in section 12-47.1-509, C.R.S., of a licensed casino.

**12-47.1-509. Licensed premises - retail floor plan.** For purposes of this section, *"retail floor plan"* means a physical layout of the inside of the building in which limited gaming will take place, which shall show the location of the licensed premises within the building. The retail floor plan shall be submitted to the commission with an applicant's application for a retail gaming license. Approval of the retail floor plan is subject to commission rules and those rules pertaining to the public health, safety, good order, and general welfare of the cities of Central, Black Hawk, and Cripple Creek. All gaming devices shall be located within the licensed premises of a business. A licensed retailer may change the physical location of the licensed premises with commission or director approval, however, in no event shall the licensed premises as modified violate any provision of this article or consist of more than two noncontiguous areas on one floor. Failure of the commission or the director to deny an application to relocate the licensed premises in a building, within thirty days of such application, shall be deemed an approval thereof.

- An establishment that is licensed under [state liquor laws] and derives twenty-five percent or less of its annual gross revenue from the sale of food.
- The premises of a private membership organization. As used in this paragraph, a "private membership organization" means a private club or other organization that maintains a roster of dues-paying members that is updated on a monthly or less frequent basis.

- The business premises of a racetrack or other facility, ... , other than any portion of the premises that is identified as a restaurant.
- Premises owned or rented by a bingo-raffle licensee for the conduct of games of chance ... , while the premises are being used for the conduct of games of chance.

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.

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.

# Sleeper!

"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.

“Cigar bar” means a business that prohibits the entry of persons under the age of eighteen (18) and that can demonstrate that the marketing and sale of cigars or other tobacco products generated at least ten percent (10%) of its gross revenues.

(Denver city ordinance, adopted 2003)

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# H.B. 07-1108

A nice try falls short

- “ ... annual sales from *both* the on-site sale of *cigars or cigar tobacco* and the rental of on-site humidors, not including *any sales of cigarettes or any sales from vending machines.*”
- Certification by either local gov’t or state revenue department
- Posting of certificate
  - ▶ Valid certificate = prima facie proof of compliance
  - ▶ No posting = conclusive presumption of non-compliance

*Coalition for Equal Rights, Inc., v. Owens*  
458 F. Supp. 2d 1251 (D. Colo. 2006)

10th Circuit appeal no. 06-1511

# Sleeper?

- "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, either at wholesale or retail, *and in which the sale, manufacture, or promotion of other products is merely incidental.*