

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0571.01 Jennifer Berman x3286

HOUSE BILL 22-1064

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A BILL FOR AN ACT

101 CONCERNING TOBACCO PRODUCTS, AND, IN CONNECTION THEREWITH,
102 PROHIBITING THE DISTRIBUTION OF FLAVORED CIGARETTES,
103 TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, AMENDING THE
104 DEFINITION OF CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
105 PRODUCT TO INCLUDE PRODUCTS CONTAINING SYNTHETIC
106 NICOTINE, AND DIRECTING THE PREVENTION SERVICES DIVISION
107 IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO
108 CONVENE A WORKING GROUP TO DEVELOP AND IMPLEMENT A
109 GRANT PROGRAM TO ADDRESS THE NEEDS OF COMMUNITIES
110 DISPROPORTIONATELY IMPACTED BY TOBACCO AND NICOTINE
111 MARKETING, SALES, AND USE.

Bill Summary

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill makes legislative findings.

Section 3 prohibits a cigarette, tobacco product, or nicotine product (product) retailer from selling, offering for sale, advertising for sale, displaying, or marketing in the state any flavored product, and **section 2** defines flavored product as a product imparting a taste or smell other than the taste or smell of tobacco. A retailer, manufacturer of products, or employee or agent of a retailer or manufacturer of products engages in conduct creating a rebuttable presumption that a product is a flavored product if the person makes a public statement or claim, uses text or images, or takes other action directed toward consumers indicating that the product has a taste or smell other than the taste or smell of tobacco.

Section 4 imposes the same penalties for selling, offering for sale, advertising for sale, displaying, or marketing in the state any flavored product that apply to unlawful sales of products to minors.

Section 5 amends the definition of product to include products containing synthetic nicotine, and **section 2** defines synthetic nicotine as nicotine derived from a source other than tobacco.

Section 6 directs the prevention services division in the department of public health and environment (department) to convene a working group to develop, implement, and administer a grant program to award 2-year grants to applicants who are able to provide evidence-informed and individualized wrap-around services in communities disproportionately impacted by targeted tobacco and nicotine marketing and sales or by increased or minimally improved tobacco-use and nicotine-use prevalence rates. **Section 6** also directs the general assembly to appropriate \$10 million from the general fund to the department for the grant program.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) Colorado has a substantial interest in protecting the health and
5 safety of its residents, including protecting children under 18 years of age,

1 referred to in this section as "youth", as well as young adults under 21
2 years of age, from dangerous products like cigarettes, tobacco products,
3 and nicotine products, referred to collectively in this section as "tobacco
4 products";

5 (b) Use of tobacco products remains the leading cause of
6 preventable death in the United States, killing more than 480,000
7 Americans each year, including 5,100 each year in Colorado;

8 (c) According to a 2016 article in the Journal of the American
9 Medical Association Internal Medicine, "State-level Cancer Mortality
10 Attributable to Cigarette Smoking in the United States", smoking
11 accounts for 25.7% of cancer deaths in Colorado;

12 (d) According to a 2018 publication of the office of the surgeon
13 general, "Surgeon General's Advisory on E-cigarette Use Among Youth",
14 nicotine use can harm the part of the adolescent brain that is responsible
15 for attention, learning, mood, and impulse control, and nicotine use can
16 prime the brain for addiction to other drugs;

17 (e) In that same 2018 publication of the office of the surgeon
18 general, the surgeon general declared that electronic cigarette use among
19 youth is an "epidemic";

20 (f) The office of the surgeon general, in a 2012 report entitled
21 "Preventing Tobacco Use Among Youth and Young Adults: A Report of
22 the Surgeon General", determined that menthol cigarettes and other
23 flavored tobacco products have been shown to be "starter" tobacco
24 products for youth, can become habit-forming, and can lead to long-term
25 addiction;

26 (g) According to a 2013 study conducted by the federal food and
27 drug administration, "Preliminary Scientific Evolution of the Possible

1 Public Health Effects of Menthol versus Nonmenthol Cigarettes",
2 menthol is an appealing option for youth initiating tobacco use because
3 it cools and numbs the throat and reduces irritation;

4 (h) Based on the 2013 study, the federal food and drug
5 administration has determined that menthol cigarettes lead to:

