

HB20-1001: NICOTINE PRODUCT REGULATION

Concerning nicotine product regulation.

Details

Bill Sponsors:	House – Mullica (D) and Larson (R) Senate – Bridges (D) and Priola (R)
Committee:	House Health & Insurance
Bill History:	Introduced 1/8/2020
Next Action:	Hearing in House Health & Insurance Committee
Fiscal Note:	Not yet published

Bill Summary

The bill raises the minimum age of a person to whom cigarettes, tobacco products, and nicotine products may be sold from 18 years of age to 21 years of age. The bill repeals the criminal penalty for purchasing or attempting to purchase the products as a minor. On July 1, 2021, every retailer of tobacco and nicotine products in the state must be licensed by the Liquor Enforcement Division of the Department of Revenue.

Issue Summary

Nicotine Products

A "cigarette, tobacco product, or nicotine product" is a product that contains nicotine or tobacco, or is derived from tobacco that is ingested, inhaled, or applied to skin.¹ 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.² 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).³ 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.³ In Colorado, 25.7 percent of cancer deaths are attributable to smoking.⁴ Each year, approximately 5,100 Coloradan adults die from their own smoking.⁴

Adult Tobacco and Nicotine Product Use

In 2017, 5.3 percent of Colorado adults reported currently using e-cigarettes⁵ and 14.6 percent currently using cigarettes.⁶ Between 2016 and 2017, 5.5 percent of Larimer County adults reported currently using e-cigarettes.⁶ From 2015 to 2017, 13.4 percent reported currently using traditional cigarettes.⁶ In recent years,

¹ As defined in C.R.S. 18-13-121(5)

² 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

³ Centers for Disease Control and Prevention (2018). *Health Effects*. Retrieved from https://www.cdc.gov/tobacco/basic_information/health_effects/index.htm

⁴ Campaign for Tobacco Free Kids (Jan. 15, 2020) *The Toll of Tobacco in Colorado*. Retrieved from <https://www.tobaccofreekids.org/problem/toll-us/colorado>

⁵ The survey used the wording "electronic vapor device"

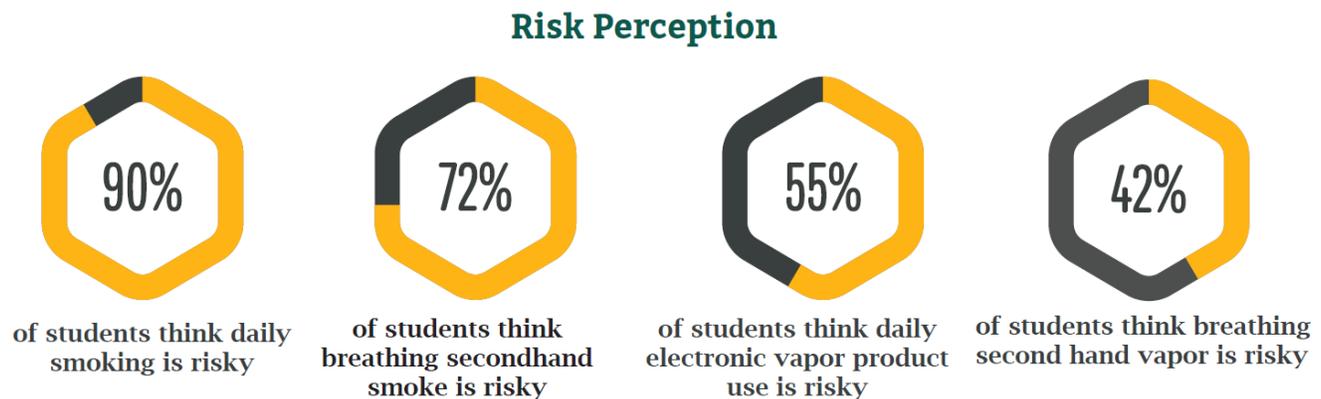
⁶ CO Department of Public Health and Environment (n.d.) *VISION: Visual Information System for Identifying Opportunities and Needs*. Retrieved from <https://www.colorado.gov/pacific/cdphe/vision-data-tool>

one-third of U.S. adults perceive e-cigarettes as equally or more harmful than traditional cigarettes (up from approximately 10 percent in 2012).⁷

Youth Tobacco and Nicotine Use

The U.S. Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC) recently released findings from the 2019 National Youth Tobacco Survey.⁸ The results show high rates of middle and high school students using e-cigarettes. More than 5 million youth reporting having used e-cigarettes in the past 30 days and nearly one million reporting daily use. According to the CDC, many young Americans that consume electronic smoking devices (i.e. e-cigarettes) also use traditional cigarettes and there is some evidence that young people that start with ESDs are more likely to smoke in the future.⁹ 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 2018.¹⁰ Nearly a third of U.S. youth thought that e-cigarettes were less harmful than traditional cigarettes.¹¹ About two-thirds of U.S. youth believe that the harmful effects of e-cigarettes are dose-dependent.

