

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-1041.01 Christopher McMichael x4775

HOUSE BILL 24-1356

HOUSE SPONSORSHIP

Herod,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PROHIBITING THE SALE OF ELECTRONIC SMOKING
102 DEVICES THAT ARE NOT AUTHORIZED FOR SALE BY THE FEDERAL
103 FOOD AND DRUG ADMINISTRATION, AND, IN CONNECTION
104 THEREWITH, ESTABLISHING THE SALE OF UNAUTHORIZED
105 ELECTRONIC SMOKING DEVICES AS A DECEPTIVE TRADE
106 PRACTICE AND REQUIRING THE ATTORNEY GENERAL'S OFFICE
107 TO MAINTAIN A DIRECTORY OF MANUFACTURERS OF
108 ELECTRONIC SMOKING DEVICES AND OF ELECTRONIC SMOKING
109 DEVICES THAT ARE AUTHORIZED FOR SALE BY THE FEDERAL
110 FOOD AND DRUG ADMINISTRATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does

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

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>.)

The bill amends the "Colorado Consumer Protection Act" to make the sale of electronic smoking devices that have not received authorization by the federal food and drug administration (FDA) an unfair or deceptive trade practice.

To sell electronic smoking devices in the state, the bill requires a manufacturer of electronic smoking devices to be authorized by the FDA. The attorney general must compile and maintain a directory of all manufacturers and electronic smoking devices that have been authorized by the FDA. Retailers, distributors, wholesalers, or other intermediary entities are not permitted to sell electronic smoking devices that do not have FDA authorization and do not appear in the directory, and violations of the bill are subject to civil penalties under the "Colorado Consumer Protection Act".

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

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-105, **amend**
3 (1)(cccc) and (1)(dddd); and **add** (1)(eeee) as follows:

4 **6-1-105. Unfair or deceptive trade practices.** (1) A person
5 engages in a deceptive trade practice when, in the course of the person's
6 business, vocation, or occupation, the person:

7 (cccc) Sells or offers for sale a product that is age-restricted to a
8 person who does not meet the age restriction; **or**

9 (dddd) Fails to register a mobile home park in violation of section
10 38-12-1106; **OR**

11 (eeee) **FAILS TO COMPLY WITH THE REQUIREMENTS OF, OR SELLS**
12 **AN ELECTRONIC SMOKING DEVICE IN VIOLATION OF, SECTION 6-1-735.**

13 **SECTION 2.** In Colorado Revised Statutes, **add** 6-1-735 as
14 follows:

15 **6-1-735. Electronic smoking device directory - authorization**

1 - **prohibited actions - attorney general - rules - definitions.**

2 (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
3 OTHERWISE REQUIRES:

4 (a) (I) "ELECTRONIC SMOKING DEVICE" OR "DEVICE" MEANS A
5 NONCOMBUSTIBLE PRODUCT THAT PRODUCES VAPOR OR AEROSOL FOR
6 INHALATION FROM THE APPLICATION OF A HEATING ELEMENT TO A LIQUID
7 SUBSTANCE CONTAINING NICOTINE.

8 (II) "ELECTRONIC SMOKING DEVICE" OR "DEVICE" INCLUDES:

9 (A) A CONSUMABLE NICOTINE LIQUID SUITABLE FOR USE IN AN
10 ELECTRONIC SMOKING DEVICE PRODUCT, WHETHER SOLD WITH THE
11 PRODUCT OR SOLD SEPARATELY; AND

12 (B) A PRODUCT RELATED TO THE USE OF AN ELECTRONIC SMOKING
13 DEVICE, SUCH AS A POWER UNIT, E-LIQUID, E-LIQUID CARTRIDGE, E-LIQUID
14 POD, DISPOSABLE DEVICE, OR OTHER PRODUCT.

15 (III) "ELECTRONIC SMOKING DEVICE" OR "DEVICE" DOES NOT
16 INCLUDE ANY PRODUCT THAT HAS BEEN APPROVED BY THE FOOD AND
17 DRUG ADMINISTRATION FOR SALE AS A TOBACCO CESSATION PRODUCT OR
18 FOR OTHER THERAPEUTIC USE WHERE THAT PRODUCT IS MARKETED AND
19 SOLD SOLELY FOR SUCH APPROVED USE.

20 (b) "ELECTRONIC SMOKING DEVICE DIRECTORY" OR "DIRECTORY"
21 MEANS THE DIRECTORY OF MANUFACTURERS AND ELECTRONIC SMOKING
22 DEVICES ESTABLISHED PURSUANT TO SUBSECTION (4) OF THIS SECTION
23 AND MAINTAINED BY THE ATTORNEY GENERAL'S OFFICE IN ACCORDANCE
24 WITH THIS SECTION.

