

DEPARTMENT OF REVENUE

Executive Director of the Department of Revenue

ENFORCEMENT OF THE PROHIBITED USE OF ELECTRONIC BENEFITS TRANSFER CARDS AT CERTAIN LOCATIONS

1 CCR 210-4

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

BASIS AND PURPOSE

These rules and regulations are adopted by the Executive Director of the Department of Revenue pursuant to the provisions of the State Administrative Procedure Act, article 4 of title 24, C.R.S. The purpose of these rules and regulations is to govern the enforcement of the prohibited use of electronic benefits transfer service cards at automated teller machines located in licensed gaming establishments, in-state simulcast facilities, race tracks, retail establishments licensed to sell malt, vinous, or spirituous liquors (except that, pursuant to HB17-1365 (amending subsections 26-2-104(2)(a)(ii)(c) and (2)(h)(i)(b), C.R.S.) this rule shall not apply to liquor-licensed drug stores),, medical marijuana centers, and retail marijuana stores. The statutory basis for 1 CCR 210-4 is found in section 26-2-104, et seq., C.R.S., 44-30-103 (18), C.R.S., 44-32-102 (11), C.R.S., 44-32-102 (24), C.R.S., 44-3-202 (b), C.R.S., 44-11-104 (6), C.R.S., and 44-12-103 (7), C.R.S.

(1) Construction.

Nothing contained in these regulations shall be so construed as to conflict with any provision of 26-2-101, et seq., C.R.S., or of any other applicable statute.

(2) Definitions.

The following definitions of terms, in addition to those set forth in section 24-4-102, C.R.S., shall apply to all rules and regulations promulgated pursuant to section 26-2-104, C.R.S.:

- (a) "Electronic Benefits Transfer Service Card (EBT)" is a card on which benefit allotments are stored and used to purchase authorized items at a point-of-sale terminal.
- (b) "Automated Teller Machine (ATM)" is a device which dispenses cash and provides benefit inquiries. The equipment is activated by inserting a plastic card with a magnetic stripe or smart card technology and entering a personal identification number (PIN).
- (c) "Licensed Gaming Establishment" means any premises licensed pursuant to article 30 of Title 44 of the Colorado Revised Statutes for the conduct of gaming.
- (d) "In-State Simulcast Facility" means:
 - (I) A class A or class B horse track at which a licensee has held within the preceding twelve months or is licensed and scheduled to hold within the following twelve months a race meet of at least the duration required of a class A or class B track;
 - (II) An additional facility that is operated by and is the responsibility of the licensee of a class B horse track, located in Colorado, and used for the handling of wagers placed on simulcast races received by the track or facility.

- (III) A class A horse track granted permission to receive simulcast races at an alternate location within five miles of its track during the times when the track is not in operation.
- (e) "Racetrack" means any premises where race meets or simulcast races with pari-mutuel wagering are held in accordance with the provisions of Article 32 of Title 44 of the Colorado Revised Statutes.
- (f) For this rule, a Liquor "licensed premises" means the premises specified in an application for a retail establishment licensed to sell malt, vinous, or spirituous liquors pursuant to part 3 of article 3 of title 44, C.R.S., except that this rule shall not apply to establishments applying for or holding a license as a liquor-licensed drug store under section 44-3-410, C.R.S.
- (g) A Medical Marijuana center "licensed premises" means the premises specified in an application for a license pursuant to Article 11 of Title 44 of the Colorado Revised Statutes owned or in possession of the licensee and within which the licensee is authorized to sell medical marijuana.
- (h) A Retail Marijuana store "licensed premises" means the premises specified in an application for a license pursuant to Article 12 of Title 44 of the Colorado Revised Statutes owned or in possession of the licensee and within which the licensee is authorized to sell retail marijuana.

(3) Responsibility of Licensee.

Responsibility for the employment and maintenance of lawful methods of operation rests with the licensee, and willful or persistent use or toleration of methods of operation considered unlawful by the Department of Revenue is prohibited. Each licensee shall fully and timely perform each and every term, condition and duty required by the rules and regulations of the Department of Revenue.

(4) Prevention Measures.

The operator of any establishment defined in this Rule, at which an ATM is located must take measures to prevent a client from using an EBT card to access moneys from such an ATM.

