
Counter Tools' Healthy POS Webinar Series: Reversing Preemption – A Colorado Case Study

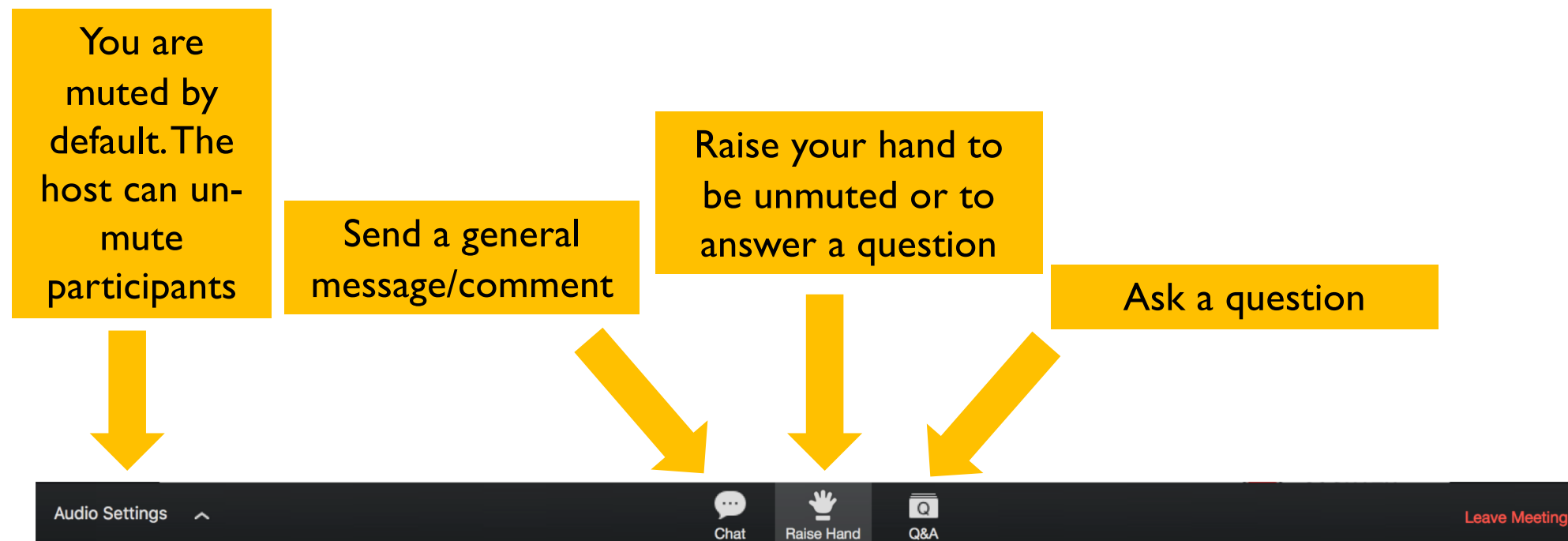
March 14, 2019

Moderator: Jackie Boards

Presenters: Jodi Radke, Mandy Ivanov, Jill Bednarek



Webinar Housekeeping: Zoom Webinar Orientation





COUNTER TOOLS

Est. 2012

www.countertools.org



current and recent

current and recent



Empowering communities to become healthier places by...



CounterTobacco.org

a project of Counter Tools

The screenshot shows the homepage of CounterTobacco.org. At the top left is the logo, which consists of a red diamond shape with a black cross inside, followed by the text "COUNTER TOBACCO.ORG". To the right of the logo are social media icons for Facebook, Twitter, and Email, along with a search icon. Below the header is a navigation bar with links: "The War in the Store", "Policy Solutions", "Resources & Tools", "News", "Media Gallery", and "About Us". The main content area features a large red banner on the left with white text that reads: "THE TOBACCO INDUSTRY SPENDS \$1 MILLION PER HOUR ON ADVERTISING AND MARKETING, MOST OF IT AT THE POINT OF SALE". To the right of the banner is a photograph of a cigarette display in a store, showing various brands like Marlboro and a sign that says "COME TO WHERE THE FLAVOR IS.". Below the banner and photo is a row of five small black dots. Underneath this is a paragraph in red text: "COUNTERTOBACCO.ORG IS THE FIRST COMPREHENSIVE RESOURCE FOR LOCAL, STATE, AND FEDERAL ORGANIZATIONS WORKING TO COUNTERACT TOBACCO PRODUCT SALES AND MARKETING AT THE POINT OF SALE." At the bottom, there are two columns. The left column is titled "RECENT NEWS" and contains two items: "Announcing CounterTobacco.org's 2018 POS Tobacco Photo Contest" and "Today marks the start of CounterTobacco.org's 7th annual Point of Sale Tobacco Photo Contest." The right column is titled "POLICY SOLUTIONS" and contains two items: "Licensing, Zoning, and Retailer Density >" and "Tobacco 21 >".

COUNTER TOBACCO.ORG

THE TOBACCO INDUSTRY SPENDS
\$1 MILLION PER HOUR
ON ADVERTISING AND MARKETING,
MOST OF IT AT THE POINT OF SALE

COME TO WHERE
THE FLAVOR IS.

COUNTERTOBACCO.ORG IS THE FIRST COMPREHENSIVE RESOURCE FOR LOCAL, STATE, AND FEDERAL ORGANIZATIONS WORKING TO COUNTERACT TOBACCO PRODUCT SALES AND MARKETING AT THE POINT OF SALE.

