

**HB19-1033: LOCAL GOVERNMENTS MAY REGULATE NICOTINE PRODUCTS**

Concerning a local government's authority to regulate products containing nicotine.

**Details**

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<b>Bill Sponsors:</b>	House – Tipper (D) and Kennedy (D) Senate – Fields (D) and Priola (R)
<b>Committee:</b>	House Health & Insurance
<b>Bill History:</b>	1/4/2019 Introduced 2/1/2019 Hearing in House Health & Insurance Committee 2/5/2019 Passed Second Reading in House with Amendments 2/6/2019 Passed Third Reading in House
<b>Next Action:</b>	Introduction in the Senate
<b>Fiscal Note:</b>	<u>1/28/2019 Version</u>

**Bill Summary**

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This bill authorizes counties to enact a resolution or ordinance that prohibits a minor from possessing or purchasing nicotine products. It also allows counties to impose regulations on nicotine products that are more stringent than state regulations, this includes prohibiting sales to young adults under the age of 21. The bill removes the prohibition on counties imposing fees, licenses, or taxes on cigarettes as a condition of receiving their share of the state cigarette tax revenues. The bill allows counties, with the consenting vote of the people, to impose a special sales tax on the sale of cigarettes, tobacco products, or nicotine products.

**Issue Summary**

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**Nicotine Products**

A "cigarette, tobacco product, or nicotine product" is a product that is contains nicotine or tobacco, or is derived from tobacco that is ingested, inhaled, or applied to skin.<sup>1</sup> These products include, but are not limited to: cigarettes, cigars, e-cigarettes, pipe tobacco, chewing tobacco and hookah tobacco. The nicotine in all of these products may impair prefrontal brain development in adolescents, which can lead to attention deficits.<sup>2</sup> Tobacco use remains the leading cause of preventable death and disease in the United States and in Colorado. For those that use cigarettes and other traditional tobacco products, smoking can cause cancer, heart disease, stroke, lung diseases, diabetes, and chronic obstructive pulmonary disease (COPD).<sup>3</sup> Additionally, secondhand smoke can lead to many of those same diseases and contributes to approximately 41,000 deaths among nonsmoking adults and 400 deaths in infants each year.<sup>3</sup>

**Nicotine Products in Colorado & Larimer County**

In 2017, 5.3 percent of Colorado adults reported currently using e-cigarettes<sup>4</sup> and 14.6 percent currently using cigarettes.<sup>5</sup> During the same time, 27 percent of high school students in Colorado reported currently

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<sup>1</sup> As defined in C.R.S. 18-13-121(5)

<sup>2</sup> Goriounova, N. A., & Mansvelder, H. D. (2012). Short- and long-term consequences of nicotine exposure during adolescence for prefrontal cortex neuronal network function. *Cold Spring Harbor perspectives in medicine*, 2(12), a012120. doi:10.1101/cshperspect.a012120

<sup>3</sup> Centers for Disease Control and Prevention (2018). *Health Effects*. Retrieved from [https://www.cdc.gov/tobacco/basic\\_information/health\\_effects/index.htm](https://www.cdc.gov/tobacco/basic_information/health_effects/index.htm)

<sup>4</sup> The survey used the wording "electronic vapor device"

<sup>5</sup> CO Department of Public Health and Environment (n.d.) *VISION: Visual Information System for Identifying Opportunities and Needs*. Retrieved from <https://www.colorado.gov/pacific/cdphe/vision-data-tool>

using e-cigarettes and 44.2 percent of students had ever used e-cigarettes. Further, the majority of high school students, 55 percent, reported having ease of access to cigarettes. Between 2016 and 2017, 5.5 percent of Larimer County adults reported currently using e-cigarettes.<sup>6</sup> From 2015 to 2017, 13.4 percent reported currently using traditional cigarettes.

### **Tobacco Control Policies**

In the United States, a 10 percent price increase on a pack of cigarettes results in anywhere from a 2.5 percent to a 5.0 percent overall decline in smoking, with most studies showing an average 4.0 percent drop.<sup>7</sup> Studies have found that this effect is more pronounced on teen and young smokers as they are likely less addicted, more sensitive to price hikes and more present-oriented than adults, so they may react more immediately to price hikes. However, this is not universal as some just starting to use tobacco might smoke only one or two cigarettes a week, so a price hike due to a tax would have a minimal impact.

The movement behind increasing the legal age for purchasing nicotine products from 18 to 21 has been dubbed “Tobacco 21.” Eight states and territories (California, the District of Columbia, Guam, Hawaii, Maine, Massachusetts, New Jersey, and Oregon) and over 360 cities and towns have enacted Tobacco 21 laws.<sup>8</sup> A 2015 study from the National Academies of Sciences, Engineering, and Medicine reported that raising the age to 21 would translate to a 12 percent decrease in smoking prevalence.<sup>9</sup> The report also asserts that if the legal age was raised nationwide, there would be approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019.

