

2018 Tobacco Control Network Policy Scans

Limiting Tobacco Retailers Near Youth-Oriented Locations

Exposure to tobacco retail marketing can normalize tobacco use and lead to higher rates of tobacco use among youth.¹ Researchers across the US have consistently found that overall rates of tobacco use are higher in communities with a higher density of tobacco retailers.² The relationship between tobacco use and retail density can exacerbate and entrench health disparities surrounding tobacco use, since more tobacco retailers are found in lower socio-economic and minority communities.³ Furthermore, rates of tobacco use among students are higher in schools where there are tobacco retailers nearby.⁴ The relationship between exposure to retail stores and youth tobacco use is well-understood by the tobacco industry. For example, disclosures made as part of tobacco litigation revealed tobacco industry marketing reports and strategies emphasizing the use of promotional items and advertising in retail locations near high schools to attract and addict "replacement smokers."⁵

Although tobacco manufacturers agreed to stop certain forms of advertising as part of the 1998 Tobacco Master Settlement Agreement, they continue to invest heavily in marketing their products. In 2015, the tobacco industry spent nearly 9 billion dollars advertising tobacco products, with an emphasis on point-of-sale (POS) marketing strategies such as price reduction instruments and premium product placement.⁶ These forms of advertising are particularly attractive to youth⁷ with the U.S. Surgeon General concluding "there is a causal relationship between advertising and promotional efforts of the tobacco companies and the initiation and progression of tobacco use among young people."⁸

Since exposure to POS advertising occurs at tobacco retail locations, limiting the number and location of tobacco retailers can reduce the amount of tobacco advertising to which youth are exposed. State and local jurisdictions have implemented policies to cap the number of tobacco retailers allowed in their communities, as well as establishing tobacco retail "buffer zones" by prohibiting tobacco retailers from operating near youth-oriented facilities.⁹ During the 2018 legislative session, Utah made key changes to improve enforceability and administration of an existing retail buffer zone. In addition, while ultimately not enacted, legislators in Hawaii considered the retail buffer zones in 2018. The deliberations from these states can provide insight for other jurisdictions that are interested in this policy approach.

Overview of Utah's State-Wide Restrictions on Retail Tobacco Specialty Businesses

In 2012, in response to a growing problem with the sale of synthetic marijuana and other illegal products through standalone smoke shops, Utah established a licensing process for retail tobacco specialty businesses.¹⁰ Under the initial law, a "retail tobacco specialty business" was defined as a commercial establishment that receives more than 35% of its total annual gross receipts from the sale of tobacco products; receives less than 45% of its total annual gross receipts from the sale of food

and beverage products, excluding gasoline; and is not licensed as a pharmacy.¹¹

The definition was written so as to exclude convenience and grocery stores, gas stations, and pharmacies, which were seen as less likely to sell tobacco products to minors or illegal drugs.¹² The law prohibited municipalities from issuing a license to an establishment located within 1,000 feet of a "community location," 600 feet from another retail tobacco specialty business, or 600 feet from property used or zoned for agricultural or residential use.¹³ A grandfathering provision was also included to allow businesses with valid licenses issued prior to the law's effective date to continue to operate within the retail buffer zones.¹⁴

During the 2018 legislative session, legislators amended the law to improve its enforcement and administration. The revisions retain the retail buffer zones, change some of the definitions, and grant local health departments the authority to permit retail tobacco specialty businesses.¹⁵

The revised law expands the definition of "community locations" by adding homeless shelters¹⁶ and changes the definition of "retail tobacco specialty business" to any establishment where any of the following occurs:

- receives more than 35% of its total quarterly (not annual) gross receipts from the sale of tobacco products,
- has 20% or more of its public retail floor space allocated to the offer, display, or storage of tobacco products,
- has 20% or more of its total shelf space allocated to the offer, display, or storage of tobacco products, or
- has a self-service display for tobacco products (i.e., "a display of a cigarette, tobacco, or an electronic cigarette to which the public has access without the intervention of a retailer or retailer's employee").^{17, 18}

In addition to broadening definitions, the law now also requires a permit issued by the local health department into the licensing process and prohibits local jurisdictions from issuing a retail tobacco specialty business license without proof of a valid permit from the local health department and a valid license to sell tobacco products from the state tax commission.¹⁹ These changes will ensure local health departments are "in a place where they are participating actively from the beginning all the way through" the licensing and enforcement process.²⁰ This is critical for business compliance with existing tobacco control laws and regulations. In testimony in support of the new legislation, a representative of the Utah Medical Association, cited at least 50 instances where businesses were granted licenses within the retail buffer zones in two counties.²¹ Aligning licensing, compliance, and enforcement activities within local health departments may facilitate more effective administration and implementation.