RECENT NEWS

Announcing CounterTobacco.org's 2018 POS Tobacco Photo Contest

Today marks the start of CounterTobacco.org's 7th annual Point of Sale Tobacco Photo Contest.

POLICY SOLUTIONS

Licensing, Zoning, and Retailer Density >

Tobacco 21 >

Removing Barriers to Healthy Point of Sale Strategies



Jill Bednarek, Colorado
Department of Public Health
and Environment

Mandy Ivanov, Eagle County
Health and Environment

Jodi Radke, Campaign for
Tobacco-Free Kids



A Colorado Story

Colorado's Preemption of Local Tobacco Point of Sale Strategies

Taxation statutes have language that penalizes local communities from implementing policies consistent with tobacco control best practices to reduce access to tobacco.

C.R.S. § 39-22-623: Title 39 Taxation (II) (A) “...In order to qualify for distribution of state income tax moneys, units of local government are prohibited from imposing fees, licenses, or taxes on any person as a condition for engaging in the business of selling cigarettes or from attempting in any manner to impose a tax on cigarettes.”



State Tobacco Education and Prevention Partnership,
Colorado Department of Public Health and Environment

Reducing Illegal Tobacco Sales to Minors:

Public Recommendations from the Youth Smoking Prevention Stakeholder Group



CONVENE A STAKEHOLDER GROUP

The purpose of the group was to:

1. Review Colorado youth tobacco use and access data.
2. Review evidence based policy strategies to reduce youth tobacco initiation and access.
3. Identify gaps in existing Colorado laws.
4. Rate potential strategies for public health impact and political feasibility



State Tobacco Education and Prevention Partnership,
Colorado Department of Public Health and Environment

Reducing Illegal Tobacco Sales to Minors:

Policy Recommendations from the Youth Smoking Prevention Stakeholder Group



STAKEHOLDER GROUP RECOMMENDATIONS:

The following four policies were determined to be the top priorities for addressing youth tobacco initiation:

1. Require a license for tobacco retailers.
2. Increase penalties for violations of the state law prohibiting tobacco sales to minors.
3. Update the tobacco-free schools law.
4. **Remove restrictions on localities that prohibit state tax reimbursement if they license or tax cigarettes**



State Tobacco Education and Prevention Partnership,
Colorado Department of Public Health and Environment

State Tobacco Control Program Role

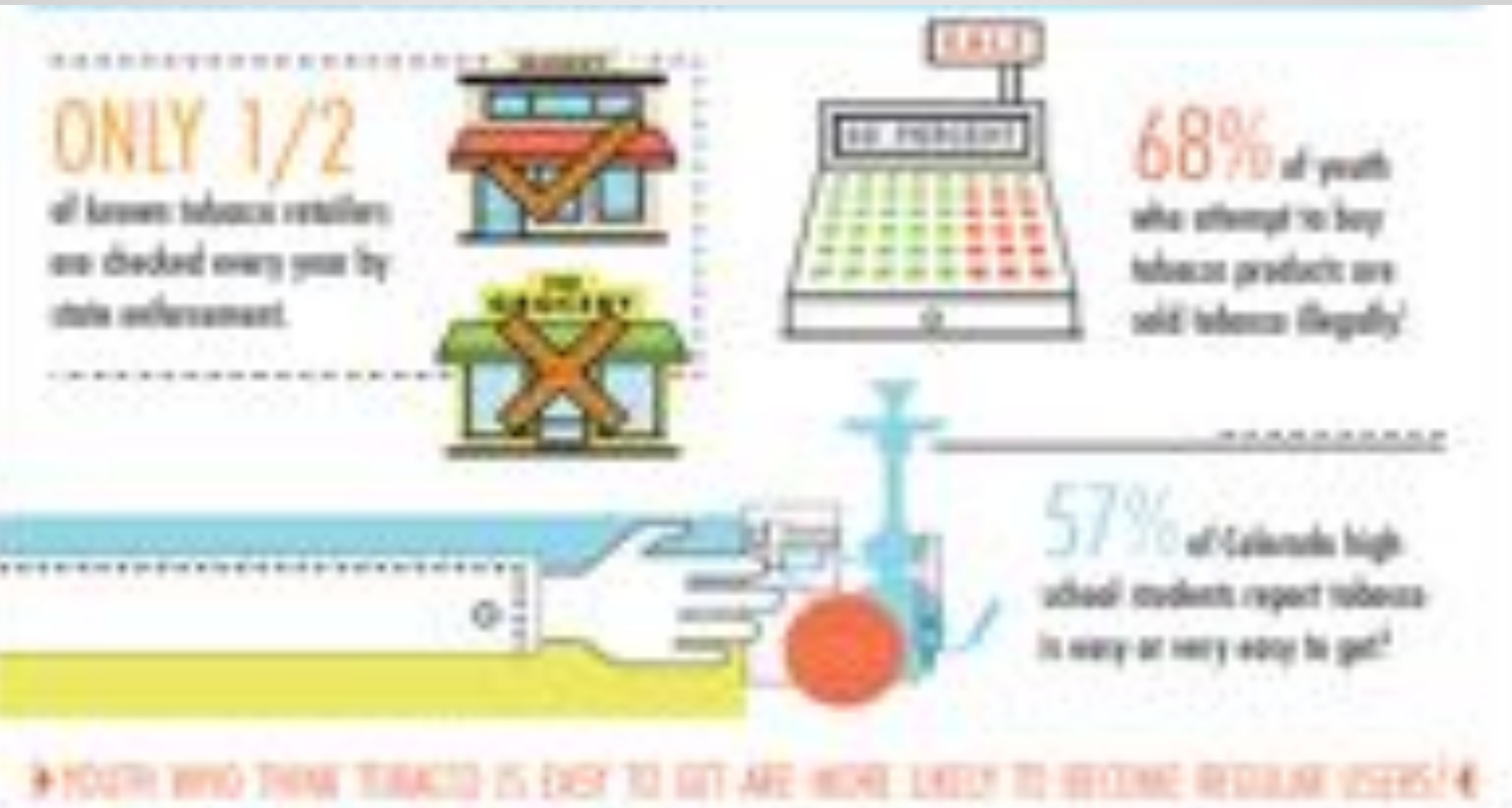
- Build working relationships with multiple key entities
 - ✓ Dept. of Revenue and Attorney General's Office,
 - ✓ Key Decision-Makers
 - ✓ Advocacy Organizations
- Provide grant funding to Local Health Departments
 - ✓ Create media materials and policy resource materials
 - ✓ Conduct evaluation of local policies
 - ✓ Promote the local successes
- Educate internal department leadership