In 2017, 27 percent of high school students in Colorado reported currently using e-cigarettes and 7.2 percent were current cigarette smokers.¹² During the same period, 32 percent of Larimer County high school students reported using electronic vapor products within the past 30 days.¹³ In comparison, 7 percent of all Larimer students reported using cigarettes. The following graphic from the Larimer County Department of Health and Environment illustrates the difference in risk perception of youth in regards to cigarettes and electronic smoking devices.



⁷ 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.

⁸ US Food and Drug Administration (Nov. 18, 2019) *Youth Tobacco Use: Results from the National Youth Tobacco Survey*. Retrieved from <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>

⁹ 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

¹⁰ 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>

¹¹ 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.

¹² 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>

¹³ Larimer County Department of Health & Environment. *Tobacco Data Brief*.

Raising Age to 21

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.¹⁴ 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.

As of the beginning of 2020, 25 cities and counties in Colorado had enacted ordinances or resolutions that raised the minimum age to purchase tobacco and nicotine products to 21 years old.¹⁵ On December 20, 2019, President Donald Trump signed legislation¹⁶ that amended the Federal Food, Drug, and Cosmetic Act, which raised the federal minimum age of sale of tobacco products from 18 to 21 years.¹⁷ Every retailer is prohibited from selling any tobacco or nicotine product—including cigarettes, cigars and e-cigarettes—to anyone under 21.

Retailer Licensing

Tobacco retail licensing policies typically require businesses to purchase licenses and follow all tobacco control laws in order to 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.¹⁸

Local licensing has the potential to decrease youth sales by up to 30 percent in some cases.¹⁹ A study demonstrated that policies that ban tobacco product sales near schools seem to be more effective at reducing retailer density in lower income and racially diverse communities, and may have the potential to reduce tobacco-related disparities.²⁰ A 2013 study showed that both smokers (51 percent) and non-smokers (69 percent) favor prohibiting retailers near schools from selling tobacco.²¹

As of the beginning of 2020, 28 cities and counties in Colorado had enacted ordinances or resolutions that established a type of tobacco retailer licensing.²² Six of these communities opted to create only a non-cigarette tobacco retailer licensing program. At the time of publication, no community in Larimer County had opted to enact an ordinance or resolution to create any retailer licensing program. However, 61 percent of respondents from the Health District's 2016 Community Health Survey favored a license to sell tobacco products. Between 2016 and 2018, 7.5 percent of tobacco/nicotine retailers in Fort Collins failed the currently required compliance checks and sold products to minors.²³

¹⁴ 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>

¹⁵ Number gathered through conversations with staff at the Larimer County Department of Health and Environment

¹⁶ H.R. 1865- Further Consolidated Appropriations Act, 2020. Retrieved from <https://www.congress.gov/bill/116th-congress/house-bill/1865?q=%7B%22search%22%3A%5B%22h.r.+1865%22%5D%7D&s=6&r=1>

¹⁷ US FDA (Jan. 15, 2020). *Newly Signed Legislation Raises Federal Minimum Age of Sale of Tobacco Products to 21*. Retrieved from <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21>

¹⁸ 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>

¹⁹ 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>

²⁰ Ribisl, K., et al. (Aug. 2016). Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine & Tobacco Research* 19 (2): 239-244. doi: <https://doi.org/10.1093/ntr/ntw185>

²¹ Farley SM, Coady MH, Mandel-Ricci J, et al. Public opinions on tax and retail-based tobacco control strategies. *Tobacco Control* 2015;24:e10-e13.

²² Number gathered through conversations with staff at the Larimer County Department of Health and Environment

²³ Larimer County Department of Health & Environment. *Current Laws are Not Enough-Possible Local Solutions*.