6 (I) Increased initiation of smoking among youth and young adults
7 18 to 24 years of age;

8 (II) Greater addiction to tobacco products; and

9 (III) Decreased success in smoking cessation efforts;

10 (i) According to a 2019 federal centers for disease control and
11 prevention study, "Tobacco Product Use and Associated Factors Among
12 Middle and High School Students - United States, 2019", almost one-half
13 of all high school users of flavored tobacco products use menthol
14 cigarettes;

15 (j) A study in Nicotine and Tobacco Research, "The African
16 Americanization of Menthol Cigarette Use in the United States", states
17 that the tobacco product industry has targeted Black communities for
18 decades by marketing menthol cigarette use through magazine
19 advertising, retail promotions, and sponsorship of community and music
20 events;

21 (k) A 2020 article in Nicotine and Tobacco Research, "Banning
22 Menthol Cigarettes: A Social Justice Issue Long Overdue", states that,
23 while only 29% of White tobacco product users smoke menthol
24 cigarettes, 85% of Black tobacco product users and 50% of Hispanic
25 tobacco product users smoke menthol cigarettes;

26 (l) A 2015 report of the United States surgeon general, "Smoking
27 Cessation", indicated that, in the prior year, Black adult smokers had a

1 higher prevalence of attempts to quit smoking than White adult smokers,
2 but that successful attempts at cessation do not vary by race or ethnicity,
3 thus suggesting that a higher percentage of Black adults than White adults
4 are trying to quit smoking, but are less successful at quitting. Because
5 Black smokers are more likely to use menthol cigarettes than other racial
6 or ethnic groups, menthol cigarettes may play a role in this disparity.

7 (m) In a 1998 report of the United States surgeon general, it was
8 estimated that approximately 45,000 Black Americans die each year from
9 smoking-caused illnesses;

10 (n) A 2015 article in the Journal of the American Medical
11 Association, "Flavored Tobacco Product Use Among US Youth Aged
12 12-17 Years, 2013-2014", indicated that eight out of 10 youth who have
13 ever used a tobacco product first used a flavored tobacco product;

14 (o) That same article indicated that more than three-quarters of
15 youth hookah users report that they use hookah products "because they
16 come in flavors I like";

17 (p) A 2012 report of the United States surgeon general,
18 "Preventing Tobacco Use Among Youth and Young Adults: A Report of
19 the Surgeon General", indicated that hookah smoke contains at least 82
20 toxicants and carcinogens and that smoking hookah is linked to many of
21 the same adverse health effects as cigarette smoking, such as heart disease
22 and lung, bladder, and oral cancers;

23 (q) Electronic cigarettes and other flavored tobacco products have
24 been made available in a variety of kid-friendly flavors, like cotton candy,
25 gummy candy, and pink lemonade;

26 (r) Likewise, cigars are sold in hundreds of flavors to mask the
27 harsh taste of tobacco, such as cherry, brownie, and tropical flavors;

1 (s) A 2019 Healthy Kids Colorado Survey conducted by the
2 Colorado Center for Health and Environmental Data showed that 25.9%
3 of Colorado high school students use electronic cigarettes;

4 (t) According to a 2018 report of the National Academies of
5 Science, Engineering, and Medicine, "Public Health Consequences of
6 E-cigarettes", youth usage of electronic cigarettes is associated with an
7 increased risk of cigarette smoking;

8 (u) A United States department of health and human services
9 report, "Results from the 2019 National Survey on Drug Use and Health:
10 Summary of National Findings and Detailed Tables", estimates that each
11 year, 9,900 Colorado youth will try their first cigarette;

12 (v) According to a 2020 nationwide study by the federal centers
13 for disease control and prevention, "E-cigarette Use Among Middle and
14 High School Students - United States, 2020":

15 (I) More than two million youth nationwide use electronic
16 cigarettes;

17 (II) Nearly 40% of high school students who use electronic
18 cigarettes use them frequently;

19 (III) 85% of youth using electronic cigarettes use flavored
20 products;

21 (IV) Cigars are the second most popular tobacco product for youth
22 and are disproportionately used by Black youth; and

23 (V) The growing market for flavored tobacco products
24 undermines the nation's progress toward reducing overall youth tobacco
25 product use; and

26 (w) A 2021 article in the Journal of the American Medical
27 Association, "Nicotine Pouch Unit Sales in the U.S. From 2016 to 2020

1 - Reply", stated that "[w]hether derived from tobacco plants or
2 synthetically developed in a laboratory, nicotine is an addictive drug with
3 known adverse health consequences", particularly to youth.