Overview of Utah's State-Wide Restrictions on Retail Tobacco Specialty Businesses

With Hawaii law currently restricting alcohol retailers and medical marijuana dispensaries from operating near schools and other locations frequented by youth, the idea of retail buffer zones to protect youth is not new to the state.²² In 2018, legislators in Hawaii explored a state-wide buffer zone for tobacco retailers. As introduced, the bill (SB 2304) sought to make it "unlawful to sell a tobacco

product or an electronic smoking device at a place of business located within seven hundred and fifty feet of a public or private school, public park, or public housing project or complex.”²³ The bill and set out fines of “\$500 for the first day of offense” with subsequent days of offenses of “not less than \$500 nor more than \$2,000”²⁴ and prohibited the Department of Health from issuing or renewing a retail tobacco permit for a business with a location within 750 feet of a specified location.²⁵

The bill worked its way through two committees and passage in the Senate, as well as two committees in the House of Representatives.²⁶ Figure 1 illustrates the timeline and highlights key changes made to SB 2304 through committee amendments.

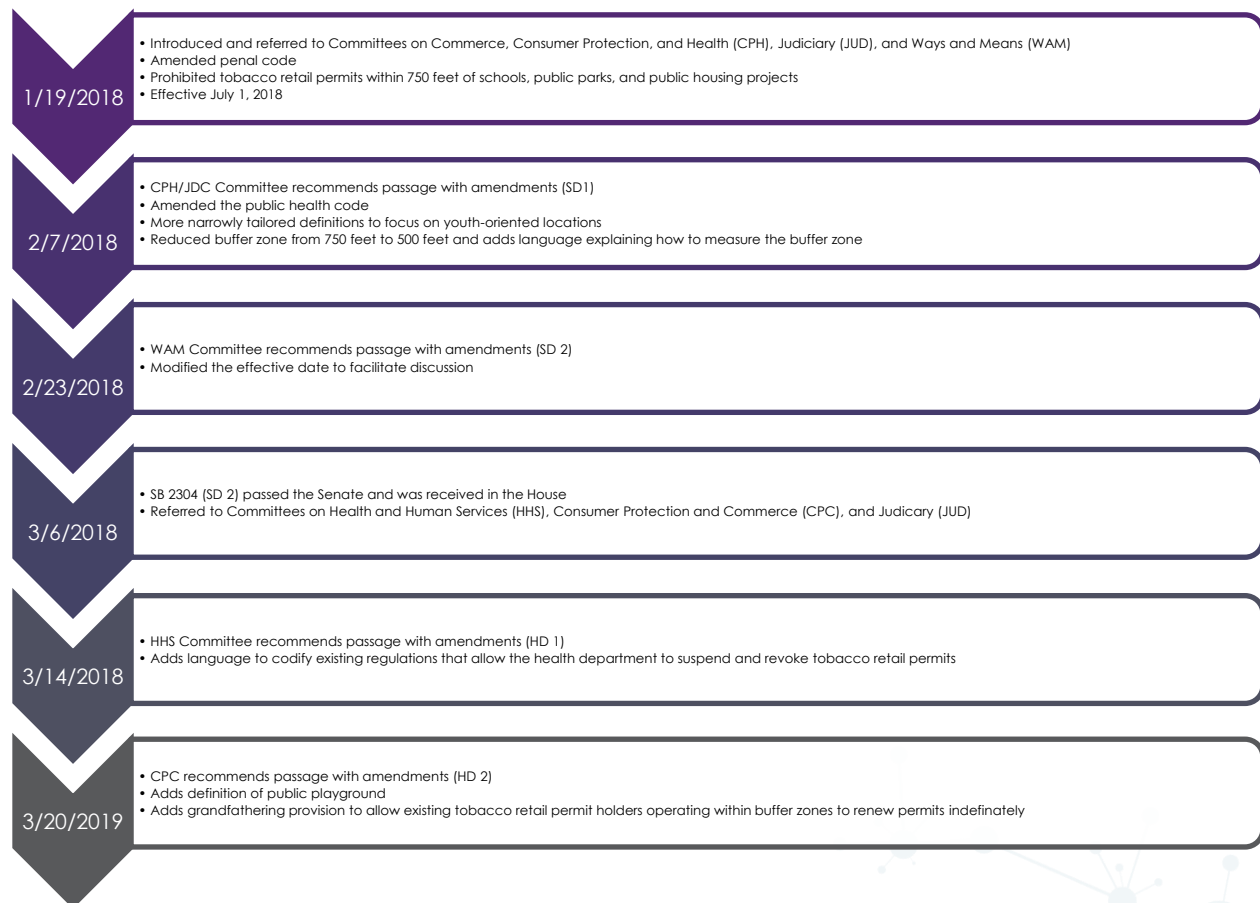


Figure 1

Although SB 2304 was not enacted, exploring the bill’s path and process can provide insight for decision makers into a couple of the issues that may arise when seeking to establish tobacco retail buffer zones. Below is a brief review of how the Hawaii legislators addressed the defining of retail buffer zones and their boundaries and the administration and enforcement of the restrictions.