25 (c) "FOOD AND DRUG ADMINISTRATION" OR "FDA" MEANS THE
26 FOOD AND DRUG ADMINISTRATION IN THE UNITED STATES DEPARTMENT
27 OF HEALTH AND HUMAN SERVICES.

1 (d) (I) "MANUFACTURER" MEANS:

2 (A) A PERSON THAT MANUFACTURES OR FABRICATES ELECTRONIC
3 SMOKING DEVICES; OR

4 (B) A PERSON THAT MIXES, COMPOUNDS, REPACKAGES, OR RESIZES
5 ELECTRONIC SMOKING DEVICES.

6 (II) "MANUFACTURER" INCLUDES A PERSON THAT IS A SALES
7 ENTITY AFFILIATE OF THE MANUFACTURER OR ANY OTHER ENTITY
8 REPRESENTING THE MANUFACTURER THAT SELLS ELECTRONIC SMOKING
9 DEVICES PRODUCED BY THE MANUFACTURER TO WHOLESALERS OR
10 PERMITTED RETAILERS.

11 (e) "SALE" MEANS ANY SALE OF, OFFER FOR SALE OF, OR ATTEMPT
12 TO SELL ANY GOODS, SERVICES, OR PROPERTY FOR ANY CONSIDERATION.

13 (2) (a) A MANUFACTURER OF AN ELECTRONIC SMOKING DEVICE
14 SHALL NOT OFFER AN ELECTRONIC SMOKING DEVICE FOR SALE IN
15 COLORADO, WHETHER DIRECTLY OR THROUGH A RETAILER, DISTRIBUTOR,
16 WHOLESALER, OR SIMILAR INTERMEDIARY, UNLESS THE MANUFACTURER
17 MEETS THE FOLLOWING CRITERIA:

18 (I) THE MANUFACTURER HAS RECEIVED A MARKETING
19 AUTHORIZATION OR SIMILAR ORDER FOR THE ELECTRONIC SMOKING
20 DEVICE BEING OFFERED FOR SALE IN COLORADO FROM THE FOOD AND
21 DRUG ADMINISTRATION PURSUANT TO 21 U.S.C. SEC. 387j, AS AMENDED;
22 OR

23 (II) THE MANUFACTURER OF THE ELECTRONIC SMOKING DEVICE
24 BEING OFFERED FOR SALE IN COLORADO MARKETED THE DEVICE IN THE
25 UNITED STATES AS OF AUGUST 8, 2016, AND SUBMITTED A PREMARKET
26 TOBACCO PRODUCT APPLICATION FOR THE DEVICE TO THE FDA PURSUANT
27 TO 21 U.S.C. SEC. 387j, AS AMENDED, ON OR BEFORE SEPTEMBER 9, 2020,

1 AND THE APPLICATION EITHER REMAINS UNDER REVIEW BY THE FDA OR
2 A FINAL DECISION ON THE APPLICATION HAS NOT OTHERWISE TAKEN
3 EFFECT.

4 (b) AT THE REQUEST OF THE ATTORNEY GENERAL, A
5 MANUFACTURER SHALL SUBMIT TO THE ATTORNEY GENERAL ANY
6 DOCUMENTS THAT DEMONSTRATE AN ELECTRONIC SMOKING DEVICE BEING
7 OFFERED FOR SALE IN COLORADO BY THE MANUFACTURER MEETS THE
8 CRITERIA ESTABLISHED IN SUBSECTION (2)(a) OF THIS SECTION.

9 (c) (I) IF THE ATTORNEY GENERAL REQUESTS THAT A
10 MANUFACTURER SUBMIT DOCUMENTATION IN ACCORDANCE WITH
11 SUBSECTION (2)(b) OF THIS SECTION, THE MANUFACTURER SHALL COMPLY
12 WITH THE ATTORNEY GENERAL'S REQUEST WITHIN THIRTY DAYS.

13 (II) A MANUFACTURER THAT OFFERS AN ELECTRONIC SMOKING
14 DEVICE FOR SALE IN COLORADO SHALL NOTIFY THE ATTORNEY GENERAL'S
15 OFFICE OF ANY MATERIAL CHANGE TO THE MANUFACTURER'S FDA
16 AUTHORIZATION FOR THE ELECTRONIC SMOKING DEVICE WITHIN THIRTY
17 DAYS AFTER THE MATERIAL CHANGE, INCLUDING THE ISSUANCE OR DENIAL
18 OF A MARKETING AUTHORIZATION OR OTHER ORDER BY THE FDA
19 PURSUANT TO 21 U.S.C. SEC. 387j, AS AMENDED, OR ANY OTHER ORDER
20 OR ACTION BY THE FDA OR ANY COURT THAT AFFECTS WHETHER THE
21 ELECTRONIC SMOKING DEVICE IS ABLE TO BE INTRODUCED OR DELIVERED
22 INTO INTERSTATE COMMERCE FOR COMMERCIAL DISTRIBUTION IN THE
23 UNITED STATES.