Tobacco retail licensing policies typically require businesses to purchase licenses and follow all tobacco control laws in order sell nicotine products. Studies show that if retailers decide to stop selling tobacco and there are fewer retailers located near a smoker’s home, this can support their decision to quit.<sup>10</sup> Local licensing has the potential to decrease youth sales by businesses by up to 30 percent in some cases.<sup>11</sup>

### **Local Efforts in Colorado**

Currently, if a local government opted to implement a local regulation to control nicotine products, such as fees, licenses, or taxes, they would forfeit money from the state. For example, if Fort Collins chose to license all nicotine products they would lose an estimated \$350,000 of tobacco share-back dollars from the state. These funds are currently placed in the city’s general fund as intergovernmental revenue. In addition to Fort Collins, Timnath receives an estimated \$16,000 and Wellington receives \$5,000 from the state, which they would currently forfeit if they opted to regulate.

Many communities do not want to risk losing funds and are opting to pass a less comprehensive retail licensing policy that does not include cigarettes. Some communities are passing a full tobacco licensing policy, forfeiting revenue funds, and asking voters to tax tobacco products locally to make-up the lost funds and dedicate even more to substance use prevention and tobacco control. And some communities may not want to touch licensing policies at all because of the potential risk of losing the revenue from the

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<sup>6</sup> CO Department of Public Health and Environment (n.d.) *VISION: Visual Information System for Identifying Opportunities and Needs*. Retrieved from <https://www.colorado.gov/pacific/cdphe/vision-data-tool>

<sup>7</sup> Goldman, T.R. (Sept. 2016). Tobacco Taxes. *Health Affairs*. Retrieved from <https://www.healthaffairs.org/doi/10.1377/hpb20160919.471471/full/>

<sup>8</sup> American Academy of Pediatrics (n.d.) *Tobacco 21*. Retrieved from <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Richmond-Center/Pages/Tobacco-21.aspx>

<sup>9</sup> National Academies of Sciences, Engineering, Medicine (Mar. 2015). *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Retrieved from <http://www.nationalacademies.org/hmd/Reports/2015/TobaccoMinimumAgeReport.aspx>

<sup>10</sup> Upstream Public Health (Oct. 2015). *Tobacco Retail Licensing Policy: A Health Equity Impact Assessment*. Retrieved from <https://www.pewtrusts.org/~media/assets/external-sites/health-impact-project/upstream-2015-tobacco-licensing-report.pdf>

<sup>11</sup> Tobacco Control Legal Consortium (Apr. 2010). *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*. Retrieved from <https://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>

state. Aspen, Basalt, and Avon have all enacted nicotine product laws in the last couple years. In 2017, Aspen was the first to enact a Tobacco 21 policy in the state. The city opted to implement a tax, increase the legal age of purchase and possession to 21, and license businesses selling nicotine products.<sup>12</sup> The city has opted to use the revenues for health and human services, tobacco-related health issues, and substance use issues. Additionally, cities such as Steamboat Springs, Fountain, Manitou Springs, Golden, Pueblo, and Rocky Ford has passed tobacco retailer licensing policies within their respective jurisdictions.

### This Legislation

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Law currently allows home rule municipalities to enact an ordinance that prohibits a person under the age of 18 from purchasing cigarettes, tobacco products, or nicotine products. The bill amends the language to include counties as well as city and counties to be permitted to enact ordinances or resolutions that prohibit minors<sup>13</sup> from purchasing such products.

The bill amends the definition of “tobacco product” to be the same set forth in statute for “cigarette, tobacco product, or nicotine product.” The definition of “cigarette, tobacco product, or nicotine product” is a product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested, inhaled, or applied to the skin or any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including electronic cigarette, cigar, cigarillo, or pipe.<sup>14</sup> The bill clarifies that nothing included in the Teen Tobacco Use Prevention Act prohibits a statutory or home rule municipality, county, or city and county from enacting an ordinance or resolution that prohibits the possession of nicotine products by a minor.

The bill adds that a city council of a statutory or home rule city or the town council of a statutory town can adopt an ordinance for the purpose of regulating the possession or purchasing of cigarettes, tobacco products or nicotine products by a minor or to the sale of these products to minors.

The bill adds the power to regulate the possession or purchasing of cigarettes, tobacco products, or nicotine products to minors or to regulate the sale of these products to minors to boards of county commissioners.

The bill amends the current law regarding the share back of state cigarette tax. The bill removes language the stipulates that in order to qualify for the funds from the state tax, local governments are prohibited from imposing fees, licenses, or taxes on any business selling cigarettes or from attempting to impose a tax on cigarettes. The bill adds that any city, town, or county that was previous disqualified from receiving its portion of the state tax due to imposing a fee, license, or tax related to the sale of cigarettes, the city, town, or county is eligible for allocation after the effective date of the bill but not for an allocation of funds from before the effective date.