State Tobacco Education and Prevention Partnership,
Colorado Department of Public Health and Environment

Fact Sheets and Resources to Highlight the Public Health Problem Example

Current Colorado laws are not working to reduce access or use



Policy Technical Assistance and Resources Example



Date	# of audits	# of violations	Compliance Rate	Action Taken
Sept 2014	16	7	56%	Warning
Feb 2015*	7	1	86%	Warning
August 2015	13	3	77%	Warning
May 2016	17	3	82%	Citation
August 2016	18	0	100%	--
March 2017	22	0	100%	--
June 2017	21	0	100%	--
May 2018	25	0	100%	--



State Tobacco Education and Prevention Partnership,
Colorado Department of Public Health and Environment

Educate Leadership and Foster Champions - Example

Governor Hickenlooper issued a proclamation for Vape-Free November and signed an Executive Order directing the Department of Health to work with other state agencies to address high rates of youth vaping.



State Tobacco Education and Prevention Partnership,
Colorado Department of Public Health and Environment

Local Tobacco Retailer Licensing Successes

12 local ordinances to require licensing of tobacco retailers

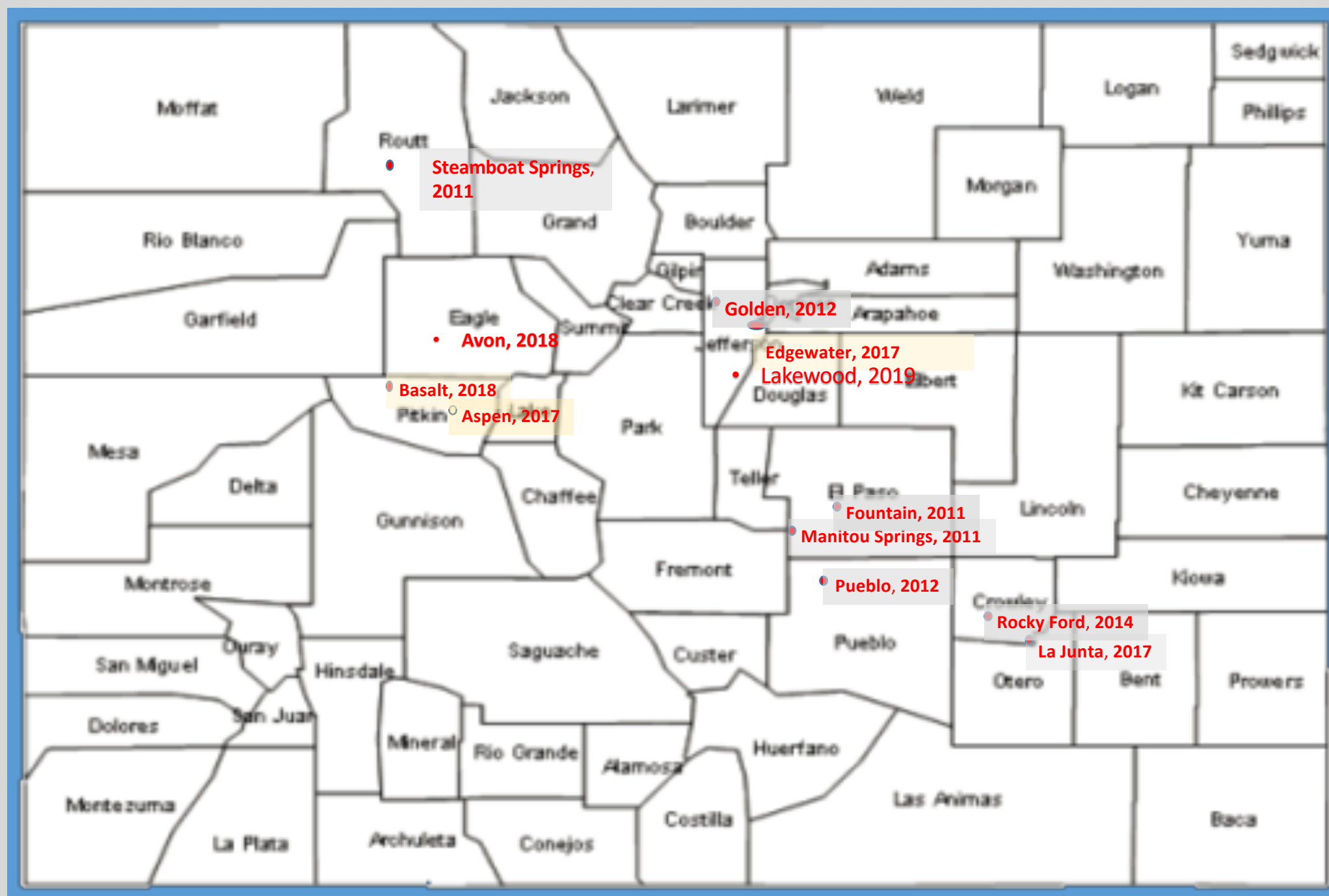
- 8 non-cigarette
- 4 all tobacco products and increased age to T21
- *3 also got voter approval for a tobacco products tax*