4 (2) The general assembly further finds and declares that:

5 (a) Many parents, students, schools, and public health
6 organizations, including the American Cancer Society, the American
7 Lung Association, the American Heart Association, and the Campaign for
8 Tobacco-free Kids, support a prohibition on the sale of all flavored
9 tobacco products; and

10 (b) Therefore, the sale of flavored tobacco products in the state
11 should be prohibited.

12 **SECTION 2.** In Colorado Revised Statutes, 44-7-102, **add** (4.5)
13 and (12.2) as follows:

14 **44-7-102. Definitions.** As used in this article 7, unless the context
15 otherwise requires:

16 (4.5) "FLAVORED CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
17 PRODUCT" MEANS A CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
18 PRODUCT THAT, EITHER BEFORE OR DURING THE CONSUMPTION OF THE
19 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT, IMPARTS A TASTE
20 OR SMELL OTHER THAN THE TASTE OR SMELL OF TOBACCO, INCLUDING ANY
21 TASTE OR SMELL RELATING TO FRUIT, MENTHOL, MINT, WINTERGREEN,
22 CHOCOLATE, COCOA, VANILLA, HONEY, CANDY, DESSERT, ALCOHOL
23 BEVERAGE, HERB, OR SPICE.

24 (12.2) "SYNTHETIC NICOTINE" MEANS NICOTINE DERIVED FROM A
25 SOURCE OTHER THAN TOBACCO.

26 **SECTION 3.** In Colorado Revised Statutes, **add** 44-7-104.9 as
27 follows:

1 **44-7-104.9. Prohibition on sale or advertisement of flavored**
2 **cigarettes, tobacco products, or nicotine products - rebuttable**
3 **presumption. (1) A RETAILER SHALL NOT SELL, OFFER FOR SALE,**

4 ADVERTISE FOR SALE, DISPLAY, OR MARKET IN THIS STATE ANY FLAVORED
5 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT.

6 (2) THE FOLLOWING CONDUCT OF A RETAILER, A MANUFACTURER
7 OF A CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT, OR AN
8 EMPLOYEE OR AGENT OF A RETAILER OR MANUFACTURER OF CIGARETTES,
9 TOBACCO PRODUCTS, OR NICOTINE PRODUCTS CREATES A REBUTTABLE
10 PRESUMPTION THAT A CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
11 PRODUCT IS A FLAVORED CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
12 PRODUCT:

13 (a) MAKING A PUBLIC STATEMENT OR CLAIM THAT THE CIGARETTE,
14 TOBACCO PRODUCT, OR NICOTINE PRODUCT IMPARTS A TASTE OR SMELL
15 OTHER THAN THE TASTE OR SMELL OF TOBACCO;

16 (b) USING TEXT, IMAGES, OR BOTH ON THE LABELING OR
17 PACKAGING OF THE CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
18 PRODUCT TO INDICATE, EXPLICITLY OR IMPLICITLY, THAT THE CIGARETTE,
19 TOBACCO PRODUCT, OR NICOTINE PRODUCT IMPARTS A TASTE OR SMELL
20 OTHER THAN THE TASTE OR SMELL OF TOBACCO; OR

21 (c) TAKING ACTION DIRECTED TO CONSUMERS THAT WOULD BE
22 REASONABLY EXPECTED TO CAUSE CONSUMERS TO BELIEVE THAT THE
23 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT IMPARTS A TASTE
24 OR SMELL OTHER THAN THE TASTE OR SMELL OF TOBACCO.

