

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0571.01 Jennifer Berman x3286

HOUSE BILL 22-1064

HOUSE SPONSORSHIP

Mullica and Bacon,

SENATE SPONSORSHIP

Priola and Fields,

House Committees

Health & Insurance
Finance
Appropriations

Senate Committees

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, PROHIBITING THE DISTRIBUTION OF SYNTHETIC**
107 **NICOTINE PRODUCTS, AND DIRECTING THE PREVENTION**
108 **SERVICES DIVISION IN THE DEPARTMENT OF PUBLIC HEALTH AND**
109 **ENVIRONMENT TO CONVENE A WORKING GROUP TO DEVELOP**
110 **AND IMPLEMENT A GRANT PROGRAM TO ADDRESS THE NEEDS OF**
111 **COMMUNITIES DISPROPORTIONATELY IMPACTED BY TOBACCO**
112 **AND NICOTINE MARKETING, SALES, AND USE.**

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.

HOUSE
Amended 2nd Reading
May 3, 2022

Bill Summary

(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

1 safety of its residents, including protecting children under 18 years of age,
2 referred to in this section as "youth", as well as young adults under 21
3 years of age, from dangerous products like cigarettes, tobacco products,
4 and nicotine products, referred to collectively in this section as "tobacco
5 products";

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

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

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

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

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

27 (g) According to a 2013 study conducted by the federal food and

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

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

7 (I) Increased initiation of smoking among youth and young adults
8 18 to 24 years of age;

9 (II) Greater addiction to tobacco products; and

10 (III) Decreased success in smoking cessation efforts;

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

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

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

27 (l) A 2015 report of the United States surgeon general, "Smoking

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

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

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

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

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

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

27 (r) Likewise, cigars are sold in hundreds of flavors to mask the

1 harsh taste of tobacco, such as cherry, brownie, and tropical flavors;

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

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

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

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

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

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

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

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

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

27 (w) A 2021 article in the Journal of the American Medical

1 Association, "Nicotine Pouch Unit Sales in the U.S. From 2016 to 2020
2 - Reply", stated that "[w]hether derived from tobacco plants or
3 synthetically developed in a laboratory, nicotine is an addictive drug with
4 known adverse health consequences", particularly to youth.

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

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

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

13 **SECTION 2.** In Colorado Revised Statutes, 44-7-102, **add** (1.3),
14 (4.5), (5.3), (9.5), (11.5), and (12.2) as follows:

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

17 (1.3) (a) **"CIGAR LOUNGE"** HAS THE SAME MEANING AS **"CIGAR-**
18 **TOBACCO BAR"** SET FORTH IN SECTION 25-19-203 (4), AS EXEMPTED FROM
19 THE INDOOR SMOKING RESTRICTIONS SET FORTH IN SECTION 25-14-205.

20 (b) **"CIGAR LOUNGE"** HAS THE SAME RESTRICTIONS AS SET FORTH
21 IN SECTION 25-14-205.

22 (4.5) (a) **"FLAVORED CIGARETTE, TOBACCO PRODUCT, OR NICOTINE**
23 **PRODUCT"** MEANS A CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
24 PRODUCT THAT, EITHER BEFORE OR DURING THE CONSUMPTION OF THE
25 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT, IMPARTS A TASTE
26 OR SMELL OTHER THAN THE TASTE OR SMELL OF TOBACCO, INCLUDING ANY
27 TASTE OR SMELL RELATING TO FRUIT, MENTHOL, MINT, WINTERGREEN,

1 CHOCOLATE, COCOA, VANILLA, HONEY, CANDY, DESSERT, ALCOHOL
2 BEVERAGE, HERB, OR SPICE.

3 (b) "FLAVORED CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
4 PRODUCT" INCLUDES FLAVORED ROLLING PAPER.

5 (5.3) "HOOKAH" MEANS A TYPE OF WATER PIPE:

6 (a) USED TO SMOKE SHISHA TOBACCO PRODUCTS OR OTHER
7 TOBACCO PRODUCTS;

8 (b) THAT HAS A LONG, FLEXIBLE TUBE TO DRAW AEROSOL
9 THROUGH WATER; AND

10 (c) WITH COMPONENTS THAT MAY INCLUDE HEADS, STEMS, BOWLS,
11 AND HOSES.