All meet recommended components:

- Annual non-transferable license
- Fee that covers the administration of the license
- Minimum # of compliance checks
- Meaningful penalties to encourage compliance



State Tobacco Education and Prevention Partnership,
Colorado Department of Public Health and Environment



Lessons Learned

Establish solid partnerships with multiple organizations

Raise awareness about the impact of preemption on public health

Seek solutions and adapt proven strategies

Never give up



State Tobacco Education and Prevention Partnership,
Colorado Department of Public Health and Environment

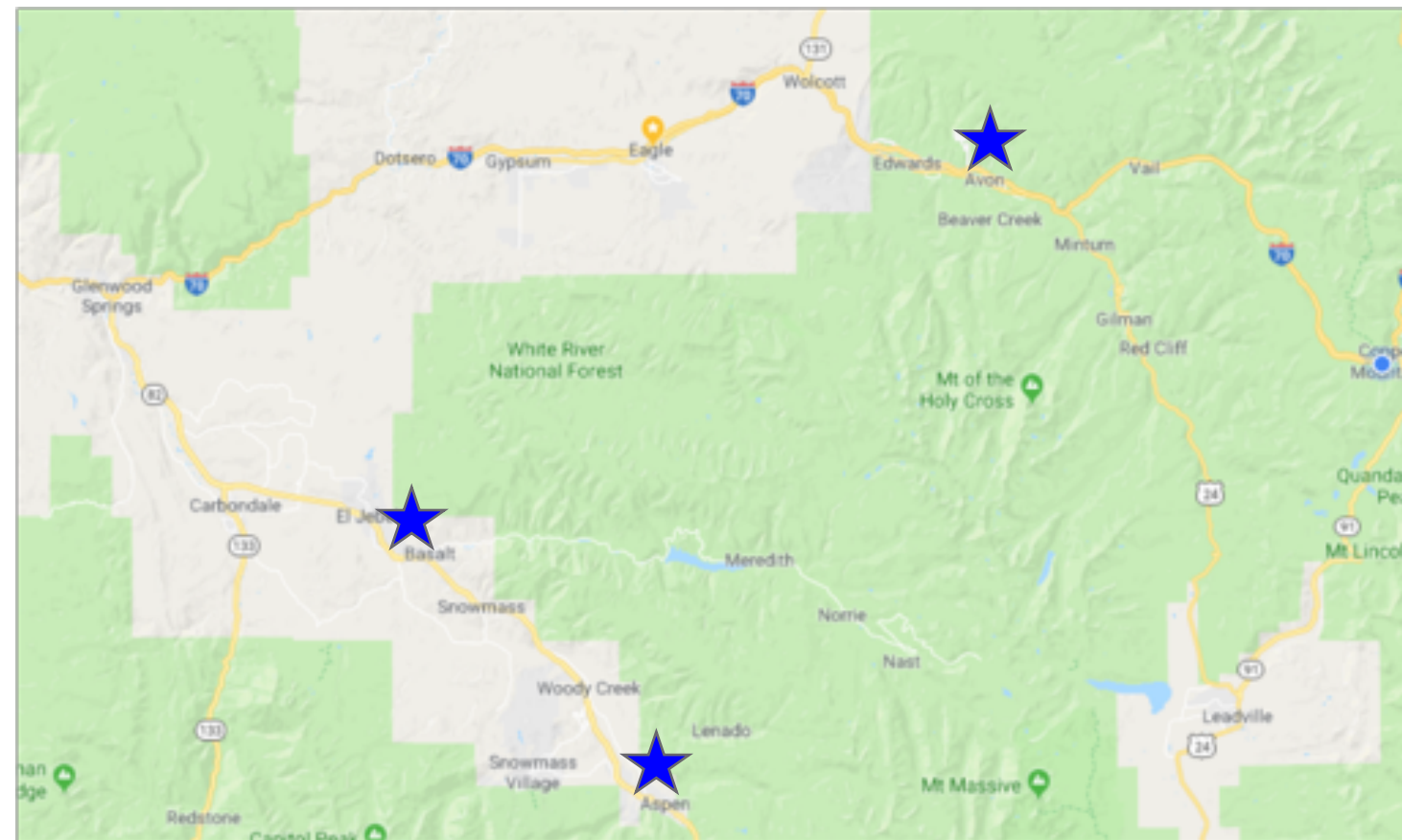


Jill Bednarek, M.S.W.
Tobacco Policy Supervisor
Colorado Department of Public Health &
Environment
303-692-2475 jill.bednarek@state.co.us