25 (3) THIS SECTION IS ENFORCEABLE ONLY AGAINST A RETAILER AND
26 SHALL NOT BE ENFORCED AGAINST ANY CONSUMER WHO PURCHASES,
27 USES, OR POSSESSES A FLAVORED CIGARETTE, TOBACCO PRODUCT, OR

1 NICOTINE PRODUCT.

2 **SECTION 4.** In Colorado Revised Statutes, 44-7-106, **amend**
3 (1)(a) introductory portion as follows:

4 **44-7-106. Limitation on fines.** (1) (a) For a violation of section
5 44-7-103 (1) OR 44-7-104.9, the penalty is as follows:

6 **SECTION 5.** In Colorado Revised Statutes, 18-13-121, **amend**
7 (5) as follows:

8 **18-13-121. Furnishing cigarettes, tobacco products, or nicotine**
9 **products to persons under twenty-one years of age - definition.**

10 (5) (a) As used in this section, "cigarette, tobacco product, or nicotine
11 product" means:

12 (I) A product that contains, IS MADE OF, OR IS DERIVED FROM
13 nicotine, ~~or tobacco, or is derived from tobacco,~~ SYNTHETIC NICOTINE and
14 is intended ~~to be ingested or inhaled by~~ FOR HUMAN CONSUMPTION, OR IS
15 LIKELY TO BE CONSUMED, THROUGH INGESTION OR INHALATION ~~or applied~~
16 BY APPLICATION to the skin of an individual; ~~or~~

17 (II) Any device that can be used to deliver tobacco, ~~or~~ nicotine,
18 SYNTHETIC NICOTINE, OR ANY SUBSTANCE THAT CONTAINS NICOTINE OR
19 SYNTHETIC NICOTINE to the person inhaling from the device BY
20 AEROSOLIZING OR VAPORIZING THE TOBACCO, NICOTINE, SYNTHETIC
21 NICOTINE, OR SUBSTANCE THAT CONTAINS NICOTINE OR SYNTHETIC
22 NICOTINE, including:

23 (A) An electronic cigarette;

24 (B) AN ELECTRONIC cigar;

25 (C) AN ELECTRONIC cigarillo; or

26 (D) AN ELECTRONIC pipe; OR

27 (III) ANY COMPONENT, PART, OR ACCESSORY OF A PRODUCT

1 DESCRIBED IN SUBSECTION (5)(a)(I) OF THIS SECTION OR A DEVICE
2 DESCRIBED IN SUBSECTION (5)(a)(II) OF THIS SECTION, WHETHER THE
3 COMPONENT, PART, OR ACCESSORY CONTAINS TOBACCO, NICOTINE, OR
4 SYNTHETIC NICOTINE, INCLUDING FILTERS, ROLLING PAPERS, BLUNT OR
5 HEMP WRAPS, HOOKAHS, FLAVOR ENHANCERS, OR PIPES.

6 (b) ~~Notwithstanding any provision of paragraph (a) of this~~
7 ~~subsection (5) to the contrary,~~ "Cigarette, tobacco product, or nicotine
8 product" does not mean a product that DRUGS, DEVICES, OR COMBINATION
9 PRODUCTS AUTHORIZED FOR SALE BY the food and drug administration of
10 the United States department of health and human services, ~~has approved~~
11 ~~as a tobacco use cessation product~~ AS THOSE TERMS ARE DEFINED IN THE
12 "FEDERAL FOOD, DRUG, AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ.

13 **SECTION 6.** In Colorado Revised Statutes, **add 25-3.5-811** as
14 follows:

15 **25-3.5-811. Grant program - disproportionately impacted**
16 **communities - administration by working group - grant applicant**
17 **eligibility - appropriation - report.** (1) BY AUGUST 1, 2022, THE
18 DIVISION SHALL CONVENE A WORKING GROUP TO DEVELOP, IMPLEMENT,
19 AND ADMINISTER A GRANT PROGRAM TO PROVIDE RESOURCES TO
20 COMMUNITIES DISPROPORTIONATELY IMPACTED BY THE MARKETING AND
21 SALES OF TOBACCO AND NICOTINE PRODUCTS AND THE PREVALENCE OF
22 TOBACCO AND NICOTINE PRODUCT USE IN THE COMMUNITIES. THE
23 WORKING GROUP MUST INCLUDE REPRESENTATIVES FROM:

- 24 (a) COMMUNITY-BASED ORGANIZATIONS;
- 25 (b) PUBLIC HEALTH ORGANIZATIONS AND INSTITUTIONS;
- 26 (c) HEALTH CLINICS THAT SERVE COMMUNITIES THAT ARE
27 DISPROPORTIONATELY IMPACTED BY TOBACCO MARKETING, SALES, AND

1 USE;

2 (d) COLORADO-BASED FOUNDATIONS;

3 (e) THE KINDERGARTEN THROUGH TWELFTH GRADE EDUCATION
4 COMMUNITY; AND

5 (f) ADVOCACY ORGANIZATIONS THAT WORK DIRECTLY WITH
6 COMMUNITIES DISPROPORTIONATELY IMPACTED BY TOBACCO AND
7 NICOTINE MARKETING, SALES, AND USE AND THAT PROVIDE CULTURALLY
8 COMPETENT SERVICES.

