

GREENBRIER COUNTY BOARD OF HEALTH CLEAN INDOOR AIR REGULATION

Section 1000. Title

This Regulation shall be known as the Greenbrier County Clean Indoor Air Regulation of 2004.

Section 1001. Authority

This Clean Indoor Air Regulation is adopted in accordance with the authority contained in West Virginia Code §16-2-11 et seq.

Section 1002. Findings and Purpose

The Greenbrier County Board of Health does hereby find:

The United States Surgeon General and numerous other credible authorities and medical researchers have determined: (a) that involuntary inhalation of secondhand or environmental tobacco smoke can cause or contribute to numerous serious health problems and diseases, including heart disease, cancer and respiratory illness, and acute episodes of decreased respiratory function, including broncho-constriction and broncho-spasm in healthy nonsmokers; (b) that the presence of secondary tobacco smoke is a major contributor to indoor air pollution; (c) that children, elderly people, and individuals with cardiovascular and/or respiratory diseases, including asthmatics and those with obstructive airway disease are at special risk to exposures from secondhand tobacco smoke; (d) that the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke, and smoking bans remain the most viable and cost-effective method of protecting patrons.

Accordingly, the purpose of this regulation is to: (a) protect the health of the public by minimizing exposure of individuals to a proven harmful environmental toxin, i.e. secondhand smoke, while they engage in public indoor commerce; and (b) direct and/or strongly encourage the proprietors of public places of indoor commerce to provide a smoke-free environment to minimize public exposure to this harmful toxin. "In attempting to minimize the effects of tobacco smoke on the general public in enclosed public places, the regulations of [boards of health] address a serious health issue which the Legislature has recognized... Based upon the foregoing observations, we find that clean indoor air regulations of local boards of health that place restrictions on smoking in enclosed public places (1) are consistent with the findings of the Legislature "that smoking may cause lung cancer, heart disease, emphysema and other serious health problems," (2) advance the legislatively prescribed public policy "to provide the state with a citizenry free from the use of tobacco," and (3) fall within the bounds of authority granted by the Legislature to such boards..." Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.

Section 1003. Definitions

The following words and phrases, whenever used in this regulation, shall be construed as defined in this section:

1. "Attached Bar" means an area of a restaurant.
2. "Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
3. "Complete Physical Separation" means enclosure of all space between the floor and ceiling on all sides by solid walls or windows with any ingress or egress occurring through self-closing doors which provide an air seal to the maximum extent possible.
4. "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
5. "Employer" means any person, partnership, and corporation, association, including a municipal corporation or non-profit entity, which employs the services of one or more individual persons.
6. "Enclosed Areas" means all space between the floor and ceiling which is enclosed on all sides by solid walls or windows including doors, which extend from the floor to the ceiling.
7. "Free Standing Bar" means an establishment, which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets. For the purposes of this regulation, a "freestanding bar" (A) means an establishment whose gross sales of alcoholic beverages are 80% or greater of their total gross sales, excluding lottery sales, AND (B) is an enclosed facility that does not allow for smoke to infiltrate into areas where smoking is prohibited under the provisions of this Article.
8. "Free Standing Video Lottery Room" –means a room that is devoted to the placement of video Lottery machines licensed by the WV Gaming Commission. It has solid walls or windows, enclosed on all sides which is served by a separate ventilation system and does not allow for the infiltration of secondhand smoke into any non smoking area. The serving of full meals is prohibited.
9. "Grocery Store" means any supermarket, convenience store, or other retail food production and marketing establishment.
10. "Non-Profit Entity" means any entity whose operations are not committed to private financial gain. A public agency is not a "non-profit entity" within the meaning of this section.
11. "Place of Employment" means any area under the control of a public or private employer where employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence

is not a “place of employment” unless it is used as a child care, adult day care, or health facility.