Harnessing Local Opportunity

Building Momentum for Tobacco Policy
Town by Town

Where we are



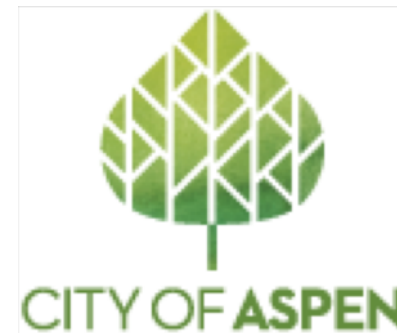
Tobacco Retail License Timeline



Tobacco 21

City of Aspen

- First in Colorado
 - Local Champion
 - *Can afford to lose shareback*
 - Comprehensive Retail License
 - National, State, and Local support
-



Town of Basalt

- Followed Aspen
- Local Champion
- Debated loss of shareback
- Comprehensive Retail License
- National, State, and Local support



Vaping Epidemic



Town of Avon

- New level of urgency
- Local Champion
- Youth input
- Debated loss of shareback
- Comprehensive Retail License
- National, State, and Local support



Patchwork Challenge

- Leaves loopholes in access
- Retailer frustration with inconsistencies and sales loss
- Confusion for adult consumers
- Counties unable to act due to state preemption language



Lessons Learned

- Capitalize on momentum (T21, youth vaping)
- Tailor messaging
- Leverage national, state, and local experts



Mandy Ivanov, MPH
Health Promotion
Coordinator,
Eagle County Public Health
& Environment





Creating Partnerships Partners in Public Health & with Public Officials Colorado's Story

Jodi L. Radke

Regional Director

Campaign for Tobacco-Free Kids



Colorado Tobacco-Free Alliance



UNIVERSITY OF COLORADO
COLORADO STATE UNIVERSITY
UNIVERSITY OF NORTHERN COLORADO





Mission

The Colorado Tobacco-Free Alliance (CTFA) is dedicated to reducing the toll of tobacco for adults and youth in Colorado through a **coordinated**, local and state-level approach to achieve the following priorities through policy or environmental change:

- Increase the price of tobacco
- Secure funding for a comprehensive tobacco control program
- Reduce exposure to secondhand smoke
- Increase access to cessation resources
- **Reduce youth use, and access, to tobacco**



Alliance Values

- Supporting research, evidence-base strategies
- Inclusivity
- Collective-decision making
- **Honoring local control** and working against preemption



2013 Capitol Landscape

69th General Assembly (Trifecta)

Governor – Democrat

House of Representatives (65) -

37 Democrats

28 Republicans

Senate (35) –

18 Democrats

17 Republicans

+1





Chapter 1

2014 – Raising the Age of Sale on Tobacco from 18 to 21 Introduction of HB 14-1263



A BILL FOR AN ACT CONCERNING THE PROHIBITION OF TOBACCO TRANSACTIONS FOR PERSONS UNDER TWENTY-ONE YEARS OF AGE.

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://www.leg.state.co.us/billsummaries>.)

The bill prohibits anyone from giving, selling, distributing, or offering for sale cigarettes or tobacco products to anyone who is under 21 years of age. The bill prohibits anyone who is under 21 years of age from purchasing or possessing cigarettes or tobacco products. The bill makes an exception for anyone who was born on or before June 30, 1996.



Playing Offense

- HB 14-1263

First Committee – House Health, Insurance & Environment, passes out of committee

Second Committee- House Finance, postponed indefinitely, fails by “1” vote (physician)

***Note: Committee members included Representative Kevin Priola (R), and Representative KC Becker (D)**



2015 Capitol Landscape

70th General Assembly (Senate Controlled by 1 “R” Seat)

Governor – Democrat

House of Representatives (65) -

34 Democrats

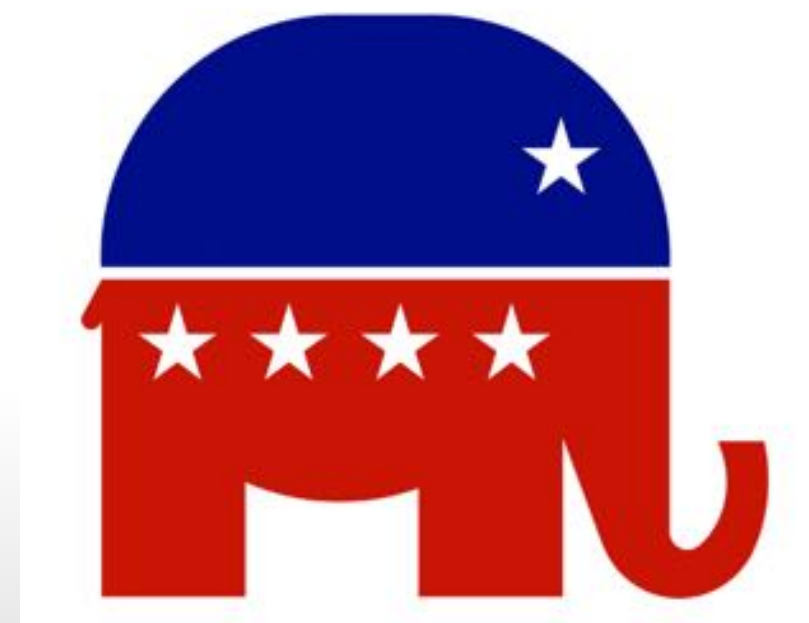
31 Republicans

+1

Senate (35) –

17 Democrats

18 Republicans





Chapter 2

2015 - Removing Preemption on Local Governments Introduction of HB 15-1257



A BILL FOR AN ACT CONCERNING THE REMOVAL OF PENALTIES ON LOCAL GOVERNMENTS REGARDING THE REGULATION AND SALE OF CIGARETTES.

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://www.leg.state.co.us/bills/summaries>.)