Defining Retail Buffer Zones and Boundaries

Guidance from the Tobacco Control Legal Consortium stresses the importance of using clear definitions and concise language when developing licensing and zoning requirements for tobacco retailers.²⁷ Defining retail buffer zones and their boundaries may be challenging, especially when a

precise definition that can lead to the efficient administration and enforcement of the restrictions (e.g., it is clear what areas are included and excluded in the buffer zones) can also narrow the potential reach of the restrictions (e.g., the public health intervention is limited in its application).

The introduced version of Hawaii's SB 2304 established retail buffer zones by prohibiting the sale of tobacco products and electronic smoking devices at a business "located within seven hundred fifty feet of a public or private school, public park, or public housing project or complex."²⁸ An early amendment to the bill reduced the buffer to 500 feet, removed references to public parks and public housing projects or complexes, and focused instead on "public or private preschool; a public or private elementary, intermediate, or high school, or public playground utilized extensively by minors."²⁹ The early amendment also added exclusions to the buffer zone locations such as "[p]ublic or private beaches, and public or private day care centers located in or adjacent to commercial areas" and "vocational or licensing schools, or schools attended primarily by adults."³⁰

A later amendment further defined "public playground" as an "area of land that is used for outdoor play or recreation, especially by children, maintained by a city, county, or state government that contains one of more of the following: (1) pieces of recreational equipment such as a slide or swing, (2) facilities for playing informal games such as a baseball diamond or tennis court; or (3) fields for playing of sports such as soccer or football."³¹ These additional changes responded to concerns that the scope of the reach of the buffer zones as initially proposed were so broad as to prohibit nearly every tobacco retailer in the state.³² The end result was a retail buffer zone definition that more precisely targeted youth-oriented locations (e.g., preschools, primary and secondary schools, and parks with features attractive to children) while limiting the reach of the zones with exclusions for certain day care centers and schools focused on adult learners.

Administering and Enforcing Retail Buffer Zones

The administration and enforcement provisions of SB 2304 also changed as the Hawaii legislators crafted the bill. The introduced version provided that violations of the retail buffer zones were subject to a fine, however, additional means of administering and enforcing the bill were added by amendments. For example, as part of its testimony on the bill, the Hawaii Department of Taxation recommended adding language specifying that the buffer zone distances be measured from the boundary of the protected property (e.g., preschool, school, or public playground) to the boundary of the retailer and that revocation or suspension of a permit be expressly allowed if a retailer is noncompliant.³³ The agency believed that such tactics would facilitate the laws implementation and enforcement by placing the responsibility for determining the buffer zones on the retailers.³⁴ Amendments to the bill incorporated the agency's suggested changes.^{35, 36} A grandfathering provision was also added to allow retail tobacco permit holders who are within the buffer zone before a certain date to continue to be eligible for permit renewal despite their location within the buffer zone.³⁷

Conclusion

Preventing youth initiation of tobacco products is an effective strategy to address the harmful effects of tobacco products, as most individuals begin using those products as adolescents and young

adults.³⁸ Restricting the location of tobacco retailers provides an evidence-based strategy that state lawmakers can explore to mitigate the pernicious effects of POS advertising and promote tobacco-free communities. Lawmakers in Utah and Hawaii examined the issues surrounding such bans and the evolution of their policies can help to inform efforts in other jurisdictions.



Strengthening Clean Indoor Air Acts to Encourage Tobacco Cessation in Substance Use Disorder and Mental Health Treatment Facilities

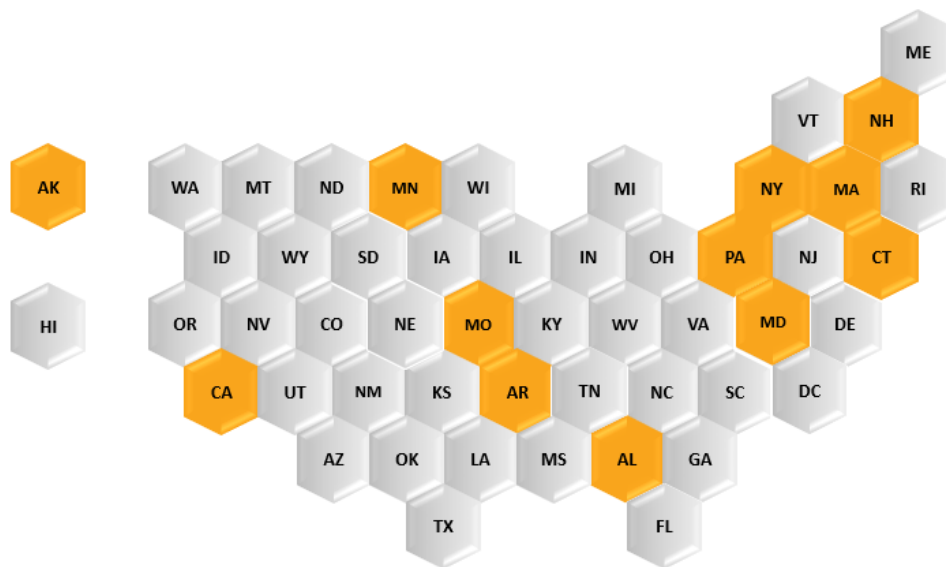
Smoking and tobacco use is more prevalent among populations with substance use disorder (SUD) and behavioral health diagnoses and results in significant harms. Individuals with mental health and/or substance use disorders smoke and use tobacco products at much higher rates than the general population. The 25 percent of Americans who have a mental health and/or substance use disorder account for 40 percent of cigarette sales.³⁹ Furthermore, individuals who use tobacco products and have SUD are more likely to die from tobacco-related causes than addiction-related ones, making tobacco products more hazardous than the other drugs or alcohol.⁴⁰ The outlook is similarly bleak for individuals with behavioral health diagnoses. Individuals with behavioral health conditions live on average 25 years less than an individual without such issues, and the leading causes of death are heart disease, cancer, and lung disease—attributable, in part, to tobacco use.⁴¹