The bill clarifies that the article concerning the state cigarette tax does not prevent statutory or home rule municipalities, counties, or city and counties from imposing, levying, and collecting any special sales tax upon cigarettes, tobacco products, or nicotine products nor does it affect the existing authority to impose a special sales tax to be used for local and governmental purposes. The bill states that each county is authorized to levy, collect, enforce, and administer a special sales tax on these products under certain following conditions. The first circumstance is allowing for the special sales tax in the unincorporated areas of the county. Another circumstance is allowing for the special sales tax in the municipalities within the county that do not levy a special sales tax on these products. The county may only levy the special sales tax in a municipality until the municipality obtains voter approval to levy a municipal sales tax on cigarettes, tobacco

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<sup>12</sup> City of Aspen (Dec. 2017). *Changes in Tobacco Law and Taxes Coming to Aspen*. Retrieved from <https://www.cityofaspen.com/CivicAlerts.aspx?AID=20>

<sup>13</sup> The bill does not define “minors” as it leaves it open to local governments to decide if that means 18 or 21.

<sup>14</sup> C.R.S. 18-13-121(5)

products, or nicotine products. Once the municipality gains voter approval, the county sales tax is invalid within the limits of the municipalities unless the two entities enter into an intergovernmental agreement that authorizes the county to continue to levy, collect enforce, and administer the sales tax within the municipality. This intergovernmental agreement may include a provision that would allocate a certain percentage of the gross county tax revenue to the municipality. A county may also levy, collect, enforce, and administer a special sales tax in less than the entire county if it meets one or more of the conditions above. No special sales tax can be levied until it has been referred to and approved by the county's eligible electors. The proposal shall appear on the ballot on election day in November in odd-numbered years. If a county levies a sales tax in a municipality that has already obtained voter approval to levy such a sales tax, the county's sales tax is invalid within the municipality unless the two entities sign an intergovernmental agreement. The bill adds that each municipality is allowed to levy, collect, enforce, and administer a special sales tax on all sales of cigarettes, tobacco products, or nicotine products. The tax cannot be levied until the proposal has been referred to and approved by the voters of the municipality. The proposal shall appear on the ballot on election day in November in odd-numbered years or on the date of a municipal biennial election. If a county or municipality obtained approval from the voters to levy a special sales tax prior to the effective date of this bill, the tax remains valid and the governmental entity can continue to levy, collect, enforce, and administer the tax. Except, the county can continue if it complies with the previously outlined conditions regarding where the sales tax can be levied and under what circumstances.

The bill clarifies that the Colorado Department of Revenue is not collecting, administering, or enforcing the special sales tax, but this responsibility falls to the county or municipality that has imposed the tax. Counties or municipalities that levy a special sales tax may allow a retailer to retain a percentage of the tax to cover the expense of collecting and remitting the tax to the county or municipality. The county or municipality determines the amount that retailers may retain. The revenues from a special sales tax is credited to the general fund or a special fund in a county's or municipality's treasury. The revenues may be used by the county or municipality for any purpose that the governing bodies of the entities see fit.

The bill clarifies that the state tax on tobacco products does not prevent a statutory or home rule municipality, county, or city and county from levying a special sales tax on cigarettes, tobacco products, or nicotine products to be used for local and governmental purposes.

This bill is effective July 1, 2019.

### Reasons to Support

This would allow for local governments to enact regulations and ordinances that they believe are in the best interest of their communities without being penalized by the state. Certain tobacco control policies have been demonstrated that they are effective in decreasing youth access to and use of nicotine products, which has a beneficial downstream effect. Increasing the legal age to 21 could reduce the likelihood that a high school student or young college student will be able to legally purchase tobacco products for other students and underage friends. Additionally, allowing for taxation of nicotine products would likely decrease the prevalence of smokers and increase the health of residents while raising revenue for the local government to fund priority health projects. By decreasing the prevalence of smokers in a community it is likely that there would be less smoking-related disease and fewer deaths. Furthermore, some assert that compliance checks by the state for nicotine product sales to minors are too few and allowing for local control would allow for increased enforcement.

### Supporters

- American Cancer Society- Cancer Action Network
- Campaign for Tobacco Free Kids
- City of Northglenn
- City of Rocky Ford

- Colorado Association of Local Public Health Officials (CALPHO)
- Colorado Children's Hospital
- Colorado Counties, Inc.
- Colorado Department of Public Health and Environment (CDPHE)
- Colorado Parent Teacher Association
- Colorado Public Health Association
- Town of Avon
- Town of Carbondale

### Reasons to Oppose

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Some may assert that a tobacco tax increase would disproportionately negatively impact low-income populations, as they are more likely to currently use nicotine products. Some may declare it inappropriate for the government to intervene in personal decisions by prohibiting adults ages 18 to 21 from purchasing legal products. Others may wonder whether it is appropriate for the government to restrict the ability of individuals who are between 18 and 21 to purchase these products when the age restriction is not extended to the military draft or voting. With the availability of online stores, some argue that this does little to hamper youth access to and use of nicotine products, especially e-cigarettes.

### Opponents

- Absolute Vapor
- Colorado Chamber of Commerce
- Colorado Retail Council
- Core-Mark International
- Gasamat/Smoker Friendly
- Heartland Institute
- International Premium Cigar & Pipe Retailers Association
- Petroleum Marketers Association
- Rocky Mountain Smoke Free Alliance
- Vapor Source

### About this Analysis

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This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. This analysis is accurate to staff knowledge as of date printed. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at [awilliams@healthdistrict.org](mailto:awilliams@healthdistrict.org).