From state income tax moneys, the state currently apportions an amount equal to 27% of state cigarette tax revenues to cities, towns, and counties (local governments) in proportion to the amount of state sales tax revenues collected within the boundaries of the local governments. Local governments are prohibited from receiving their allocation of these moneys if they impose their own fees, licenses, or taxes on cigarette sales.



Playing Offense

- HB 15-1257

First Committee – House Local Government, passes out of committee

Second Committee – House Finance, passes out of committee

House Floor, passes

First Committee – Senate Business, Labor, & Technology, postponed indefinitely, does not pass



Chapter 3

2016 –

Nicotine Product Retailers Registry

Introduction of HB 16-1370

A BILL FOR AN ACT

CONCERNING THE REGULATION OF NICOTINE PRODUCT RETAILERS.

Bill Summary



Summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill is passed by the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

There is not currently a comprehensive list of retailers in the state that sell cigarettes, tobacco products, or nicotine products (retailers). Commencing in 2017, **section 2** of the bill requires retailers to register with the liquor enforcement division in the department of revenue (division). The division is required to keep a retailer's registration information confidential. The division is authorized to impose a \$500 fine on a retailer that fails to register with the division.



Playing Defense

- HB 16-1370

First Committee – House Business Affairs & Labor, fails, postponed indefinitely



2017 Capitol Landscape

71st General Assembly (Senate Controlled by 1 “R” Seat)

Governor – Democrat

**House of Representatives (65) -
*Beginning/Ending***

37/36 Democrats

28/29 Republicans

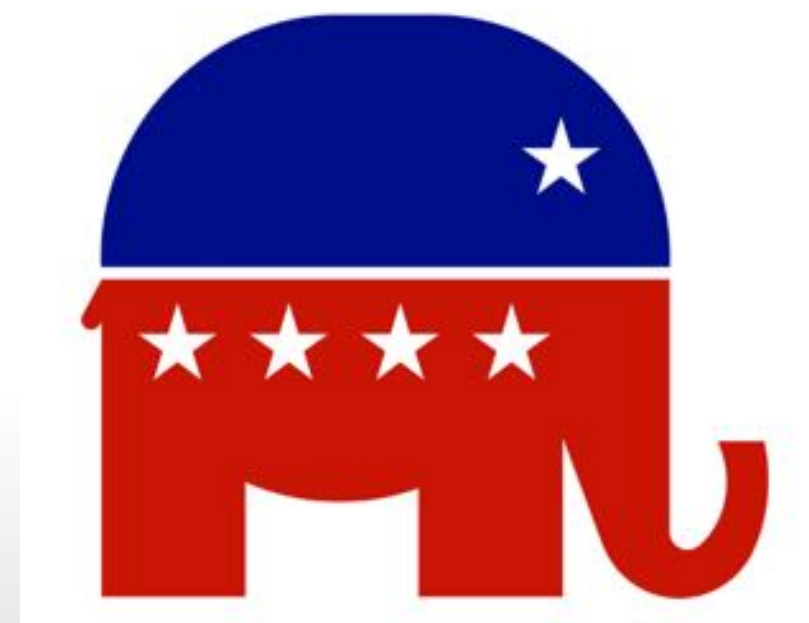
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Senate (35) –

Beginning/Ending

17/16 Democrats

18 Republicans 1 Independent





Chapter 4

2017-

Two Bills unrelated to youth access...





Chapter 5

2018 – Statewide Regulation of Products with Nicotine Introduction of SB 18-139

A BILL FOR AN ACT
CONCERNING STATEWIDE REGULATION OF PRODUCTS THAT CONTAIN
NICOTINE.

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>.)

Sections 2 through 4 of the bill establish a licensure requirement for retailers who sell cigarettes, tobacco products, or nicotine products (products). Beginning January 1, 2019, it is illegal for any person doing business in the state to sell or offer for sale products without first obtaining a license as a retailer from the division of liquor enforcement in the department of revenue (division). A retailer with more than one