Outdated misconceptions about how these populations respond to tobacco products and cessation continue to place them at increased risk of poor health outcomes even when under medical care.⁴² Less than 25 percent of mental health treatment facilities, both inpatient and outpatient, offer support and services to quit smoking.⁴³ While close to 60 percent of inpatient SUD facilities screen for tobacco use, only 20 percent of them provide non-nicotine cessation medications. Also, over 70 percent of government-funded treatment centers provide cessation medications, compared to 16 percent of private clinics that do.⁴⁴ The lack of cessation services can actually harm treatment and recovery efforts since nicotine may interact with medications used to treat SUD and behavioral health conditions, making them less effective.⁴⁵ In addition, there's a growing body of evidence that providing tobacco cessation alongside treatment for SUD improves the likelihood that an individual will abstain from substance use over the long-term.⁴⁶ Finally, evidence-based tobacco cessation interventions are successful in these populations. When provided with adequate tobacco cessation and support services, individuals can quit using tobacco products at similar rates to smokers without SUD and behavioral health conditions.⁴⁷

Clean Indoor Air Laws and Exemptions for Substance Use Disorder and Behavioral Health Facilities

Clean indoor and smoke-free laws typically prohibit smoking and the use of other tobacco products in indoor public spaces and places of employment. These laws have proven effective at both protecting the health of non-smokers and establishing social norms against tobacco use. Most states explicitly include health facilities in the definition of public space, place of employment, or both for the purposes of state-wide clean indoor air laws. These laws typically apply only to indoor spaces, and so even in such places, tobacco use is allowed in outdoor areas. However, at least 12 state laws contain express exclusions that permit tobacco use in treatment facilities for SUD and behavioral health.

The map below identifies states that have expressly excluded SUD and behavioral health treatment facilities from their clean indoor air acts.



States laws expressly exempt some or all substance use disorder or behavioral health treatment facilities from clean indoor air laws

Overview of Clean Indoor Air Exemptions

AL	Allows “smoking by patients in a chemical dependency treatment program or mental health program” in a “separated well-ventilated area pursuant to a policy established by the administrator of the program that identifies circumstances in which prohibiting smoking would interfere with the treatment of persons recovering from chemical dependency or mental illness” ⁴⁸
AK	<p>Exempts “a public or private office or facility that is engaged primarily in providing mental health services” from smoking prohibitions⁴⁹</p> <p>Allows “a person in charge of” a facility that primarily provides mental health services” to designate “smoking sections,” provided he or she makes “reasonable accommodations to protect the health of the nonsmokers”⁵⁰</p>
AR	<p>Addresses smoking in medical facilities in two laws, both containing exemptions for SUD/mental health treatment</p> <p>Allows a treating physician to “enter a written order permitting the use of tobacco” by hospital</p>

	<p>patients if treatment would be substantially impaired" by a smoking prohibition⁵¹</p> <p>Exempts psychiatric hospitals from smoking prohibitions in the Arkansas Clean Indoor Air Act of 2006, specifically exempts psychiatric hospitals from the smoking prohibitions.⁵²</p>
CA	<p>Prohibits the use of tobacco products in "patient care areas, waiting rooms, and visiting rooms of a health facility" but allows owners or managers of facilities to "identify 'smoking permitted' areas," which can include patient rooms in some circumstances.⁵³</p>
CT	<p>Exempts "designated smoking areas of psychiatric facilities" from its prohibition on smoking in healthcare facilities.⁵⁴</p>
MD	<p>Exempts facilities "for the treatment of mental disorders," "where the average length of state is more than 30 days," or an acute care hospital where "the attending physician authorizes smoking, in writing, as part of the care for the patient"⁵⁵</p> <p>Requires smoking in these facilities to be "in designated areas that are considered safe and provide nonsmoking patients, family members, and employees protection from tobacco smoke"⁵⁶</p>
MA	<p>Allows "acute care substance abuse treatment centers" to apply to the local board of health to have a portion of the facility designated as a residence thereby exempting it from smoking prohibitions subject to specific restrictions set out in the law⁵⁷</p>
MN	<p>Allows "smoking by patients in a locked psychiatric unit" in a "separated well-ventilated area...under a policy established by the administrator of the program" if a treating physician determines the "benefits to be gained in obtaining patient cooperation with treatment outweigh the negative impacts of smoking"⁵⁸</p> <p>Prohibits tobacco use on the grounds of state-run regional treatment centers and the Minnesota Security Hospital⁵⁹</p>
MO	<p>Allows "persons having custody or control of public spaces" to designate smoking areas within public spaces, which includes healthcare facilities.⁶⁰</p>
NH	<p>Exempts "resident rooms in facilities such as nursing homes, sheltered care facilities and residential treatment and rehabilitation" and "healthcare facilities, except for hospitals and other acute care facilities" from smoking prohibitions pursuant to rules promulgated by the Commissioner of Health⁶¹</p>
NY	<p>Allows smoking and vaping in designated smoking areas "by patients in separate enclosed rooms of residential health care facilities, adult care facilities...community mental health residents...or facilities where day treatment programs are provided."⁶²</p> <p>Through regulations promulgated by the New York's Department of Mental and Behavioral</p>