- (a) The operator of any establishment defined in this Rule, at which an ATM is located must post a sign on or near the ATM clearly notifying clients that this rule prohibits the use of an EBT card at the machine. The sign must use a minimum of an Arial 30 point font type and must contain the following statement:

"The use of an electronic benefits transfer service ("EBT") card to access public benefits at this machine is prohibited by Colorado Law, section 26-2-104, Colorado Revised Statutes."

- (I) A sticker affixed to an ATM that is in plain view may serve as the sign so long as the owner or operator of the ATM allows it. The sticker must contain the required statement and must use a minimum of an Arial 14 point font type.
- (b) The operator of any establishment defined in this Rule shall take additional measures necessary to prevent a client from using an Electronic Benefits Card to access moneys from ATMs at its establishment.
- (c) Each licensee must immediately notify in writing the Division within the Department of Revenue that has regulatory authority over the licensed premises, of the discovery of a violation or of a suspected violation of 26-2-104 (2) (h) (II), C.R.S., or this Rule. This notification may be sent electronically.
- (d) An operator of any establishment defined in this Rule who violates any of the provisions of 26-2-104 (2) (h) (II), C.R.S., or of this Rule, may be fined up to \$100.00 for each violation.

(5) Exemptions.

The licensed operator of any establishment defined in this Rule at which an ATM is located is exempt from the requirements of 26-2-104(2)(h)(II), C.R.S. and this Rule if the following requirements are met:

The licensed operator must obtain a signed statement from the owner or operator of each ATM located on the licensed premises verifying that all of the ATM machines on the licensed premises do not accept EBT cards. The signed statement must specifically identify each ATM. The signed statement from the owner or operator of the ATM(s) must be on the owner or operator's letterhead with the name and address of the owner or operator. The licensed operator shall then submit the ATM owner or operator's signed statement to the Division within the Department of Revenue that has regulatory authority over the licensed premises, together with a cover letter identifying the licensed operator seeking the exemption. Signed exemption letters can be sent electronically.

If a licensed operator is itself the owner or operator of an ATM on its premises, then the licensed operator shall prepare a signed statement verifying that all of the ATM machines on the licensed premises do not accept EBT cards. The signed statement must specifically identify each ATM. The signed statement from the licensed operator must be on the licensed operator's letterhead. The licensed operator shall then submit its signed statement to the Division within the Department of Revenue that has regulatory authority over the licensed premises. Signed exemption letters can be sent electronically.

If one or more violations of 26-2-104(2)(h)(II), C.R.S. occurs at any exempted establishment, the Department of Revenue may take measures to prevent future violations, including issuing fines up to \$100.00 for each violation. Activity will be monitored monthly and fines assessed on a quarterly basis. Therefore, each fine assessed per quarter will be assigned the same penalty level, which upon the determination that a fine is applicable, may be increased upon further violation in the following quarter.

In all instances where fines have been deemed applicable, the following structure may apply:

- (a) Level One Violation: For the first violation (i.e., all violations occurring in a particular quarter) a fine of \$25.00 may be assessed for each violation.
- (b) Level Two Violation: For the second violation (i.e., all violations occurring in a particular quarter after a level one violation has occurred) a fine of \$50.00 may be assessed for each violation.
- (c) Level Three Violation: For the third violation (i.e., all violations occurring in a particular quarter after a level two violation has occurred) a fine of \$75.00 may be assessed for each violation.
- (d) Level Four Violation: For the fourth violation (i.e., all violations occurring in a particular quarter after a level three violation has occurred) a maximum fine of \$100.00 may be assessed for each violation.

(6) Enforcement and penalties.

The Division of Gaming, the Liquor and Tobacco Enforcement Division, the Marijuana Enforcement Division, and the Racing Division are responsible for notifying the Department of Revenue of any discovered violation of 26-2-104 (2) (h) (II), C.R.S., or this Rule by the licensees under such Division's respective authority. The Division having regulatory authority over the licensee shall be responsible for the collection of fines on behalf of the Department of Revenue.

Editor's Notes

History

Entire rule eff. 01/01/2016.

Basis and Purpose, Rules (2)(f), 5 eff. 09/01/2017.