

2/8/2019

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POLICY ANALYSIS

## HB19-1076: CLEAN INDOOR AIR ACT ADD E-CIGARETTES REMOVE EXCEPTIONS

Concerning updates to the “Colorado Clean Indoor Air Act”, and, in connection therewith, removing certain exceptions and adding provisions relevant to the use of electronic smoking devices.

### Details

<b>Bill Sponsors:</b>	House – <i>Michaelson Jenet (D) and Larson (R)</i> , Caraveo (D), Cutter (D), Jackson (D), Mullica (D) Senate – <i>Priola (R) and Donovan (D)</i> , Ginal (D)
<b>Committee:</b>	House Health & Insurance Committee
<b>Bill History:</b>	1/11/2019- Introduced in House
<b>Next Action:</b>	2/6/2019- Hearing in House Health & Insurance Committee
<b>Fiscal Note:</b>	<u>1/28/2019 Version</u>

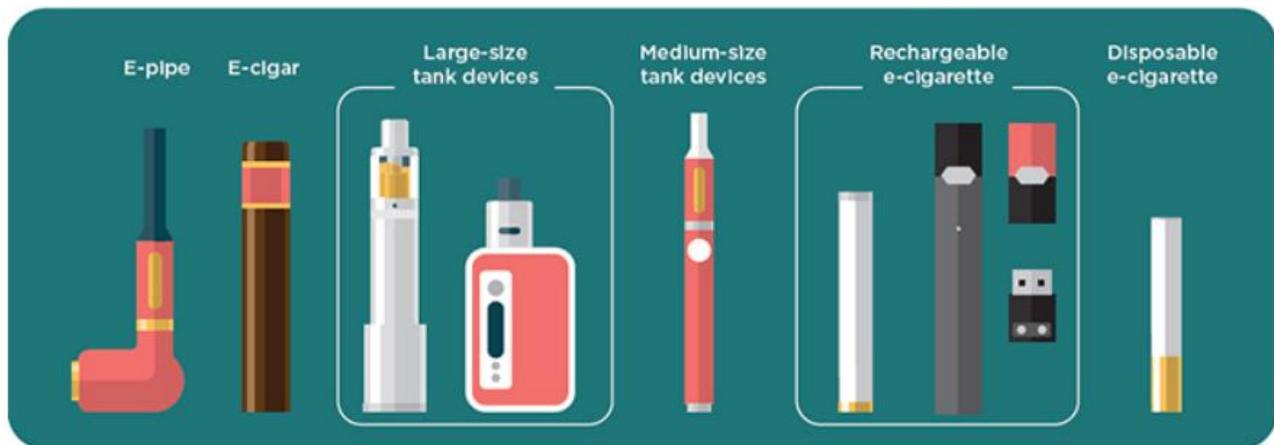
### Bill Summary

HB19-1076 amends the “Colorado Clean Indoor Air Act” to include of electronic smoking devices (ESDs) into the prohibitions.<sup>1</sup> Additionally, the bill amends the smoke-free radius around the entryway of locations subject to the act from 15 feet to 25 feet. The bill also removes certain current exceptions to the Clean Indoor Air Act.

### Issue Summary

#### Electronic Smoking Devices (ESDs)

E-cigarettes and ESDs are battery-powered devices that are a variety of shapes and sizes that produce an aerosol (or vapor) by heating a liquid that contains a variety of chemicals, which can include nicotine, ultrafine chemicals, flavorings, heavy metals, and other volatile compounds.<sup>2</sup> Users inhale the aerosol into their lungs. Bystanders can also breathe in this aerosol when the user exhales into the air. The figure below from the Centers for Disease Control and Prevention (CDC) demonstrates the variability in the products.<sup>2</sup>



<sup>1</sup> It is important to note that Colorado already has e-cigarettes legally included in the definition of tobacco product but that definition does not extend to the “Colorado Clean Indoor Air Act.”