	Health, extended tobacco-free campus requirements for behavioral health facilities ⁶³
PA	Exempts a separate enclosed room or designated smoking room in a residential adult care facility, community mental health care facility, drug and alcohol facility, or other residential facilities" that are not covered by federal regulations from smoking prohibitions ⁶⁴

Role of the Health Department to Support and Encourage Tobacco-Free SUD and Behavioral Health Facilities

States and state health agencies can play a key role in strengthening tobacco-free policies and tobacco cessation in SUD treatment programs and behavioral health facilities. States can take the lead in developing and implementing smoke-free policies for state-run facilities and demonstrate how such prohibitions are not incompatible with high quality patient care and treatment. For example, Louisiana, Minnesota, and New Jersey prohibit smoking in certain state-run facilities. In 2012 Louisiana lawmakers eliminated a requirement that the Department of Health and Hospitals establish "rules and policies to reasonably accommodate inpatients and inmates who smoke."⁶⁵ Instead the legislature required the department to "establish procedures for treatment of smokers with mental illnesses" including screening patients, training staff in smoking cessation best practices, and providing smoking cessation assistance.⁶⁶ In Minnesota, tobacco use is specifically prohibited on the grounds of state-run regional treatment centers and the Minnesota Security Hospital.⁶⁷ Finally, New Jersey expressly authorizes but does not require state-run psychiatric hospitals to prohibit smoking on the grounds.⁶⁸ Before implementing a tobacco-free policy, the facility must offer "a smoking cessation program for both employees, and residents and patients" and have at least a year-long transition period.⁶⁹

Additionally, state agencies may be able to use their regulatory authority to expand smoke-free indoor air protections in behavioral health and recovery facilities. In 2008, New York state's Office of Alcoholism and Substance Abuse Services (OASAS) promulgated rules that applied to treatment facilities certified or funded by OASAS. The regulations outline the minimum policy requirements such facilities must establish, including:

- Defining the facility, vehicles and grounds which are tobacco-free,
- Prohibiting patients, family members, and other visitors from bringing tobacco products,
- Requiring patients, staff, volunteers, and visitors to be informed of the tobacco-free policies
- Prohibiting staff from using tobacco products at work during work hours
- Establishing tobacco-free policy for staff,
- Establishing treatment modalities for patients who use tobacco products
- Describing training on tobacco use and nicotine prevention that is available to staff, and
- Establishing procedures to address patients and staff that relapse on tobacco products.⁷⁰

Health agencies can also serve as resources for health facilities that voluntarily adopt tobacco-free policies. Activities may include providing or connecting them to tobacco cessation resources for their patients and staff, training facilities and healthcare providers about evidence-based tobacco cessation treatments, and expanding access to pharmacological tobacco cessation products. For example, the Utah Department of Health implemented a three-phase systems change model to raise awareness on the importance of integrating tobacco cessation services in substance abuse

treatment, ensuring clinical staff had the requisite training to provide such services, and aid in the implementation of tobacco-free policies.⁷¹

Conclusion

The US has made promising strides to reduce tobacco use and nicotine dependence, but more must be done to ensure that the benefits accrue to all populations. The increased rates of tobacco use among individuals with SUD and behavioral health issues have led to an inequitable disease burden and decreased life expectancy. State policies encouraging smoke-free indoor spaces and campuses for mental health and SUD facilities provide one avenue to strengthen tobacco-free norms and integrate tobacco cessation into treatment programs.



Social Consumption of Marijuana and its Potential Impact on Tobacco Use Policy

By February 2018, laws allowing the possession and consumption of non-medical marijuana by people 21 years and older were adopted by nine states (Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, Vermont, and Washington) and the District of Columbia (D.C.). These jurisdictions also have statewide indoor clean air laws prohibiting smoking in various locations such as workplaces, restaurants, and bars. With smoking being a common method of consuming marijuana and limited evidence around the exposure to second-hand marijuana smoke, it is important to recognize the restrictions or lack of restrictions both types of laws (i.e., those allowing marijuana consumption and the clean indoor air laws) impose on marijuana smoking. Below is a brief review of how the laws in the nine states and D.C. address marijuana smoking and/or onsite consumption of marijuana and how their clean indoor air laws may or may not encompass marijuana smoking.