Penalties for Minors

Although there is no systematic surveillance on youth purchase, use, or possession (PUP) laws, research over the past couple decades has predominantly demonstrated that they are not an effective approach to reducing youth tobacco use. Some assert that the laws can actually detract from more effective control efforts, such as targeting penalties towards retailers that sell to minors.²⁴ Additionally, research suggests that penalizing youth with these laws can deter them from seeking support for quitting. PUP laws are difficult to systematically enforce, since there are a large number of youth, their locations are not constantly known, and use rarely occurs in front of enforcement officers. Further, focusing enforcement efforts on PUP laws may divert resources from enforcing laws that ban the sale of the products by retailers.²⁵ Punishment is not an optimal method for behavior change, especially when the behavior is addictive.²⁶

This Legislation

The bill prohibits the sale, distribution, dispensing, or offering the sale of cigarettes, tobacco, or nicotine products to persons under the age of 21. The bill removes current language that penalizes minors that purchase or attempts to purchase these products with a class 2 petty offense, resulting in a fine and/or tobacco education classes. Furthermore, statutory or home rule municipalities and counties cannot enact an ordinance or resolution that sets the legal age to purchase these products below 21.

Cigar-tobacco bars and retail tobacco businesses that are primarily engaged in the sale of tobacco products must prohibit entry by those under the age of 21. The required signage for these businesses must be updated to include the increase in age and read "Persons under twenty-one years of age may not enter."

The bill clarifies that county commissioners has the power to license or regulate the sale of cigarettes, tobacco products, or nicotine products.

Section 6 of the bill sets forth new definitions for Title 44, Article 7 of the Colorado Revised Statutes, which dictates the regulation of tobacco sales to minors.

The bill completely removes the current exception that allows cigarette vending machines in non-public businesses, places where minors are not allowed, and locations where employees can prevent the dispensing of cigarettes to minors.

Current law requires a warning sign to be predominantly posted by any person selling cigarettes, tobacco products, or nicotine. The bill updates the language of the sign to replace "18" with "21" and removes the language that states, "to purchase cigarettes, tobacco products, or nicotine products, and, upon conviction, a \$100.00 fine may be imposed."

The bill clarifies that the Division of Liquor Enforcement, within the Department of Revenue, can either perform compliance checks or have them be performed on its behalf. The bill mandates that two checks or the number required by federal regulations (whichever is greater) be performed annually. Each year the Division is to perform a check by utilizing a person under the age of 21 to enter an establishment and purchase one of these products. The bill states that if a location is found to sell to a person under the age of 21 during a compliance check, the Division or a local authority in coordination with the Division is to conduct another compliance check three to six months after the violation occurred. Furthermore, the bill updates

²⁴ Wakefield, M, and Giovino, G, "Teen penalties for tobacco possession, use, and purchase: evidence and issues," *Tobacco Control*, 12(Suppl 1):i6-i13, 2003. Retrieved from https://tobaccocontrol.bmj.com/content/12/suppl_1/i6

²⁵ Campaign for Tobacco Free Kids (Sept. 2018). *Youth PUP Laws are Not Effective Tobacco Prevention*. Retrieved from <https://www.tobaccofreekids.org/assets/factsheets/0074.pdf>

²⁶ Volkow ND, Baler RD, Goldstein RZ. Addiction: pulling at the neural threads of social behaviors. *Neuron*. 2011;69(4):599-602

current language to have the Division put the identification and business address of state-licensed retailers on its website.

On and after July 1, 2021, a retailer that sells cigarettes, tobacco products, or nicotine products must obtain a state license from the Division. The license is valid for a year and is to be renewed by application in a form and manner dictated by the Division. The owner of multiple locations must apply for license for each location. If the Executive Director wishes to authorize such an owner to apply simultaneously for licenses by submitting a join application, a rule may be enacted. The rule can dictate the process by which the owner can apply for a joint application as well as a joint application fee. A license application is to be approved or denied within 60 days of its receipt. A license can only be denied for good cause. If denied, the Division must inform the applicant the reasons for the denial. Within 14 days of receiving the denial, the applicant can request a hearing be held on the issue. If a retailer selling products within the state before July 1, 2021 has applied for a license and paid the fee by that date, the retailer can continue to sell the products without a license while the Division reviews the application. Once the retailer obtains the license, it must conspicuously display the license at the location. Licenses are not transferable. If a licensee ceases to be a retailer because of discontinuation, sale, or transfer of the business, the Division must be notified in writing on or before one of these events takes effect. If the person that purchased a retail location applies for a license within 30 days of taking ownership, the person can continue to sell all nicotine products without a license while the Division reviews the application.