<sup>2</sup> CDC. (Nov. 2018). *About Electronic Cigarettes (E-Cigarettes)*. Retrieved from [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/about-e-cigarettes.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html).

## Use of ESDs

In the United States, 4.5 percent of adults reported being currently using e-cigarettes in 2016.<sup>3</sup> Of those, 15 percent had never smoked a traditional cigarette. Of note, more than half, 51.2 percent, of the current e-cigarette users were under the age of 35. 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> Three communities in Larimer County, Fort Collins, Berthoud, and Timnath, have already passed ordinances that prohibit the use of ESDs in areas where smoking has been previously banned.

One other trend in e-cigarette use is regarding youth consumption. According to the CDC, many young Americans that consume ESDs also use traditional cigarettes and there is some evidence that young people that start with ESDs are more likely to smoke in the future.<sup>6</sup> The Surgeon General reports that current e-cigarette use increased 78 percent among high school students in one year, from 11.7 percent in 2017 to 20.8 percent in 2018.<sup>7</sup> In 2017, 27 percent of high school students in Colorado reported currently using e-cigarettes and 44.2 percent of students had ever used e-cigarettes.<sup>5</sup>

In recent years, one-third of U.S. adults perceive e-cigarettes as equally or more harmful than traditional cigarettes (up from approximately 10 percent in 2012).<sup>8</sup> Youth, however, have more nuanced opinions. Nearly a third of U.S. youth thought that e-cigarettes were less harmful than traditional cigarettes. About two-thirds of U.S. youth believe that the harms of e-cigarettes are dose-dependent.<sup>9</sup>

## Research on ESDs

The recent prevalence of ESDs in the United States has led to much speculation regarding the potential benefits and costs of using these devices in place of/in tandem with traditional combustible cigarette products. Primarily due to the nicotine, ESDs and e-cigarettes are dangerous for development in youth and pregnant women.<sup>10</sup>

According to the National Academies of Sciences' Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems, there is conclusive evidence that e-cigarette use decreases the quality of indoor air and contributes particulate matter that can be harmful to health.<sup>11</sup> Despite variability in the type, brand, and use of ESD liquids, there is broad evidence that ESDs emit toxic chemicals in addition to nicotine. The Committee also concluded that use of e-cigarettes results in dependence on the devices, though with apparently less risk and severity than that of traditional tobacco cigarettes. However, the

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<sup>3</sup> Mirbolouk, M., et al. (Oct. 2018). Prevalence and Distribution of E-Cigarette Use Among U.S. Adults: Behavioral Risk Factor Surveillance System, 2016. *Ann Intern Med* 169 (7): 429-438. doi: 10.7326/M17-3440

<sup>4</sup> The survey from CDPHE 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>

<sup>6</sup> Centers for Disease Control (Dec. 2018). Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults. Retrieved from [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html)

<sup>7</sup> U.S. Surgeon General (2018). *Surgeon General's Advisory on E-cigarette Use Among Youth*. Retrieved from <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

<sup>8</sup> Maheed, Ban A., et al. (2017). Changing Perceptions of harm of E-Cigarettes Among U.S. Adults, 2012-2015. *American Journal of Preventative Medicine* 52 (3): 331-338.

<sup>9</sup> Ambrose, Bridget K., et al. (2014). Perceptions of the Relative harm of Cigarettes and E-cigarettes among U.S. Youth. *American Journal of Preventative Medicine* 47 (2): 53-60.

<sup>10</sup> CDC. (Nov. 2018). *About Electronic Cigarettes (E-Cigarettes)*. Retrieved from [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/about-e-cigarettes.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html).

<sup>11</sup> Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems (Jan. 2018). Public Health Consequence of E-Cigarettes. *National Academies of Sciences, Engineering, and Medicine*. Retrieved from <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>

implications for long-term effects on morbidity and mortality are not yet clear. Finally, the committee found that evidence suggests that while e-cigarettes might cause youth who use them to transition to use of traditional tobacco products, they might also increase adult cessation of the traditional tobacco products.

