

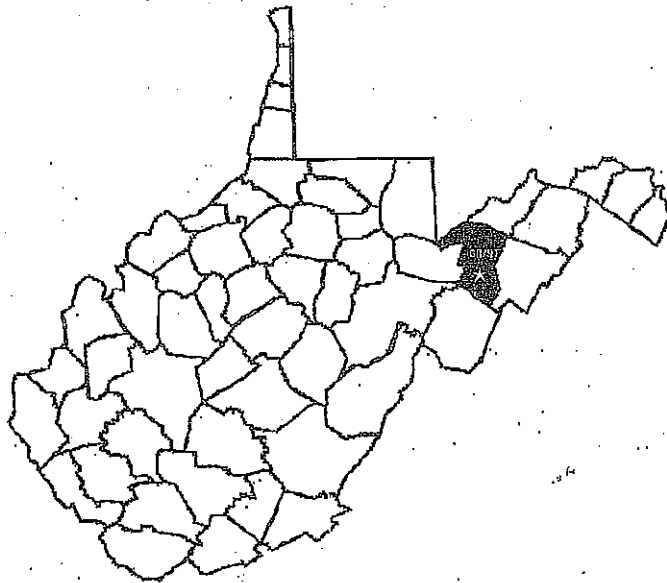
GRANT COUNTY

BOOK 0002 PAGE 021

CLEAN AIR REGULATION OF 2009

Effective September 1, 2009

Revised: October 2014



By
GRANT COUNTY BOARD OF HEALTH

John L. Hahn, M.D., Physician/Director

John E. Glover, DDS, Chairman

D. Scott Gossard, Vice Chairman

Michael Hipp

Steve Rexrode

Dave Amtower

3. Prohibit the use of electronic smoking devices in enclosed places of employment and public places

Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.... "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....."

Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." ([n.a.], "Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," Food and Drug Administration (FDA), July 22, 2009;

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> Accessed on: October 22, 2009.) E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

Section 1002: Definitions

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

- A. "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.
- B. "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or other descriptor.

- J. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other establishment which gives or offers for sale food or beverage to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
- K. "Service Line" means any line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- L. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible tobacco substance in any manner or in any form. "Smoking" also includes the use of any electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this regulation.
- M. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places, where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Section 1003: Application of Regulation to all Governmental Facilities.

All facilities including buildings, shops and vehicles owned or operated by any governmental unit whether federal, state, municipal or county or any agency thereof shall be subject to the provisions of this Regulation.

Section 1004: Prohibition of Smoking in Public Places

- A. Smoking shall be prohibited in all enclosed public places within Grant County, including, but not limited to, the following places:
 - 1. Aquariums, galleries, libraries and museums.
 - 2. Child care and adult day care facilities.
 - 3. Buses, taxicabs, airports and other means of public transit, and ticket, boarding, and waiting areas of public transit depots.
 - 4. Service lines.
 - 5. All areas of enclosed public places available to and customarily used by the public in all businesses and non-profit entities patronized by the public,

employee, applicant, or customer exercises any right to a smoke-free environment afforded by this article.

Section 1010: Violations and Penalties

A. Willful violation of this clean indoor air regulation is an unlawful act.

(1) Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they:

- (a) Knowingly permit smoking on a premises subject to their control in an area where smoking is prohibited by the provisions of this clean indoor air regulation, or
- (b) Knowingly violate any other provision of this clean indoor air regulation.

(2) Any person who smokes in an area of a premise where smoking is prohibited with knowledge that he or she is in a nonsmoking area commits a willful violation of this clean indoor air regulation.

Penalties:

The Board of Health may, at its option, seek civil relief and/or file a misdemeanor complaint under WV Code 16-2-15 against any person who willfully violates this Clean Air Regulation. Enforcement through civil process, includes, but is not limited to a petition for injunctive relief.

Any person who willfully violates this clean air regulation, may be charged with a misdemeanor under W.Va. Code 16-2-15 and, upon conviction, be subject to a monetary fine.

At the time of the adoption of this Clean Air Regulation, West Virginia Code 16-2-15 provided as follows:

WEST VIRGINIA CODE


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

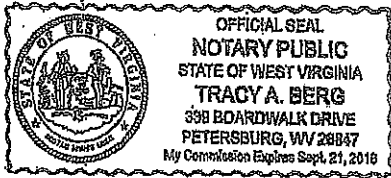
Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred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

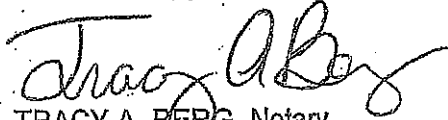
Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of provisions of this article.


JOHN L. HAHN, MD
Health Officer


JOHN E. GLOVER, DDS, Chairman
Grant County Board of Health

Taken, subscribed and sworn to before me this 17th day of November 2014




TRACY A. BERG, Notary
My Commission Expires: 21 September 2016

Regulation filed Grant County Book _____, Page _____.

Sean H. Bennett, Local Health Administrator