**First Committee – Senate Business, Labor & Technology,
fails, postponed indefinitely**





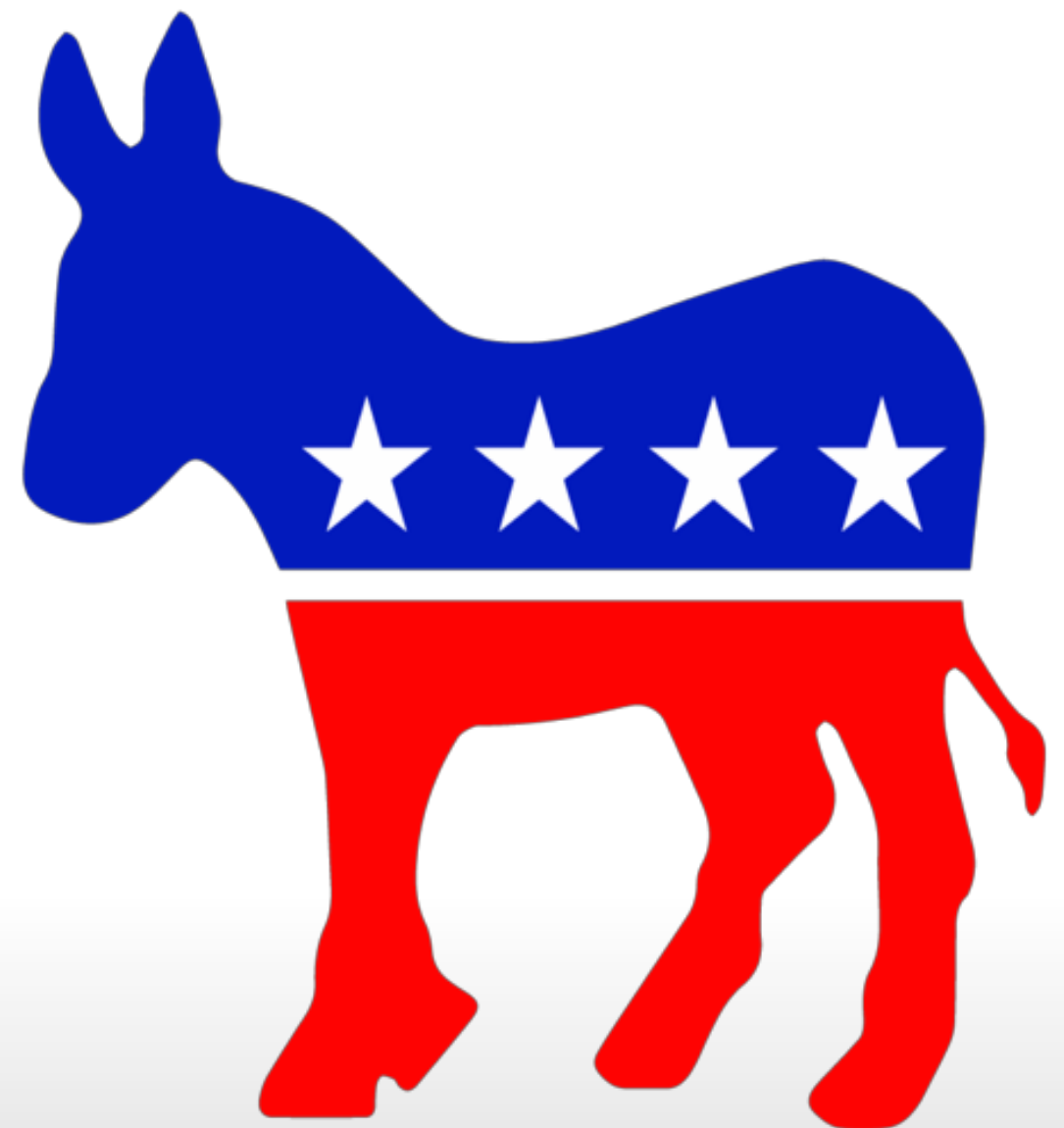
2019 Capitol Landscape

72nd General Assembly

Governor – Democrat

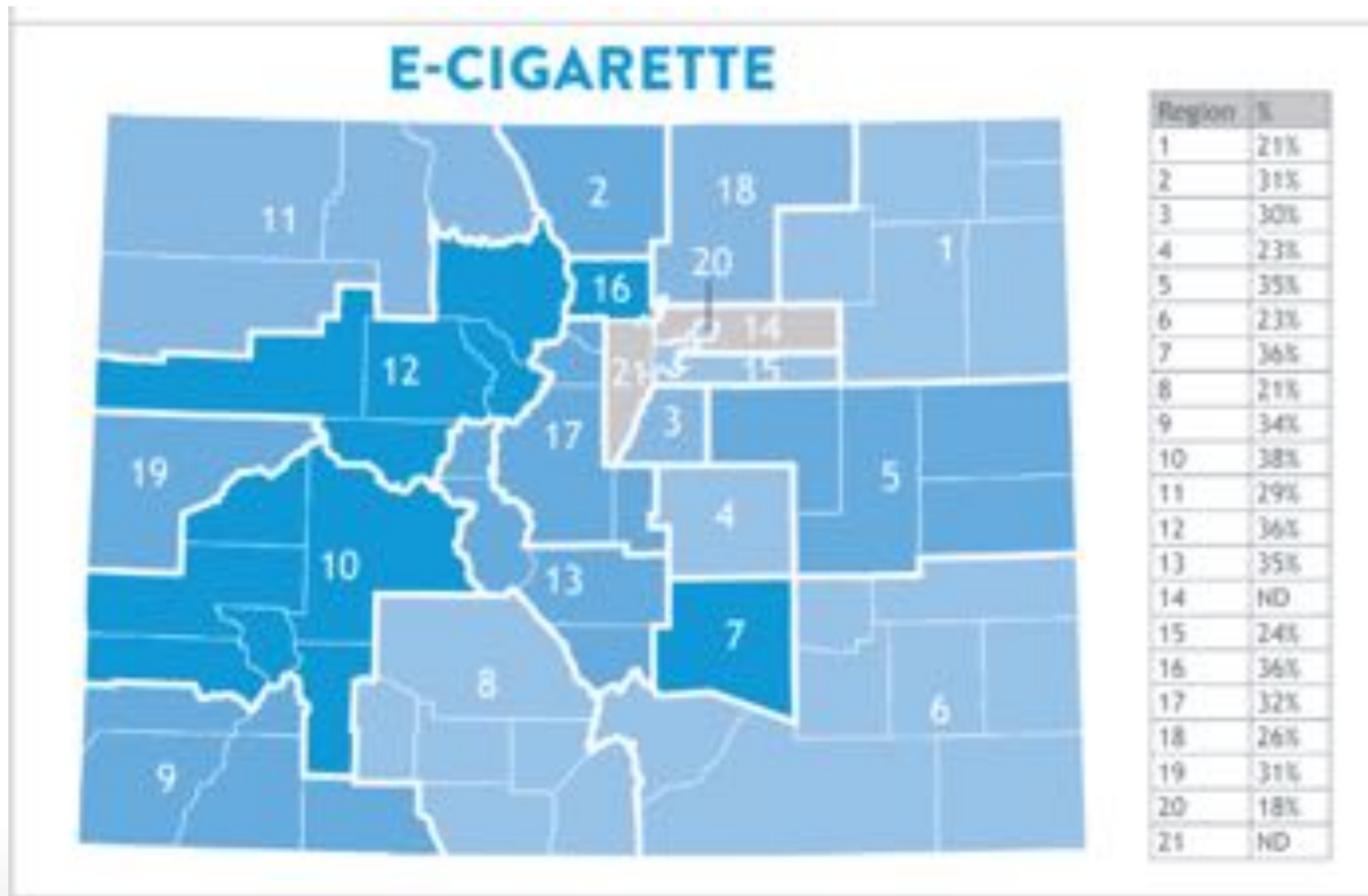
House of Representatives (65) -
41 Democrats
24 Republicans