A recent study adds to the body of evidence that supports the concept of e-cigarette use being associated with increased risk for cigarette initiation and use by youth.<sup>12</sup> Additionally, another recent study demonstrated that e-cigarettes were more effective for smoking cessation than nicotine-replacement therapy, when both products were accompanied by behavioral support.<sup>13</sup>

### Other States

Similar pieces of legislation exist in other states. As of 2017, 11 other states and DC have included e-cigarettes in state indoor clean air regulations and laws.<sup>14</sup> These states run the gamut, including: California, Connecticut, the District of Columbia, Delaware, Hawaii, Maine, North Dakota, New Jersey, Oklahoma, Oregon, Utah, and Vermont.

### This Legislation

The bill amends the legislative declaration of the Colorado Clean Indoor Act. It clarifies that it is in the best interest of the public, rather than just nonsmokers, to be protected from emissions from secondhand smoke and ESDs in most indoor areas open to the public. The bill strikes the previous language that asserted that there should be a balance between the health concerns of non-consumers of tobacco products and marijuana and the need to minimize unwarranted government intrusion into private spheres. That language is replaced with a section that states that “ESD emissions consist of ultrafine particles that are significantly more highly concentrated than particles within conventional tobacco smoke.” The bill asserts that there is conclusive evidence that demonstrates that most ESDs emit nicotine and other potentially toxic substances, while increasing airborne concentrations of particulate matter and nicotine in indoor areas. The bill states that studies show that people exposed to ESD emissions absorb nicotine at levels comparable to the levels experienced by passive smokers. Elements within those emissions are known to cause respiratory distress and disease, and that exposure damages lung tissue. The bill gives the example of lung cells that are exposed to ESD aerosol and flavorings show increased oxidative stress and inflammatory responses.<sup>15</sup> The bill strikes the language that the purpose of the act is to limit exposure to tobacco and marijuana smoke to preserve and improve the health, comfort, and environment of Coloradans. New language is amended in to make the purpose of the act to be protecting the right of people to breathe clean, smoke-free air to preserve and improve the health, comfort, and environment of Coloradans.

The bill strikes the definition of an “airport smoking concession” from statute. It adds the definition of an electronic smoking device or ESD as any product that contains or delivers nicotine or any other substance intended for human consumption and that can be used by a person to enable the inhalation of vapor or aerosol from the product and any device whether it is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or any other product name/description. The bill amends the definition of “entryway”, specifically the area of public or private property within a specified radius outside of a doorway. Current law states that the specified radius shall be determined by local authority but if the local authority has not acted the radius is to be 15 feet. The bill alters this to state that local authorities may

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<sup>12</sup> Berry KM, Fetterman JL, Benjamin EJ, et al. (Feb. 2019). Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US Youths. *JAMA Netw Open*.2(2):e187794. doi:10.1001/jamanetworkopen.2018.7794

<sup>13</sup> Hajek, P., Phillips-Waller, A., Przulj, D., et al. (Jan. 2019). A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy. *New England Journal of Medicine*. doi: 10.1056/nejmoa1808779

<sup>14</sup> National Conference of State Legislatures. (May 2017). *State E-Cigarette Regulations Postcard*. Retrieved from <http://www.ncsl.org/research/health/state-e-cigarette-regulations-postcard.aspx>

<sup>15</sup> Lung diseases such as asthma and chronic obstructive pulmonary disease (COPD) have been linked to oxidative stress. See: Holguin, F. (2013). Oxidative Stress in Airway Diseases. *Annals of the American Thoracic Society*, 10(Supplement), S150-S157. doi:10.1513/annalsats.201305-116aw

determine the radius but it must be at least 25 feet and if the local authority has not acted the radius shall be set at 25 feet. In current law, “smoking” is defined as the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana. The bill amends the definition to be the inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or any form, and includes the use of an ESD. The bill strikes the definition of “tobacco business.”