9 (2) (a) THE WORKING GROUP SHALL MEET AS NECESSARY IN ORDER
10 TO DEVELOP AND IMPLEMENT THE GRANT PROGRAM BY JANUARY 15, 2023.

11 (b) THE WORKING GROUP SHALL DEVELOP THE PROCESS FOR GRANT
12 APPLICANTS TO APPLY FOR A GRANT AND THE CRITERIA FOR GRANT
13 APPLICANTS TO QUALIFY FOR A GRANT, WHICH CRITERIA MUST, AT A
14 MINIMUM, REQUIRE A GRANT APPLICANT TO:

15 (I) SERVE COMMUNITIES AND INDIVIDUALS THAT HAVE BEEN
16 DISPROPORTIONATELY IMPACTED BY:

17 (A) TARGETED TOBACCO AND NICOTINE MARKETING AND USE IN
18 THE COMMUNITY; OR

19 (B) INCREASED OR MINIMAL IMPROVEMENTS IN TOBACCO-USE AND
20 NICOTINE-USE PREVALENCE RATES AND A HEIGHTENED NEED FOR SUPPORT
21 AND RESOURCES TO STOP PERSONAL TOBACCO AND NICOTINE USE; AND

22 (II) PROVIDE EVIDENCE-INFORMED AND INDIVIDUALIZED
23 WRAP-AROUND SERVICES.

24 (c) THE WORKING GROUP SHALL REVIEW GRANT APPLICATIONS
25 AND MAKE RECOMMENDATIONS TO THE DIVISION REGARDING GRANT
26 AWARDS. THE DIVISION SHALL AWARD GRANTS BY APRIL 15, 2023, AND BY
27 EACH APRIL 15 THEREAFTER.

1 (3) (a) FOR THE 2022-23 STATE FISCAL YEAR, THE GENERAL
2 ASSEMBLY SHALL APPROPRIATE TEN MILLION DOLLARS FROM THE
3 GENERAL FUND TO THE DEPARTMENT FOR USE BY THE DIVISION PURSUANT
4 TO THIS SECTION. THE DIVISION SHALL AWARD TWO-YEAR GRANTS TO
5 APPLICANTS BASED ON THE RECOMMENDATIONS OF THE WORKING GROUP.

6 (b) ANY MONEY APPROPRIATED PURSUANT TO THIS SUBSECTION (3)
7 THAT IS NOT EXPENDED OR ENCUMBERED AT THE END OF THE 2022-23
8 STATE FISCAL YEAR REMAINS AVAILABLE FOR EXPENDITURE IN
9 SUBSEQUENT FISCAL YEARS WITHOUT FURTHER APPROPRIATION,

10 (4) THE DIRECTOR SHALL REPORT ON THE GRANT PROGRAM AS
11 PART OF THE DEPARTMENT'S ANNUAL REPORTING UNDER THE "STATE
12 MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT
13 (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

14 **SECTION 7.** In Colorado Revised Statutes, **amend** 25-3.5-809
15 as follows:

16 **25-3.5-809. Tobacco education, prevention, and cessation**
17 **programs - funding.** The programs under this part 8, OTHER THAN THE
18 GRANT PROGRAM ESTABLISHED PURSUANT TO SECTION 25-3.5-811, shall
19 be funded by ~~moneys~~ MONEY annually appropriated by the general
20 assembly to the department from the tobacco education programs fund
21 created in section 24-22-117. ~~C.R.S.~~

22 **SECTION 8. Effective date- applicability.** This act takes effect
23 July 1, 2022, and applies to conduct occurring on or after the effective of
24 this act.

25 **SECTION 9. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, or safety.