If a local government imposes retail licensing for these establishments the requirements must be as stringent as the state license and can also be more stringent. If a retailer applies for a state license in a location that requires local license, the Division is to not issue a state license until the retailer has obtained a local license and provided a copy of that license. The Division is to collaborate with local authorities on performing appropriate compliance checks that are not duplicative of one another. The two entities are to communicate to ensure complaints received by the Division are forwarded to local authorities and vice versa.

Ninety days before an existing state license is set to expire, the Division is to notify the licensee of the expiration date by e-mail or first class mail. The Division must establish a process to confirm that the notice was received. This process must be outlined in the notification itself and on the Division's website. If the licensee is within the jurisdiction of a local authority, the state cannot renew the state license until the licensee has demonstrated that licensee has a valid local license or has a pending application to renew a local license. If the local application is still pending at the time of application to the state, the Division is to not renew the state license until the local one has been renewed. Additionally, if the Division only denies the state license renewal due to lack of local renewal documentation, the license is extended until both the local authority and Division have taken final action on the applications. If a local license is suspended by a local authority, the Division is to suspend the state license until the retailer can demonstrate that the local license has been reinstated. If the local license is revoked, the Division is to revoke the state license.

The bill requires that rules are promulgated by the Executive Director of the Department of Revenue. The rules are to set fee amounts that cover the cost of enforcement and administration of the licensing program. The fees cannot exceed the total cost of the program, except for any adjustments made in accordance with the Consumer Price Index for Denver-Aurora-Lakewood. The collected fees are to be transferred to the state treasurer, who then credits the fees to the Liquor Enforcement Division and State Licensing Authority Cash Fund. The rules must specify the number and manner of the required compliance checks. Rules can also be promulgated to authorize a temporary state license and requiring a fee, which must specify the license remains in effect for no more than 30 days and is not renewable. During rulemaking, the Department of Human Services, the Department of Public Health and Environment, local governments, and any other appropriate agencies can be consulted.

The Division cannot approve a license application for a new location that is within 500 feet of a school. The distance is measured from the nearest property line of the school to the nearest portion of the building where the products will be sold, using a direct walking route. This does not apply to existing locations. If an existing location is transferred to a new owner after the effective date, the new owner does not have to comply with the 500 foot limit. By ordinance or resolution, a local authority can eliminate one or more types of schools from the restriction or adopt shorter distance restrictions.

Retailers cannot advertise electronic smoking device products in a way that is visible from the outside of the retail location.

Cigarettes, tobacco products, and nicotine products cannot be shipped or delivered directly to Colorado consumers. Cigars are an exception and can still be directly shipped and delivered to consumers. The bill reasserts that licensed retailers, wholesalers, and distributors can receive shipments and deliveries of these products. The products can be only sold online if they are delivered to a licensed retail location that agrees to hold the products until the consumer picks them up.

The Division has the responsibility of enforcing the bill and may penalize retailers for violations. Through the Attorney General's office the Division can apply for an injunction from a court to enjoin a person from committing an act in violation of this bill. After proper investigation and hearing, a state license can be suspended or revoked and a fine levied if a retailer/person violated any section of the bill. Nothing in the bill prohibits a local government from imposing sanctions on a retailer that has violated a local ordinance or resolution. For a violation in relation to selling a product to a person under the age of 21, the penalty structure is as follows:

First violation in 36 month period	\$250-\$500
Second violation in a 36 month period	\$500-\$750 AND ban from selling nicotine products at the location for at least 7 days after the fine is imposed
Third violation in a 36 month period	\$750-\$1,000 AND ban from selling nicotine products at the location for at least 30 days after the fine is imposed
Fourth or subsequent violation in a 36 month period	\$1,000-\$15,000 AND ban from selling nicotine products at the location for up to 3 years after the fine is imposed

The bill increases the time period for violations from 24 to 36 months for violating the current prohibition on selling individual cigarettes, a pack with fewer than 20 cigarettes, or a roll-your-own tobacco package with less than 0.60 ounces of tobacco.

On and after July 1, 2021, anyone who sells or offers to sell cigarettes, tobacco products, or nicotine products without a valid state license is subject to the following specified civil fines for each retail location, with each sale without a license being considered a violation:

First violation	\$1000
Second violation in a 36 month period	\$2000
Third or subsequent violation in a 36 month period	\$3000 AND ordered to stop selling nicotine products, which makes the person ineligible to apply for a state license for 3 years after the date of the order

The above fine amounts also apply to violations of the prohibition of visible advertising of electronic smoking device products and the direct to consumer shipping and delivery of nicotine products.