The bill clarifies current language that smoking is not permitted and a person shall not smoke in any indoor area. Currently, employers who own facilities that are exempted to the act shall provide a smoke-free work area for employees that request to not have to breathe secondhand smoke, the bill adds ESD emissions. The bill adds assisted living facilities to the list of indoor areas where smoking is not allowed.

The bill removes exceptions to the smoking restrictions for:

- A hotel or motel room if the total percentage of smoking rooms in the hotel or motel does not exceed 25 percent
- Any retail tobacco business
- An airport smoking concession
- A place of employment that is not open to the public that is under the control of an employer that employs three or fewer employees
- Areas of an assisted living facility that are designated for smoking for residents, fully enclosed and ventilated, and access is restricted to residents and guests.

The bill repeals the section that allows places that are not specifically exempted under the law to post signs that prohibit smoking or provide smoking and nonsmoking areas.

The bill clarifies language that allows local authorities to enact, adopt, and enforce smoking regulations that cover the subject matter covered in the Clean Indoor Air Act except that they may not adopt any local regulation that is less stringent. Current law allows for local authorities to specify an entryway radius that is less than 15 feet; the bill amends the language to state that local authorities are authorized to specify a radius of more than 25 feet.

The bill adds to the powers of the board of county commissioners by allowing them to adopt a resolution or an ordinance that limits smoking in any manner that is no less restrictive than the limitations that are set forth in the Clean Indoor Air Act.

The bill takes effect July 1, 2019.

### **Reasons to Support**

Nicotine is extremely harmful to health and addictive, no matter its means of consumption. There is evidence that e-cigarettes and ESDs are harmful to indoor air quality and will have comparable effects to secondary smoke. The primary intent of this bill, presumably, is to reduce indirect exposure to ESD aerosols. This legislation also moves Colorado towards a more all-encompassing indoor air quality standard by removing many exemptions such as hotels and motels and increasing the radius from entryways that are subject to the act. Making these public areas smoke- and aerosol-free makes them better accessible to more of the community, including those with asthma and other conditions that can be seriously irritated by smoke and pollutants found in ESD aerosol. Additionally, by limiting the public areas where ESD use is permitted, it decreases the likelihood of normalizing the behavior for teens and young adults. Additionally, the removal of the exclusion of a block hotel rooms from the “Colorado Clean Indoor Air Act” is not as large of a burden as

many may assume. Many hotels, such as Marriott, already have a smoke-free hotel policy and have opted to not allow smoking within their buildings.<sup>16</sup>

### Supporters

- Campaign for Tobacco Free Kids
- Colorado Association of Local Public Health Officials (CALPHO)
- Colorado Children’s Campaign

### Reasons to Oppose

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Despite some evidence regarding the harms of e-cigarettes, much of the science surrounding ESDs remains unsettled. Research continues to flood in regarding the health impacts of e-cigarette use, both harmful and potential benefits. If research continues to demonstrate that ESDs are helpful in helping traditional tobacco users quit smoking, this legislation may discourage that option. Some may perceive this to be an overly restrictive increase in the constraints under the “Colorado Clean Indoor Air Act.” Additionally, the removal of the language that intends the legislation to balance public health and government intrusion into private spheres may be worrisome to private entities. Additionally, the bill removes several current exceptions to the “Colorado Clean Indoor Air Act.” Removing the allowance for blocks of “smoking” rooms in hotels may place a burden on out-of-state travelers that expect to be provided with a room where they can smoke. Those individuals who are in assisted living facilities currently expect to be able to smoke in public areas, if the facility’s internal policies allow, and the removal of this exclusion may place a burden on older adults in these settings.

### Opponents

- Any opposition has not been made publicly available at this time.

### 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).

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<sup>16</sup> Marriott (n.d.) *The Marriott Smoke-free Hotel Policy*. Retrieved from <https://www.marriott.com/marriott.mi?page=smokefree#question4>