Colorado

In November 2012, Colorado voters approved Amendment 64, amending the state's constitution to permit the use of nonmedical marijuana and allow the state to regulate its commercial production and retail sale. Under the law, anyone 21 years and older can possess and use marijuana as long as its consumption is not "conducted openly and publicly or in a manner that endangers others."⁷² The following year, the state's clean indoor air law was amended to add marijuana to the general prohibition of indoor smoking.⁷³

In November 2016, voters in Denver approved Initiative 300 to allow the public consumption of marijuana. By July 2017, Denver adopted rules permitting onsite marijuana consumption at specially licensed establishments and events. The marijuana that is consumed at these establishments and events cannot must be purchased at a separate location and alcohol consumption is prohibited at the specially licensed sites.⁷⁴ When applying for the license an applicant must describe and provide evidence of how the "designated consumption area" will comply with the state indoor clean air law.⁷⁵

In May 2018, the Colorado legislature passed a bill to enable certain retail marijuana stores to provide onsite consumption of marijuana products sold by the store.⁷⁶ The bill explicitly prohibits smoking as a means of onsite consumption at the stores and subjects the stores to the provisions of the state's clean indoor air law. The Colorado governor vetoed the bill in June 2018.⁷⁷

Washington

Washington's Initiative 502 to allow the commercial cultivation, production, and sale of nonmedical marijuana as well as its possession and use by anyone 21 years of age and older was approved by voters in November 2016. The law makes it unlawful to consume marijuana "in view of the general public or in a public place."⁷⁸ "Public place" has the same meaning as the definition found in the states alcoholic beverage control laws (e.g., streets, roads, schools, restaurants, parks, etc.), however, the exclusions to the definition do not apply to marijuana consumption.^{79, 80, 81} In 2015, the state

clarified its stance on social consumption of marijuana by disallowing the establishment of marijuana clubs, including private clubs, and making it a felony to open or operate one.

No changes were made to Washington's indoor clean air law after the marijuana laws were enacted. Washington law prohibits anyone from smoking in a public place or in any place of employment, as defined by the law.⁸² The law also defines "smoke" and "smoking" as "the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment" and is broad enough to encompass smoking marijuana.⁸³

Alaska

In November 2014, Alaska voters approved Ballot Measure 2, permitting people 21 years of age and older to possess and use nonmedical marijuana and allowing the state to establish a regulatory system for the commercial cultivation, production, and sale of nonmedical marijuana. The law allows for the personal use of nonmedical marijuana, does not permit the consumption of marijuana in public, and subjects the public consumption of marijuana to a fine.^{84, 85}

Despite the statutory prohibitions on public consumption, in November 2015, the Alaska Marijuana Control Board adopted rules permitting licensed retail marijuana stores that receive prior approval from the board to allow the onsite consumption of marijuana that is purchased from the store.⁸⁶ The board was able to make this exception by excluding the part of licensed retail marijuana stores designated for onsite marijuana consumption from the "in public" definition.⁸⁷

In August 2017, the Alaska Marijuana Control Board issued draft rules for onsite consumption.⁸⁸ Minutes from the board's April 4, 2018 meeting indicate that revisions may occur to the draft rules as they work toward final approval.⁸⁹ Localities have been divided on the onsite consumption issue. For example, in July 2017 the Anchorage Assembly adopted a resolution encouraging the Alaska Marijuana Control Board to allow onsite consumption while the City of Fairbanks adopted an ordinance in May 2018 prohibiting the onsite consumption of marijuana in any marijuana establishment.^{90, 91} Also in May 2018, Alaska's governor signed into law a bill establishing a statewide smoking ban for most workplaces, bars, and restaurants.⁹² One of the specified exceptions to the ban, however, are marijuana stores where onsite consumption is permitted.

Oregon

In November 2014, Oregon voters approved Measure 91 to allow the possession, retail sale, and use of non-medical marijuana by people aged 21 and older. The law makes it unlawful to use marijuana in a public place (e.g., publicly accessible areas, common areas of hotels and apartment houses, streets, schools, parks, bus stops, etc.).^{93, 94} There were no provisions designating or establishing places for public or social consumption.