12. “Proprietor” means any owner, operator, manager, or other person having control of a public place, including, but not limited to, buildings, business, establishments, stores and facilities.
13. “Public Place” means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, Laundromats, public transportation facilities, reception area, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a “Public Place”.
14. “Public Transit” means any means of conveyance or travel available to members of public for a fee, including, but not limited to, taxi-cabs, buses, limousines, and chartered planes.
15. “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, attached bar and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as, kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
16. “Retail Store” means any establishment that sells goods or services directly to members of the general public including, but not limited to, specialty stores, department store, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance store, barber or beauty salons, cleaners, and Laundromats.
17. “Retail Tobacco Store” means any establishment used primarily for the sale of tobacco products and in which the sale of other products is merely incidental.
18. “Secondhand Smoke” means environmental tobacco smoke that could be voluntarily or involuntarily inhaled by individuals who did not generate that smoke.
19. “Service Line” means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such a service involves the exchange of money.
20. “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other smoking equipment containing burning tobacco in any manner of in any form.
21. “Sports Arena” means a place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sporting events and includes, but is not limited to, a sports pavilion, gymnasium, health spa, boxing arena, swimming pool, baseball and football stadiums, and roller/ice rink.

Section 1004. Application of Regulation to Publicly Owned Facilities

All enclosed facilities including buildings and vehicles owned and occupied by businesses or county, or any municipality located in Greenbrier County, shall be subject to the provision of this regulation.

Section 1005. Prohibition of Smoking in Public Places.

- A. Except as provided in Section 1008 of this regulation, smoking shall be prohibited in all enclosed places within Greenbrier County, including, but not limited to, the following places:
1. All areas available to and customarily used by the general public in all businesses, governmental/quasi-governmental agencies, and non-profit entities patronized by the public, including, but not limited to, private offices and other offices, banks, Laundromats, hotels and motels, including rooms reserved for private functions.
 2. Service lines, restrooms, lobbies, elevators, enclosed stairwells and parking garages, reception areas, hallways, and any other common-use areas.
 3. All means of public transit, including, but not limited to, transit vehicles and associated ticket, boarding, transport, and waiting areas.
 4. Retail stores and grocery stores.
 5. Restaurants, including outdoor seating areas of restaurants.
 6. Every room, chamber and place of meeting, polling, or public assembly, including school buildings, under the control of any board, council, commission, committee, including joint committees, or political subdivision of the State, during such a time as a public meeting or business is in progress.
 7. All patient rooms, waiting rooms, examination rooms, and other areas in health facilities, including, but not limited to, hospitals, clinics, pharmacies, physical therapy facilities, nursing homes, doctors' offices, and dentists' offices.
 8. Enclosed shopping malls.
 9. Private and public school buildings and dormitories, child care and adult care facilities.
 10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, emergency shelters, residential board and care establishments, and other multiple-unit residential facilities.
 11. Sports arenas, bowling facilities, and the grandstands, locker rooms, restrooms, and vending areas, service lines and playing areas of outdoor stadiums and ballparks.
 12. Stage and movie theaters, aquariums, amphitheaters, galleries, libraries, and museums.

13. Polling Places.
14. Fire departments, rescue squads, or other community buildings.
15. Auction houses and indoor flea markets.

- B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare that entire establishment or facility a nonsmoking establishment.
- C. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

Section 1006. Prohibition of Smoking in Places of Employment

- A. Except for employers whose businesses are described in a category found in Section 1008 of this regulation, it shall be the responsibility of employers to provide a smoke free workplace for all employees.
- B. Within 60 days of the effective date of this article, each employer having an enclosed place of employment located within Greenbrier County shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

- C. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Section 1007. Reasonable Distance

To insure tobacco smoke does not enter an enclosed public facility or workplace through entrances, windows, ventilation systems or by any other means, designated smoking areas shall be located at a reasonable distance of at least fifteen (15) feet or more outside any entrance, exit, operable window or ventilation intake for any building or other facility where smoking is prohibited, if such a space is subject to the control of the proprietor, owner, operator, or manager for the building or other area where smoking is prohibited.