24 (3) A MANUFACTURER THAT STARTS TO MANUFACTURE
25 ELECTRONIC SMOKING DEVICES ON OR AFTER AUGUST 1, 2024, OR STARTS
26 TO OFFER ELECTRONIC SMOKING DEVICES FOR SALE IN COLORADO ON OR
27 AFTER AUGUST 1, 2024, SHALL COMPLY WITH THE REQUIREMENTS OF

1 SUBSECTION (2) OF THIS SECTION BEFORE ANY OF THE MANUFACTURER'S
2 ELECTRONIC SMOKING DEVICES ARE OFFERED FOR SALE IN COLORADO.

3 (4) (a) ON AND AFTER OCTOBER 1, 2024, THE ATTORNEY
4 GENERAL'S OFFICE SHALL MAINTAIN AND MAKE PUBLICLY AVAILABLE ON
5 ITS WEBSITE AN ELECTRONIC SMOKING DEVICE DIRECTORY THAT LISTS ALL
6 ELECTRONIC SMOKING DEVICE MANUFACTURERS DOING BUSINESS IN
7 COLORADO AND ALL ELECTRONIC SMOKING DEVICES APPROVED FOR SALE
8 IN COLORADO IN ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION.

9 (b) THE ATTORNEY GENERAL SHALL UPDATE THE DIRECTORY, AS
10 NECESSARY, TO ENSURE THE DIRECTORY'S ACCURACY.

11 (5) (a) IF A MANUFACTURER OR ELECTRONIC SMOKING DEVICE NO
12 LONGER MEETS THE CRITERIA ESTABLISHED IN SUBSECTION (2)(a) OF THIS
13 SECTION IN ORDER TO BE LISTED IN THE DIRECTORY, EACH RETAILER,
14 DISTRIBUTOR, AND WHOLESALER HAS THIRTY DAYS AFTER THE DATE THE
15 MANUFACTURER OR DEVICE IS REMOVED FROM THE DIRECTORY TO SELL
16 THE ELECTRONIC SMOKING DEVICE OR REMOVE THE DEVICE FROM ITS
17 INVENTORY.

18 (b) A PERSON THAT SELLS AN ELECTRONIC SMOKING DEVICE AFTER
19 THE EXPIRATION OF THE THIRTY-DAY PERIOD DESCRIBED IN SUBSECTION
20 (5)(a) OF THIS SECTION COMMITS AN UNFAIR OR DECEPTIVE TRADE
21 PRACTICE IN VIOLATION OF SECTION 6-1-105 (1)(eee) AND IS SUBJECT TO
22 ENFORCEMENT AND PENALTIES BY THE ATTORNEY GENERAL.

23 (6) (a) EXCEPT AS PROVIDED IN SUBSECTIONS (5)(a) AND (6)(b) OF
24 THIS SECTION, ON AND AFTER OCTOBER 1, 2024, A PERSON SHALL NOT
25 SELL OR OFFER FOR RETAIL SALE, EITHER DIRECTLY OR THROUGH A
26 RETAILER, DISTRIBUTOR, WHOLESALER, OR SIMILAR INTERMEDIARY, AN
27 ELECTRONIC SMOKING DEVICE THAT IS NOT AUTHORIZED FOR SALE IN

1 ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION.

2 (b) ON OR BEFORE DECEMBER 1, 2024, A RETAILER, DISTRIBUTOR,
3 WHOLESALER, OR OTHER INTERMEDIARY SHALL SELL OR REMOVE FROM
4 THE SELLER'S INVENTORY ANY ELECTRONIC SMOKING DEVICES THAT ARE
5 NOT INCLUDED IN THE ATTORNEY GENERAL'S INITIAL PUBLICATION OF THE
6 DIRECTORY.

7 (7) (a) A PERSON THAT VIOLATES THIS SECTION ENGAGES IN AN
8 UNFAIR OR DECEPTIVE TRADE PRACTICE IN VIOLATION OF SECTION 6-1-105
9 (1)(eeee).