The bill removes the current exception that establishes an affirmative defense for a retailer that had a violation of selling products to minors but had met certain conditions such as: adopting a written policy against selling to minors, informing employees of the law, requiring age verification, and establishing discipline for noncompliance.

The bill includes the penalties for selling products from a vending machine, not displaying the required signage, or permitting a person under 18 to sell the products. The structure is as follows:

First violation in 36 month period	\$25 (only for vending machine and sales by person under 18) or written warning (not displaying required signage)
Second violation in a 36 month period	\$50
Third violation in a 36 month period	\$100
Fourth violation in a 36 month period	\$250
Fifth or subsequent violation in a 36 month period	\$250-\$1,000

The bill is effective upon the Governor's signature.

Reasons to Support

Licensing is a common policy tool that state governments use to regulate businesses like restaurants and alcohol retailers; it is important to treat tobacco retailers like these entities and license them in order to protect public health and safety and avoid preventable deaths. Licensing will enable the state to maintain a current and comprehensive list of retailers. Outside organizations can use this data to map retailers and understand the number, location, and density of retailers in the community. The annual fees create self-financing programs that allows for regular and comprehensive enforcement. Further, the penalties for violations of the provisions in the bill are mainly two-fold. The threat of license suspension creates a greater financial deterrent to retailers than a simple fine. For many stores, especially convenience stores, tobacco sales make up a substantial portion of their revenue. Losing the ability to sell tobacco products for a defined period can cost retailers far more than the largest allowable fines. Licensing policies imposed by states or local jurisdictions place responsibility on retailers rather than young adults; by ensuring adequate funding and enforcement, it can be more effective than PUP laws in reducing youth initiation and continuing tobacco use.²⁷

Removing the penalties for minors eliminates the enforcement problems of the PUP laws and stops shifting the blame for underage tobacco use from industry and retailers to youth. It is easier to regulate and sanction retailers since they are fewer in number than youth and they reside in a fixed location. With the novel ways of discretely possessing nicotine products, it is challenging to enforce such PUP laws.

Supporters

- Adam's 12 Five Star Schools
- Adams County
- American Heart Association
- Boulder County
- Children's Hospital Colorado
- City of Northglenn

²⁷ ChangeLab Solutions (April 2019). *PUP in Smoke*. Retrieved from https://www.changelabsolutions.org/sites/default/files/2019-05/PUPinSmoke_FINAL_2019-04-17.pdf

- Colorado Association of Local Public Health Officials (CALPHO)
- Colorado Municipal League
- Colorado Public Health Association
- Healthier Colorado
- Kaiser Foundation Health Plan
- Kaiser Permanente
- Mental Health Colorado

Reasons to Oppose

This bill could cause some small tobacco retailer businesses to close, as adhering to the licensing requirements could prove burdensome to some. Furthermore, the license may create a barrier to market entry to smaller businesses. Additionally, the licensing may be perceived as another tax rather than a control measure.

Some groups may assert that stores that exclusively sell electronic smoking devices should not be lumped into the same license as other tobacco retailers, as they are selling what some consider to be a harm reduction device. Further, some research has shown that limiting access to electronic smoking devices can increase the use of conventional cigarettes by youth.²⁸ This research may bolster the argument that the retailers should be treated differently than traditional tobacco retailers.

Some may oppose removing the penalties for minors that purchase nicotine/tobacco products because it removes the personal responsibility component and the legal deterrent for those youth. Without the punishment for the youth, their perception that the products are dangerous may decrease, and the behavior of consuming tobacco products may continue or increase.

Although the federal government has already raised the minimum legal age to purchase tobacco/nicotine products to 21 years from 18, it is important to note that those young adults 18-20 years of age that consume combustible tobacco products will no longer have the option to transition to electronic smoking devices, which some see as a harm reduction model.

Opponents

- Currently there is no formal opposition to the bill

Other Considerations

To further impact youth consumption, it may be effective to increase the minimum distance new tobacco/nicotine retailers must be from schools. Five hundred feet is less than two average city blocks. Allowing local authorities to eliminate some or all schools from distance restriction, or to adopt shorter distance requirements, could lead to minimizing the impact on decreasing youth tobacco/nicotine usage.

About this Analysis

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 analysis or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.

²⁸ Friedman AS. How does electronic cigarette access affect adolescent smoking?. *Journal of Health Economics*. 2015;44 :300-308.