Section 1008. Where Smoking Not Regulated

- A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall be exempt from Sections 1005 and 1006 of this regulation:

1. Free standing bars.
 2. Free standing Video lottery Rooms
 3. Private residences, except when used as a child care, adult day care, or health care facility.
 4. No more than twenty-five percent (25) of hotel and motel rooms rented to guests. In all hotel and motel facilities constructed after the effective date of this regulation, designated rooms shall be completely enclosed and separately ventilated.
 5. Completely enclosed and separately ventilated retail tobacco stores which do not possess a food service permit.
 6. Bingo operations distributing more than 100 cards, if smoking is permitted by the operator.
- B. To qualify for exemption under this section, facilities must restrict admission to only individuals 18 years of age or older.
- C. Notwithstanding any other provisions of this section, any owner, operator, manager or person who controls any establishment described in this section may declare that entire establishment and or property as a smoke-free.

Section 1009. Posting of Signs

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted, in every building or other area where smoking is prohibited by this regulation, by the owner, operator, manager, or other person having control of such buildings or other area.
- B. Every public place where smoking is prohibited by this regulation shall have posted every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays and other smoking paraphernalia shall be removed, from any area where smoking is prohibited by this regulation, by owner, operator, manager, or other person having control of such building or other area.
- D. Every public place where smoking is allowed by this regulation shall have posted at every entrance a conspicuous sign that reads:

HEALTH WARNING

**SMOKING IS PERMITTED WITHIN THIS FACILITY, YOU WILL
BE EXPOSED TO SECONDHAND SMOKE. SUCH EXPOSURE
CAN CAUSE OR CONTRIBUTE TO CANCER, HEART
DISEASE, RESPIRATORY ILLNESS, AND OTHER
SERIOUS HEALTH PROBLEMS.**

Section 1010. Enforcement

- A. Although smoking regulations are primarily self-regulating through public pressure, enforcement of this Regulations shall be the ultimate responsibility of the Greenbrier County Board of Health, which may implement enforcement through civil process to obtain injunctive relief or by a criminal complaint under West Virginia Code §16-2-15.
- B. Any owner, operator, or employee of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.
- C. Any citizen who desires to register a complaint under this regulation may do so with the Greenbrier County Board of Health.
- D. Sanitarians employed by the Greenbrier County Board of Health shall, while an establishment is undergoing an otherwise mandated inspection, inspect for compliance with this regulation.

Section 1011. Violations and Penalties

- A. It shall be unlawful for any person who owns, operates, or manages or otherwise controls the use of any premises subject to regulation under this regulation to fail to comply with any of its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this regulation.
- C. Any person who willfully violates any provision of this regulation may be prosecuted for a violation of Chapter 16 of the West Virginia Code. If found guilty, the penalty will be as set forth by West Virginia Code §16-2-15 which, at the time of promulgation of this regulation states:

16-2-15. Obstructing local health officers and others in the enforcement of public health; other violations and penalties.

Any person who willfully obstructs any local health officer, public health nurse, sanitarian, or any other person charged with the enforcement of any public health law, in the performance of that person's legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars.

Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars and not more than one thousand dollars.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of provision of this article. (2000, c.130.)

Section 1012. Public Education

The Greenbrier County Health Department shall engage in a continuing program to explain the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators and managers in their compliance with the regulation. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this regulation.

Section 1013. Non-Retaliation

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke free environment afforded by this regulation.

Section 1014. Other Applicable Laws

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable federal, state, or local law or ordinance.

Section 1015. Severability

If any provision, clause, sentence or paragraph of this regulation, or the application thereof to any person or circumstance, shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared severable.

Section 1016. Effective Date

This regulation shall be effective sixty (60) days from and after the date of its adoption.

Section 1017. Repeal and Replacement of Former Regulation

This regulation repeals and replaces the Greenbrier County Board of Health Clean Indoor Air Regulation effective March 6, 1996 and revised May 18, 2004.