12 (9.5) "PREMIUM CIGAR" MEANS A CIGAR THAT:

13 (a) IS HANDMADE;

14 (b) IS NOT MASS PRODUCED THROUGH USE OF MECHANIZATION;

15 (c) HAS A WRAPPER THAT IS MADE ENTIRELY FROM WHOLE
16 TOBACCO LEAF;

17 (d) HAS A FILLER COMPOSED OF AT LEAST FIFTY PERCENT NATURAL
18 LONG-LEAF FILLER TOBACCO;

19 (e) DOES NOT HAVE A FILTER, TIP, OR NONTOBACCO MOUTHPIECE;

20 (f) IS CAPPED BY HAND; AND

21 (g) HAS A WHOLESALE PRICE PER CIGAR OF NO LESS THAN:

22 (I) FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2022,
23 TWELVE DOLLARS; AND

24 (II) FOR CALENDAR YEAR 2023, AND FOR EACH CALENDAR YEAR
25 THEREAFTER, TWELVE DOLLARS PLUS THE AMOUNT REFLECTING ANY
26 PERCENTAGE INCREASE IN THE UNITED STATES DEPARTMENT OF LABOR'S
27 BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR

1 DENVER-AURORA-LAKewood FOR ALL ITEMS AND ALL URBAN
2 CONSUMERS, OR ITS SUCCESSOR INDEX.

3 (11.5) "SHISHA TOBACCO PRODUCT" INCLUDES, AND MAY BE
4 REFERRED TO AS, HOOKAH TOBACCO, WATER PIPE TOBACCO, MAASEL,
5 NARGHILE, OR ARGILEH.

6 (12.2) "SYNTHETIC NICOTINE" MEANS NICOTINE DERIVED FROM A
7 SOURCE OTHER THAN TOBACCO.

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

10 **44-7-104.9. Prohibition on sale or advertisement of flavored**
11 **cigarettes, tobacco products, or nicotine products or synthetic**
12 **nicotine products - exemptions - rebuttable presumption.** (1) (a) A
13 RETAILER SHALL NOT SELL, OFFER FOR SALE, ADVERTISE FOR SALE,
14 DISPLAY, MARKET, SHIP, OR DELIVER IN THIS STATE ANY FLAVORED
15 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT; EXCEPT THAT A
16 RETAILER MAY SELL, OFFER FOR SALE, ADVERTISE FOR SALE, DISPLAY, OR
17 MARKET IN THE STATE ANY FLAVORED PIPE TOBACCO PRODUCT.

18 (b) A RETAILER AUTHORIZED TO DELIVER CIGARETTES, TOBACCO
19 PRODUCTS, OR NICOTINE PRODUCTS PURSUANT TO SECTION 44-7-104.7
20 (3)(b) OR (3)(c) SHALL NOT DELIVER FLAVORED CIGARETTES, TOBACCO
21 PRODUCTS, OR NICOTINE PRODUCTS.

22 (c) (I) THIS SECTION DOES NOT APPLY TO A CIGAR-TOBACCO BAR,
23 AS DEFINED IN SECTION 25-14-203 (4), THAT IS LOCATED WITHIN A
24 LICENSED GAMING ESTABLISHMENT, AS DEFINED IN SECTION 44-30-103
25 (18).

26 (II) A CIGAR-TOBACCO BAR DESCRIBED IN SUBSECTION (1)(c)(I) OF
27 THIS SECTION MAY SELL NO MORE THAN ONE CARTON OF MENTHOL

1 CIGARETTES PER PERSON PER DAY.

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

9 (a) MAKING A PUBLIC STATEMENT OR CLAIM THAT THE CIGARETTE,
10 TOBACCO PRODUCT, OR NICOTINE PRODUCT IMPARTS A TASTE OR SMELL
11 OTHER THAN THE TASTE OR SMELL OF TOBACCO;

12 (b) USING TEXT, IMAGES, OR BOTH ON THE LABELING OR
13 PACKAGING OF THE CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
14 PRODUCT TO INDICATE, EXPLICITLY OR IMPLICITLY, THAT THE CIGARETTE,
15 TOBACCO PRODUCT, OR NICOTINE PRODUCT IMPARTS A TASTE OR SMELL
16 OTHER THAN THE TASTE OR SMELL OF TOBACCO; OR

17 (c) TAKING ACTION DIRECTED TO CONSUMERS THAT WOULD BE
18 REASONABLY EXPECTED TO CAUSE CONSUMERS TO BELIEVE THAT THE
19 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT IMPARTS A TASTE
20 OR SMELL OTHER THAN THE TASTE OR SMELL OF TOBACCO.