10 (b) (I) A MANUFACTURER THAT FALSELY REPRESENTS ANY
11 INFORMATION REQUESTED BY THE ATTORNEY GENERAL OR FAILS TO
12 PROVIDE UPDATES OF MATERIAL CHANGES TO AN ELECTRONIC SMOKING
13 DEVICE IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION COMMITS
14 A VIOLATION OF SECTION 6-1-105 (1)(eeee) AND IS SUBJECT TO CIVIL
15 PENALTIES FOR UNFAIR OR DECEPTIVE TRADE PRACTICES PURSUANT TO
16 SECTION 6-1-112.

17 (II) THE ATTORNEY GENERAL SHALL REMOVE FROM THE
18 DIRECTORY A MANUFACTURER THAT FALSELY REPRESENTS ANY
19 INFORMATION REQUESTED BY THE ATTORNEY GENERAL OR FAILS TO
20 PROVIDE UPDATES OF MATERIAL CHANGES TO AN ELECTRONIC SMOKING
21 DEVICE IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

22 (8) (a) A NONRESIDENT MANUFACTURER OF ELECTRONIC SMOKING
23 DEVICES THAT HAS NOT REGISTERED TO DO BUSINESS IN COLORADO AS A
24 FOREIGN CORPORATION OR BUSINESS ENTITY SHALL, AS A CONDITION
25 PRECEDENT TO BEING INCLUDED IN THE DIRECTORY, APPOINT AND
26 CONTINUALLY ENGAGE WITHOUT INTERRUPTION THE SERVICES OF AN
27 AGENT WHO SHALL ACT AS AN AGENT FOR THE SERVICE OF PROCESS.

1 PROCESS RELATED TO ANY ACTION OR PROCEEDING AGAINST THE
2 MANUFACTURER CONCERNING OR ARISING OUT OF THE ENFORCEMENT OF
3 THIS SECTION MAY BE SERVED ON THE AGENT IN ANY MANNER
4 AUTHORIZED BY LAW. SUCH SERVICE CONSTITUTES LEGAL AND VALID
5 SERVICE OF PROCESS ON THE MANUFACTURER.

6 (b) AT THE REQUEST OF THE ATTORNEY GENERAL, A
7 MANUFACTURER THAT ENGAGES AN AGENT FOR THE SERVICE OF PROCESS
8 SHALL PROVIDE THE NAME, ADDRESS, TELEPHONE NUMBER, AND PROOF OF
9 APPOINTMENT OF THE AGENT TO THE ATTORNEY GENERAL.

10 (c) IF A MANUFACTURER TERMINATES THE APPOINTMENT OF AN
11 AGENT APPOINTED PURSUANT TO SUBSECTION (8)(a) OF THIS SECTION, THE
12 MANUFACTURER SHALL PROVIDE TO THE ATTORNEY GENERAL WITHIN
13 THIRTY DAYS AFTER THE MANUFACTURER HAS TERMINATED THE AGENT:

14 (I) NOTICE OF THE TERMINATION OF THE FORMER AGENT; AND

15 (II) PROOF THAT THE MANUFACTURER HAS APPOINTED A NEW
16 AGENT NO LESS THAN FIVE CALENDAR DAYS AFTER THE TERMINATION OF
17 THE FORMER AGENT, INCLUDING PROVIDING THE INFORMATION REQUIRED
18 PURSUANT TO SUBSECTION (8)(b) OF THIS SECTION.

19 (d) A NONRESIDENT MANUFACTURER THAT SELLS ELECTRONIC
20 SMOKING DEVICES IN COLORADO AND THAT HAS NOT APPOINTED AND
21 ENGAGED THE SERVICES OF AN AGENT AS REQUIRED BY THIS SUBSECTION
22 (8) IS DEEMED TO HAVE APPOINTED THE SECRETARY OF STATE AS ITS
23 AGENT FOR SERVICE OF PROCESS. THE APPOINTMENT OF THE SECRETARY
24 OF STATE AS THE MANUFACTURER'S AGENT DOES NOT SATISFY THE
25 CONDITION PRECEDENT REQUIRED IN SUBSECTION (8)(a) OF THIS SECTION
26 FOR THE MANUFACTURER TO BE INCLUDED OR RETAINED IN THE
27 DIRECTORY.

1 (9) ANY PENALTIES COLLECTED IN ACCORDANCE WITH THIS
2 SECTION SHALL BE USED FOR ADMINISTRATION AND ENFORCEMENT OF THIS
3 SECTION.

4 (10) THE ATTORNEY GENERAL MAY PROMULGATE ANY RULES
5 NECESSARY TO ENFORCE THIS SECTION AND ENSURE THE PROTECTION OF
6 PUBLIC HEALTH, SAFETY, AND WELFARE.

7 **SECTION 3. Safety clause.** The general assembly finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, or safety or for appropriations for
10 the support and maintenance of the departments of the state and state
11 institutions.