In 2015, the Oregon Indoor Clean Air Act was amended to by adding "cannabinoid" to the definition of "inhalant."⁹⁵ The definition of "smoking instrument" was also expanded to include instruments used to smoke marijuana.⁹⁶ The revised definitions help to clarify that smoking or vaping marijuana is prohibited in a public place or place of employment as defined by statute.⁹⁷ Other amendments to

the state's clean indoor air law instructed the Oregon Health Authority to adopt rules prohibiting the smoking or vaping of non-tobacco products in smoke shops and allows an exception for the use of medical marijuana in the office of a licensed health care professional when there is adequate ventilation.^{98, 99, 100}

In 2017, the Oregon legislature considered a bill to regulate and license temporary events and lounges where marijuana could be consumed.¹⁰¹ Smoking and vaping marijuana would be allowed in these venues if ventilation systems were present. The locations and events would be exempt from the state's indoor clean air act and licenses would only be issued if approved by the local jurisdiction. Public hearings were held in February and May 2017, however, the bill remained in committee upon the legislature's adjournment in July and did not pass.

District of Columbia

In November 2014, voters in the District of Columbia approved Initiative 71 to permit the possession and cultivation of marijuana for personal use. Retail sales, commercial sales, and product manufacturing were not part of the adopted legalization scheme. Under current district law, smoking and consuming marijuana in public are prohibited. Public areas include streets, alleys, parks, sidewalks, parking areas, vehicles within those places, and any place where the public is invited. In 2016, private clubs were included within the meaning of a place where the public is invited.¹⁰² While the district's clean indoor air law does not explicitly address marijuana smoking, the law's definition of "smoking" or "to smoke" includes any "plant product intended for human consumption through inhalation, in any manner or in any form."¹⁰³

California

California's Proposition 64, was approved by voters in November 2016 to allow possession and use of nonmedical marijuana and establish a system for the commercial cultivation, processing, and sale of marijuana. The law expressly allows a person 21 years of age or older to smoke or ingest marijuana and prohibits smoking marijuana in various locations including where smoking tobacco is prohibited and within a certain distance of a school, day care center, or youth center when children are present.^{104, 105} Smoking marijuana is also prohibited in public places except when the state issues a temporary license allowing onsite marijuana sales and consumption at a county fair or district agricultural association event or when a local jurisdiction allows marijuana to be smoked, vaped, and ingested on the premises of a retailer.¹⁰⁶

Nevada

In November 2016, voters in Nevada approved Question 2 to allow the possession and use of nonmedical marijuana by anyone 21 years of age and over and to establish a system for the state regulation of the commercial cultivation and retail sale of marijuana. Under the Nevada law, it is unlawful to smoke or consume marijuana in a public place, a retail marijuana store, or in a moving vehicle.¹⁰⁷ "Public place" is defined as "an area to which the public is invited or in which the public is permitted regardless of age" and does not include retail marijuana stores.¹⁰⁸ Marijuana use is also expressly prohibited within state corrections facilities and on school grounds.¹⁰⁹

During the 2017 legislative session, a bill authorizing local jurisdictions to license or permit businesses or special events where marijuana can be consumed passed the Nevada Senate but was unable to make it out of the Nevada State Assembly.¹¹⁰ In September 2017, the Nevada Legislative Counsel Bureau issued an opinion stating that nothing in the state's law prevents a local government from allowing lounges or other areas where marijuana can be used but that those venues cannot be retail marijuana stores, which are prohibited from allowing marijuana consumption.¹¹¹

Massachusetts

In November 2016, Massachusetts voters approved Question 4 to establish a regulatory system for the cultivation and sale for nonmedical marijuana and allowing person who are at least 21 years old to possess and consume nonmedical marijuana. Within in a year of Question 4's adoption the Massachusetts legislature amended the state's clean indoor air law to include marijuana in the definition of "smoke" and "smoking."¹¹²

Under the Massachusetts law, marijuana retailers, but not cultivators or marijuana product manufacturers, can sell marijuana products. The law also disallows the consumption marijuana in public and smoking marijuana where tobacco smoking is prohibited.¹¹³ Other types of marijuana-related businesses beyond retailers, cultivators, and manufactures are authorized but not specified and local governments may permit onsite consumption where marijuana is sold.¹¹⁴

In December 2017, the Massachusetts Cannabis Control Commission (MCCC) released draft rules that included the licensing of marijuana social consumption establishments (i.e., another type of marijuana-related business allowed under the law noted above). Social consumption sites would be permitted to purchase marijuana from a retailer, cultivator, or manufacturer and sell single servings of marijuana to consumers for onsite consumption. Another provision in the draft rules would prohibit the smoking of marijuana at a marijuana social consumption establishment before October 1, 2018.

At the February 26, 2018 meeting of the MCCC it was agreed that a decision about marijuana social consumptions sites would be delayed and the references to them would be removed from the draft rules.¹¹⁵ In March 2018, the MCCC adopted a final version of the rules that do not include social consumption sites. The final rules also clarify that marijuana retailers are prohibited from allowing the onsite consumption of marijuana.¹¹⁶ Draft rules for social consumption sites are expected to be considered sometime in early 2019. In the meantime, local jurisdictions are authorized to permit onsite marijuana consumption as noted above.

