

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2013**

Bill Number: H.217 Name of Bill: An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands

Agency/ Dept: AHS – VDH HPDP Author of Bill Review: Barbara and David Englander 5/16/14 Harry Chen 5/19/14

Date of Bill Review: 5/15/14 Status of Bill: (check one):

Upon Introduction     As passed by 1<sup>st</sup> body     As passed by both bodies     Fiscal

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**Recommended Position:**

Support     Oppose     Remain Neutral     Support with modifications identified in #8 below

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**Analysis of Bill**

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**1. Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.*

**H.217 expands workplace and public place protections against secondhand smoke:**

- **Lodging establishments:** H.217 designates the sleeping quarters and adjoining rooms rented to guests in hotels, motels, and other lodging establishments as workplaces that must be smoke-free.
- **State-owned property:** The bill creates a 25-foot smoke-free zone around all buildings owned by the State. This restriction does not include adjacent properties not owned by the State. Additional areas of property or grounds owned by or leased to the State may be designated as smoke-free.
- **State-operated hospitals:** H.217 creates a smoke-free campus for state-owned and operated hospitals or secure recovery facilities. This affects the Vermont Psychiatric Care Hospital.
- **Motor vehicles:** H.217 prohibits smoking in motor vehicles occupied by children restrained by a “child passenger retraining system” (i.e. car seat or booster seat) punishable by a \$100 fine. This would be a primary offense.

**H.217 enhances language for tobacco-free school grounds and childcare facilities:**

- **Public schools:** H.217 expands the definition of products prohibited on school grounds to include tobacco substitutes. It creates one policy for the entire state and applies to school grounds and school-sponsored functions, regardless of whether children are present, and includes all persons, not just students.
- **Childcare facilities:** H.217 prohibits the use of tobacco products and tobacco substitutes in licensed child care centers and afterschool programs at all times – both indoor and on the grounds. For licensed or registered family child care homes, use of tobacco and tobacco substitutes will be prohibited while children are in care. If smoking occurs on the premises when children are not in care, parents must be notified of possible exposure.

**H.217 Changes e-cigarette requirements:**

- **Amends the definition of tobacco substitutes:** H.217 clarifies that FDA-approved cessation products are not considered to be tobacco substitutes and are therefore not prohibited.
- **Requires child-safe e-liquid packaging:** Liquids or gels containing nicotine are required to be contained in child-resistant packaging. This excludes cartridges that are not designed to be opened by the consumer.

**2. Is there a need for this bill?** *Please explain why or why not.*

- **Workplace protections for lodging establishments:** H.217 provides the same workplace protections for accommodations employees that already cover Vermont employees in other sectors.
- **Protecting children from secondhand smoke in cars:** One in five (22%) Vermont youth in grades six through eight report being exposed to secondhand smoke in a car in the last week.<sup>1</sup> H.217 would increase secondhand smoke protections for those most vulnerable to its effects.
- **Protecting children from secondhand smoke in childcare facilities:** Current regulations for childcare facilities do not include tobacco substitutes or apply to registered family child care homes. H.217 expands protections for youth in licensed childcare facilities.
- **Changing social norms for youth-oriented facilities:** H.217 moves Vermont closer to having 100% tobacco-free school grounds, 100% of the time. This includes e-cigarettes, whose use has more than doubled among youth in recent years.
- **Supporting wellness for behavioral health populations:** Data from the CDC and other sources point to the disparity seen in shorter life span and in greater addiction to tobacco among those with mental illness. Creating smoke-free environments is an evidence-based way to improve the delivery of tobacco cessation services to clients and staff and improve clinical outcomes.
- **Letting the State lead tobacco-free areas by example:** Creating smoke-free buffers for State buildings will improve the health and wellness of employees, as well as clients, volunteers, and visitors who use State property.
- **Addressing the emerging poisoning threat of e-liquids:** The CDC reports that the number of e-cigarette-related calls to poison control centers has dramatically increased over the last four years, from one per month in September 2010 to 215 per month in February 2014.<sup>2</sup> 51% of these calls involved children under the age of five. H.217 is an important first step in protecting young children from nicotine poisoning.