21 (3) A RETAILER SHALL NOT SELL, OFFER FOR SALE, ADVERTISE FOR
22 SALE, DISPLAY, OR MARKET IN THIS STATE ANY SYNTHETIC NICOTINE
23 PRODUCT.

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

(5) THIS SECTION DOES NOT APPLY TO A PREMIUM CIGAR SOLD AT
A CIGAR LOUNGE OR OTHER RETAIL PREMISES IN EXISTENCE ON THE
EFFECTIVE DATE OF THIS SECTION FOR ON-SITE OR OFF-SITE CONSUMPTION.

(6) THIS SECTION DOES NOT APPLY TO THE SALE, OFFER FOR SALE,
ADVERTISING FOR SALE, DISPLAYING, OR MARKETING OF PREMIUM CIGARS
OR SHISHA TOBACCO PRODUCTS.

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

9 **44-7-106. Limitation on fines.** (1) (a) For a violation of section
10 44-7-103 (1) OR 44-7-104.9, the penalty is as follows:

11 **SECTION 5.** In Colorado Revised Statutes, 18-13-121, **amend**
12 **(5); and add (6) as follows:**

13 **18-13-121. Furnishing cigarettes, tobacco products, or nicotine**
14 **products to persons under twenty-one years of age - definitions.**
15 (5) (a) As used in this section, "cigarette, tobacco product, or nicotine
16 product" means:

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

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

18 (6) AS USED IN THIS SECTION, "SYNTHETIC NICOTINE" MEANS
19 NICOTINE DERIVED FROM A SOURCE OTHER THAN TOBACCO.

21 **SECTION 6.** In Colorado Revised Statutes, 25-3.5-804, amend
22 (1) as follows:

25-3.5-804. Tobacco education, prevention, and cessation programs - review committee - grants. (1) There is hereby created the tobacco education, prevention, and cessation grant program to provide funding for community-based and statewide tobacco education programs designed to reduce initiation of tobacco use by children and youth,

1 promote cessation of tobacco use among youth and adults, and reduce
2 exposure to secondhand smoke, AND PROVIDE RESOURCES TO
3 COMMUNITIES DISPROPORTIONATELY IMPACTED BY THE MARKETING AND
4 SALES OF TOBACCO AND NICOTINE PRODUCTS AND BY THE PREVALENCE OF
5 TOBACCO AND NICOTINE PRODUCT USE IN THOSE COMMUNITIES. Any such
6 tobacco programs may be presented in combination with other substance
7 abuse programs. The program shall be administered by the division within
8 the department and coordinated with efforts pursuant to article 7 of title
9 44. The state board shall award grants to selected entities from money
10 appropriated to the department from the tobacco education programs fund
11 created in section 24-22-117.

12 **SECTION 7.** In Colorado Revised Statutes, 25-3.5-805, **add (1)**
13 (h.5) as follows:

14 **25-3.5-805. Tobacco education, prevention, and cessation**
15 **programs - requirements.** (1) An entity that applies for a grant pursuant
16 to the provisions of this part 8 shall, in the application, demonstrate that
17 the tobacco education, prevention, or cessation program provides at least
18 one of the following:

19 (h.5) RESOURCES TO COMMUNITIES DISPROPORTIONATELY
20 IMPACTED BY THE MARKETING AND SALES OF TOBACCO AND NICOTINE
21 PRODUCTS AND BY THE PREVALENCE OF TOBACCO AND NICOTINE PRODUCT
22 USE IN THOSE COMMUNITIES; OR

23 **SECTION 8. Effective date - applicability.** (1) Except as
24 provided in subsection (2) of this section, this act takes effect July 1,
25 2022, and applies to conduct occurring on or after the effective date of
26 this act.

27 (2) Sections 3 and 4 of this act take effect January 1, 2024, and

1 apply to conduct occurring on or after the effective date of sections 3 and
2 4 of this act.

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