Senate (35) –
Beginning/Ending
19 Democrats
16 Republicans





Colorado Leads the Nation in Vaping Use Amongst Kids...



Bad, but good...

Healthy Kids Colorado Survey, 2017



Back to Basics, Back to Offense and Our Original Lineup

2019 –

Local Governments May Regulate Nicotine Products Introduction of HB 19-1033

**A BILL FOR AN ACT
CONCERNING A LOCAL GOVERNMENT'S AUTHORITY TO REGULATE
PRODUCTS CONTAINING NICOTINE.**

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>.)

Sections 1 through 3 of the bill authorize a county to enact a resolution or ordinance that prohibits a minor from possessing or purchasing cigarettes, tobacco products, or nicotine products. Sections 1 and 2 also authorize a county to impose regulations on cigarettes, tobacco products, or nicotine products that are more stringent than statewide regulations, including prohibiting sales to a person under 21 years of age,





Opposition



January 23, 2019

Re: HB19-1033 concerning a local government's authority to regulate products containing nicotine

Dear Members of the House Health and Insurance Committee,

We write to you to voice our strong concerns pertaining to HB19-1033 which seeks to overturn a longstanding and successful collaboration between law enforcement, cities, and the regulated community pertaining to age restricted sales of tobacco products.

For decades, the state has upheld an agreement where regulatory uniformity and consistency for the business community has been encouraged, through local community incentivizes realized by over 121 million dollars over the last decade alone. There are no restrictions on what that money could be used for whether it be tobacco enforcement, to support substance abuse programs, or community education.

Patchwork System

**Long-Standing
Agreement that Works**

**Financial Impact to
Businesses**



Proponent Messaging

GIVING LOCAL GOVERNMENTS THE FREEDOM TO REGULATE CIGARETTES & OTHER TOBACCO PRODUCTS INCLUDING E-CIGARETTES

SUPPORT: *HB19-1033*

BILL SPONSORS: REPS. KERRY TIPPER & CHRIS KENNEDY, SENS. RHONDA FIELDS AND KEVIN PRIOLA

- Localities know and recognize the issues their communities experience due to tobacco products, yet they face extraordinary barriers if they want to address those issues.
- If a local government wants to keep kids from using tobacco products, increasing prices, licensing, and regulating the products have been shown to be some of the most effective methods to do so. With Colorado youth using e-cigarettes at a much higher rate than the national figure, this makes it much harder for localities to stem this growing crisis.



Over 20 endorsing organizations, including CML & CCI

Chris Kennedy, Asst. Majority Leader – Colorado House of Representatives

Rep. Chris Kennedy, a Lakewood Democrat who is sponsoring the state legislation, is reaching back in time to change policy set in place before he was born, policy that stripped local communities of their ability to cut down on cigarette use.

“My understanding is this was absolutely a power play by tobacco companies in the 1970s trying to protect their interests,” he said.

But now the target of the legislation isn't youth cigarette smoking, which is at an all-time low of **7 percent in Colorado**, but vaping among Colorado youth. When towns don't have the ability to license local retailers, they don't have the ability to crack down on sales to minors, Kennedy said.



State Rep. Chris Kennedy, a
Lakewood Democrat.
(Handout)



The Colorado Sun

<https://coloradosun.com/2019/02/27/cigarettes-all-over-again-colorado-has-the-highest-youth-vaping-rate-in-the-country/?fbclid=IwAR1rAwWEqwnOD74WlykPYKWpSMGnU1bnf5PATNhTaA2zvLkdOoKCNV4E2NM>

Cigarettes all over again? Colorado has the highest youth vaping rate in the country.

Some Colorado towns got fed up waiting for the state to crack down on youth sales. They're not waiting for history to repeat itself.

FEB 27, 2019 5:05AM MDT

HEALTH



Jennifer Brown @jenbrowncolo

The Colorado Sun — 303-500-5821

jennifer@coloradosun.com

[See more](#)



[More](#)



We Win Together





CAMPAIGN
for
TOBACCO-FREE
Kids

The Impossible Became Possible...



***Local and State Elected Officials**



Lessons...

- **A Democratic trifecta doesn't ensure success. Education, relationships, and partnerships do, over time.**
- **Timing is never ideal. The time is always now.**
- **Legislative work begins near immediately after the last session ends.**
- **Local work, in whatever form, (resolutions of support or ordinances), matters.**



Contact Information

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Rocky Mountain/Great Plains

Campaign for Tobacco-Free Kids

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970-214-4808

Thank you for listening in!

► **Questions or comments?**