Maine

Maine's Question 1 to establish a regulated commercial system for cultivating and selling nonmedical marijuana and permitting anyone who is 21 years of age and older to possess and consume nonmedical marijuana was approved by voters in November 2016. The law prohibits the smoking of marijuana in a public place or area where smoking is prohibited by the state's clean indoor air law.¹¹⁷

Upon its initial adoption, the law allowed for the establishment of social clubs, however, all references to social clubs were removed in May 2018 when the legislature overrode a governor's veto to enact

LD 1719 (2018), a bill implementing state's regulatory scheme for the cultivation and sale of marijuana. An earlier bill disallowed smoking marijuana at social clubs but was vetoed by the governor and not overridden by the legislature.¹¹⁸

Vermont

In 2018, Vermont became the first state to allow the nonmedical use of marijuana through the legislative process and not by a voter initiative or ballot. Beginning July 1, 2018, anyone 21 years of age or older will be allowed under state law to grow, possess, and use marijuana. Consumption of marijuana in a public place is expressly prohibited and includes any street, alley, park, sidewalk, public building, public accommodation as defined by law, and any place where smoking tobacco is prohibited by law.¹¹⁹ 4. 18 V.S.A. § 4230a. No changes were made to the state's indoor clean air law to add marijuana.

Issue of social consumption of marijuana, some of the arguments made for allowing social consumption (tourism, right is enshrined in state constitution, equity, housing, homelessness), few of issues faced by states allowing medical marijuana.

¹ Slater SJ, Chaloupka FJ, Wakefield M, et al. "The impact of retail cigarette marketing practices on youth smoking uptake." *Archives of Pediatrics and Adolescent Medicine*. 2007. 161(5):440-445.

² Gwon SH, DeGuzman, P Kulbok, P, et al. "Density and Proximity of Licensed Tobacco Retailers and Adolescent Smoking." *Journal of School Nursing*. 2016. 33(1):18-29

³ Public Health and Tobacco Policy Center. "Tobacco Disparities: Evidence Supports Policy Change." Available at <http://www.tobaccopolicycenter.org/documents/Tobacco%20Disparities-Evidence%20Supports%20Policy%20Change.pdf>. Accessed 4-17-2018.

⁴ McCarthy W, Mistry R, Lu Y, et al. "Density of Tobacco Retailers Near Schools: Effects of Tobacco Use Among Students." *American Journal of Public Health*. 2009. 99(1): 2006-2013.

⁵ Campaign for Tobacco-Free Kids. "Tobacco Company Quotes on Marketing to Kids." Available at <https://www.tobaccofreekids.org/fact-sheets/tobaccos-toll-health-harms-and-cost/tobacco-and-kids-marketing>. Accessed 4-17-2018.

⁶ CDC. "Smoking & Tobacco Use: Tobacco Industry Marketing." Available at https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/marketing/index.htm. Accessed 4-17-2018.

⁷ Truth Initiative. "Behind the marketing strategy that costs the tobacco industry \$900k an hour." Available at <https://truthinitiative.org/news/marketing-strategy-costs-tobacco-industry-900k-hour>. Accessed 4-17-2018.

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⁹ Truth Initiative. "How some local governments are keeping the number of tobacco retailers in check." Available at <https://truthinitiative.org/news/how-some-local-governments-are-keeping-number-tobacco-retailers-check>. Accessed on 4-17-2018.

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¹³ UTAH CODE ANN. § 10-8-41.6 (1)(a) and (5)(a) (West 2018) (Amended by 2018 Utah Laws Ch. 231 (West)) (A community location includes a public or private kindergarten, elementary, middle, junior high, or high school, a licensed child-care facility or preschool, a trade or technical school, a church, a public library, a public playground, a public park, a youth center or other space used primarily for youth oriented activities, a public recreational facility, or a public arcade.)

¹⁴ UTAH CODE ANN. § 10-8-41.6 (7) (West 2018) (Amended by 2018 Utah Laws Ch. 231 (West))

¹⁵ 2018 Utah Laws Ch. 231 (West)

¹⁶ *Ibid.* (Current license holders operating lawfully may continue to operate within 600 feet of homeless shelters.)

¹⁷ *Ibid.*

¹⁸ UTAH CODE ANN. § 76-10-105.1(1)(d) (West 2018) (Amended by 2018 Utah Laws Ch. 231 (West))

¹⁹ 2018 Utah Laws Ch. 231 (West)

²⁰ *Tobacco Regulation Amendments: Hearing on H.B. 324 Before H. Comm. on Business and Labor*, 2018 Leg., 62nd Sess. (Ut. 2018) (Statement of Dr. Joseph K. Miner, Executive Director, Utah Department of Health.) audio recording available at

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²² Haw. Code R § 329D-22 (a)(2) (West, 2018) (Prohibits medical cannabis production centers or dispensaries from operating within 750 feet of playgrounds, public housing projects or complexes, or schools) and Haw. Code R § 281-39.5 (a) (Prohibits liquor licensed to be issued for locations within 500 feet of schools or public playgrounds.)

²³ S.B. 2304, 29th Leg., Reg. Sess. (Haw. 2018).

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