



Colorado Legislative Council Staff
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 06-0247
Prime Sponsor(s): Rep. May M.
 Sen. Grossman

Date: January 24, 2006
Bill Status: House Health and Human Services
Fiscal Analyst: Amy Larsen (303-866-3488)

TITLE: CONCERNING ENACTMENT OF THE "COLORADO CLEAN INDOOR AIR ACT", AND, IN CONNECTION THEREWITH, PROHIBITING SMOKING IN INDOOR ENCLOSED AREAS, INCLUDING PLACES OF EMPLOYMENT.

Fiscal Impact Summary	FY 2006/07	FY 2007/08
State Revenues		
General Fund	less than \$10,000	less than \$10,000
State Expenditures		
General Fund	\$182,089	\$178,714
Cash Funds Exempt - transfer to Department of Law*	45,115	45,115
FTE Position Change	3.3 FTE	3.3 FTE
Effective Date: July 1, 2006		
Appropriation Summary for FY 2006/07:		
Department of Regulatory Agencies:	\$182,089	GF and 3.0 FTE
Department of Law:	\$ 45,115	CFE and 0.3 FTE
Local Government Impact: May increase local government law enforcement activities and county jail confinements.		

**These amounts are included in the General Fund expenditure totals.*

Summary of Legislation

This bill repeals portions of statutes governing the control of smoking and creates the "Colorado Clean Indoor Air Act." The bill prohibits smoking in indoor areas, with certain exemptions. Exceptions include private homes; residences; automobiles if not used for child care or public transportation of children; limousines under private hire; up to 25 percent of rooms of a hotel or motel; retail tobacco businesses; and the outdoor area of any business. For places of employment that are exempt, the bill requires the employer to provide a smoke-free work area if requested by an employee. The bill allows the owner or manager of any place not specified or exempt to prohibit smoking or to provide smoking and nonsmoking areas. In addition, local governments may adopt and enforce smoking regulations that cover the same subject matter as the act, so long as the requirements are at least as strict as the provisions of this bill.

Violations of any provision of the act are a class 2 petty offense, punishable by a fine up to \$200 for the first violation, \$300 for a second violation, and \$500 for each additional violation within a calendar year. In addition, the bill establishes the following practices as unlawful, and as such, creates protected activities as a foundation by which a person may file discriminatory retaliation claims:

- retaliation against an employee requesting that the act be enforced or for reporting a violation of the act is a discriminatory or unfair employment practice;
- refusing to show, sell, transfer, rent, lease, or otherwise make unavailable housing to any person in retaliation for requesting that the act be enforced or for reporting a violation of the act is an unfair housing practice; and
- withholding from or denying public accommodation for requesting that the act be enforced or for reporting a violation of the act is a discriminatory practice.

State Revenues

Fines. Any violation of the act is a class 2 petty offense punishable with a fine up to \$200 for the first violation, \$300 for a second violation, and \$500 for each additional violation within a calendar year. The penalty assessment procedure per Section 16-2-201, C.R.S., specifies that the arresting officer may either give the person a penalty assessment notice or take the person before a judge of the county court in which the offense occurred. Any resulting fines are to be deposited in the state General Fund, and the annual amount of new fine revenue is anticipated to be less than \$10,000.

State Expenditures

General Fund expenditures in the Department of Regulatory Agencies are anticipated to increase \$182,089 in FY 2006-07 and \$174,714 in FY 2007-08. Of the totals, a transfer of \$45,115 CFE to the Department of Law is expected each year. Expenditure detail is shown in Table 1 and discussed below.

Table 1. Department of Regulatory Agencies Colorado Civil Rights Commission - General Fund Expenditures		
	FY 2006/07	FY 2007/08
Personal Services	\$122,322	\$122,322
FTE	3.0	3.0
Operating & Non-recurring Expenses	\$14,652	\$5,277
Legal Expenses - Department of Law	\$45,115	\$45,115
FTE	700 hours - 0.3	700 hours - 0.3
Hearing Expenses	0	\$6,000
Total Expenses	\$182,089	\$178,714
FTE	3.3	3.3

Department of Regulatory Agencies. Any person claiming to be aggrieved by a discriminatory or unfair practice established by the act may file a claim with the Colorado Civil Rights Commission. As a result, this bill is expected to increase the number of complaints filed annually with the commission. The commission is required to make a prompt and thorough investigation of each claim to determine whether probable cause exists. If probable cause exists, the commission would order the charging party and the respondent to participate in mediation. The amounts shown in Table 1 are based upon the following assumptions:

- the commission will experience an increase in consumer inquiries to clarify, interpret, and define the act;
- the commission will investigate 160 additional claims annually requiring 3.0 FTE;
- probable cause of discrimination will be determined in 8 cases, of which 2 will require a hearing before an administrative law judge;
- the commission will require additional legal services to define and clarify legislation, conduct legal reviews, and counsel commission staff; and
- investigation and resolution of these complaints will not qualify for federal funds.

Department of Law. The commission is expected to require 700 hours of legal services each year. Services in FY 2006-07 will be needed to assist the commission in promulgating rules and in defining and clarifying the legislation. Additional time is expected each year for legal reviews, determining hearing worthiness and interpreting definitions. Starting in FY 2007-08, legal services will also be required for the 2 cases brought to hearing before an administrative law judge.

Judicial Branch. This bill creates a new class 2 petty offense for any violation of the act. It allows municipalities to adopt ordinances and to enforce local regulations through the municipal courts. As a result, the number of new petty offense cases filed in county court is anticipated to be minimal. Consequently, any associated costs can be met within existing funding.

The bill also creates a new discriminatory or unfair employment practice, a new unfair housing practice, and a new discriminatory practice for denial of a public accommodation. Violations of these provisions are anticipated to be addressed in an administrative process for relief prior to civil action in court or with a misdemeanor filing. As a result, the number of filings should be minimal, and any associated costs can be met within existing funding.

Local Government Impact

Any violation of the act is a class 2 petty offense. The penalty assessment procedure per Section 16-2-201, C.R.S., specifies that the arresting officer may either give the person a penalty assessment notice or take the person before a judge of the county court in which the offense occurred. The conviction of a discriminatory practice for denial of a public accommodation is punishable by a fine or imprisonment in county jail for not more than one year, or both.

Although local authorities may enact regulations to cover smoking in indoor areas, it is not anticipated that the promulgation of rules and enforcement efforts will significantly affect local government revenue or expenditures.

State Appropriations

The fiscal note indicates that the Department of Regulatory Agencies requires a General Fund appropriation of \$182,089 and 3.0 FTE for FY 2006-07. Of this amount, the Department of Law requires a cash funds exempt spending authority of \$45,115 and 0.3 FTE.

Departments Contacted

Judicial Branch	Law
Local Affairs	Personnel and Administration
Public Health and Environment	Regulatory Agencies