**3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**

As with all secondhand smoke laws, the most effective strategy is public outreach and communication. The Tobacco Control Program is prepared to take the lead for developing educational materials about the new law and providing signage to communicate new smoke-free spaces. Enforcement for H.217 might be shared by the Tobacco Control Program (for enclosed public places and worksites) and the Food and Lodging Program (for accommodations).

**4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

- Unknown fiscal benefit for Department of Children and Families and Department of Vermont Health Access through improving reducing costs for conditions exacerbated secondhand smoke.
- Modest fiscal gains for the State through moving vehicle violation fines and secondhand smoke violation fines. Modest costs for law enforcement to enforce smoke-free cars provisions.
- The Agency of Education supports strengthening the tobacco (and tobacco substitute)-free language for school grounds. However, the enforcement mechanism is unclear and should be clarified in public communications.
- The Department of Children and Families supports expanding protections for childcare facilities.
- The Department of Liquor Control may be responsible for inspecting child-resistant packaging for e-liquids as part of tobacco licensing checks; however, the compliance mechanism is unclear in the bill as written.
- The Vermont Department of Tourism and Marketing supports the smoke-free hotels provision.

- 5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *(for example, public, municipalities, organizations, business, regulated entities, etc)*
- H.217 could have positive fiscal implications for the hospitality industry.<sup>3,4</sup> Employees in the accommodations industry would experience health benefits from a 100% smoke-free workplace.
  - Employees, clients, and visitors of State office buildings will benefit from reduced secondhand smoke exposure.
  - H.217 may increase costs for small retailers of e-liquids who customize and sell e-cigarette refills. However, child-resistant packaging would reduce costs to families and medical insurers (including the State) from poisonings.

**6. Other Stakeholders:**

**6.1 Who else is likely to support the proposal and why?**

- Coalition for a Tobacco-Free Vermont
- American Lung Association of Vermont
- American Heart Association of Vermont
- American Cancer Society of Vermont
- American Academy of Pediatrics Vermont chapter
- American Academy of Family Physicians Vermont chapter
- Local tobacco coalitions and advocates
- Vermont Superintendents Association (tobacco-free schools)
- Vermont Principal’s Association (tobacco-free schools)
- Concerned hotel and motel managers as recorded by calls to Vermont Department of Health

**6.2 Who else is likely to oppose the proposal and why?**

- Members of the public who oppose governmental regulation of smoking. However, the majority of Vermonters support complete smoking bans in building entryways (80%) and complete or partial bans on smoking on outdoor worksite campuses (71%).<sup>5</sup>
- Small e-cigarette businesses may oppose the e-liquid restriction; products from large tobacco companies are largely exempted due to their use of cartridges.

**7. Rationale for recommendation:** *Justify recommendation stated above.*

Support of H.217 is recommended to improve workplace and public place protections against secondhand smoke exposure and provide clear definitions and guidance for areas covered under law. H.217 resolves gaps in Vermont’s existing smoke-free laws and extends protections for Vermont’s children. With H.217, Vermont also takes the lead in protecting children from e-liquid poisonings.

**8. Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

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**Secretary/Commissioner has reviewed this document:** \_\_\_\_\_ **Date:** \_\_\_\_\_

<sup>1</sup> Vermont Department of Health, 2013 Youth Risk Behavior Survey.

<sup>2</sup> <http://www.cdc.gov/media/releases/2014/p0403-e-cigarette-poison.html>

<sup>3</sup> Hyland A, Puli V, Cummings M, Sciandra R. New York’s smoker-free regulations: effect on employment and sales in the hospitality industry. *Cornell Hotel and Restaurant Administration Quarterly*. 2003;44(3):9-16.

<sup>4</sup> Christophi CA, Paisi M, Pampaka D, Kehigias M, Vardavas C, Connolly GN. The impact of the Cyprus comprehensive smoking ban on air quality and economic business of hospitality venues. *BMC Public Health*. 2013;13(76).

<sup>5</sup> Vermont Department of Health. Tobacco Control Program Macro Poll, April 2012.