

# **Colorado Tobacco Enforcement Unit**

## **Retailer's Guide to Colorado Tobacco Law**



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## **Colorado's Tobacco Enforcement Unit**

In 1998, the Colorado Liquor Enforcement Division added investigative and administrative staff in response to the updated tobacco laws and federal mandates. Investigators of the Tobacco Enforcement Unit, of the Liquor Enforcement Division, Colorado Department of Revenue, conduct undercover compliance checks and retail inspections in an effort to increase compliance among retailers and to reduce the sale of cigarettes and other tobacco products to minors. Retail establishments and clerks who sell tobacco to minors may face criminal and administrative sanctions, including monetary fines.

The Tobacco Enforcement Unit also works with retailers to provide training and education materials, and offers additional assistance through the "Cops and Shops" program. "Cops and Shops" is a cooperative program with retailers that allows the investigators to work undercover in stores to identify, and criminally charge, minors who attempt to purchase cigarettes or other tobacco products.

The Tobacco Enforcement Unit will work with retailers to ensure voluntary compliance with Colorado's tobacco laws; however, it will undoubtedly become necessary, from time to time, to issue warnings or citations to retailers or employees who fail to comply. To effectively communicate the activities of the Tobacco Enforcement Unit, when a violation occurs, we will forward written record of our enforcement actions to the corporate offices and owners of each establishment that is cited or warned to the address of record provided to the Department of Revenue.

The Tobacco Enforcement Unit currently has investigators residing in four offices statewide to assist and answer any questions. The addresses and phone numbers are as follows:

**Main/Lakewood Office:** 1881 Pierce Street, Room 108, Lakewood, CO 80214  
303-205-2300

**Colorado Springs Office:** 4420 Austin Bluffs Parkway, Colorado Springs, CO 80918  
719-594-5654

**Greeley Office:** 800 8<sup>th</sup> Avenue, Room 325, Greeley, CO 80631  
970-378-6759

**Grand Junction Office:** 222 S. 6<sup>th</sup> Street, Room 425, Grand Junction, CO 80501  
970-248-7519

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# SYNOPSIS OF COLORADO LAWS REGARDING TOBACCO SALES

## Criminal Violations (Employees/Public/Minors)

### C.R.S. 18-13-121 (1)(a)

#### Furnishing Cigarettes or Tobacco Products to Minors

SYNOPSIS: Prohibits the furnishing by gift, sale or other means of cigarettes or tobacco products to a person under 18 years of age.

**Class 2 Petty Offense**

**Penalty: \$200 fine upon conviction**

### C.R.S. 18-13-121 (1)(b)

#### Furnishing Cigarettes or Tobacco Products to Minors – ID Checking Requirement

SYNOPSIS: Requires that, prior to selling any cigarette or other tobacco product to any individual, the seller shall request from the individual and examine a government-issued, photographic identification that establishes that the individual is eighteen years of age or older. Exception: In face-to-face transactions, this requirement shall be waived if the individual appears older than thirty years of age.

**Class 2 Petty Offense**

**Penalty: \$200 fine upon conviction**

### C.R.S. 18-13-121 (2)

#### Minors Purchasing/Attempting to Purchase Cigarettes or Tobacco Products

SYNOPSIS: Prohibits any person under the age of 18 from purchasing or attempting to purchase cigarettes or tobacco products.

**Class 2 Petty Offense**

**Penalty: \$100 fine upon conviction**

## Administrative Violations (Owners/Retailers)

### C.R.S. 24-35-503(1)

#### Sale of Cigarettes or Tobacco Products to Minors Prohibited

SYNOPSIS: Provides penalties for retail establishments that sell or permit the sale of cigarettes or tobacco products to anyone under the age of 18.

<b>Penalties:</b>	<b>1st Violation within a 24 month period</b>	<b>Written Warning</b>
	<b>2nd Violation within a 24 month period</b>	<b>\$250 Fine</b>
	<b>3rd Violation within a 24 month period</b>	<b>\$500 Fine</b>
	<b>4th Violation within a 24 month period</b>	<b>\$1,000 Fine</b>
	<b>5th Violation within a 24 month period</b>	<b>\$1,000-\$15,000 Fine</b>

### C.R.S. 24-35-503(2)

#### Certain Vending Machine Sales of Cigarettes or Tobacco Products Prohibited

SYNOPSIS: Provides penalties for retail establishments that sell or permit the sale of cigarettes or tobacco products to anyone under the age of 18 by use of a vending machine, and mandates the use of a locking device on vending machines accessible to minors.

<b>Penalties:</b>	<b>1st Violation within a 24 month period</b>	<b>\$25 Fine</b>
	<b>2nd Violation within a 24 month period</b>	<b>\$50 Fine</b>
	<b>3rd Violation within a 24 month period</b>	<b>\$100 Fine</b>
	<b>4th Violation within a 24 month period</b>	<b>\$250 Fine</b>
	<b>5th Violation within a 24 month period</b>	<b>\$250-\$1,000 Fine</b>

### C.R.S. 24-35-503(3)

#### Failure to Display Warning Sign

SYNOPSIS: Provides penalties for retail establishments selling cigarettes or tobacco products that do not display a specified warning sign in a prominent place in the building and on any cigarette or tobacco product vending or coin operated machine.

<b>Penalties:</b>	<b>1st Violation within a 24 month period</b>	<b>Written Warning</b>
	<b>2nd Violation within a 24 month period</b>	<b>\$50 Fine</b>
	<b>3rd Violation within a 24 month period</b>	<b>\$100 Fine</b>
	<b>4th Violation within a 24 month period</b>	<b>\$250 Fine</b>
	<b>5th Violation within a 24 month period</b>	<b>\$250-\$1,000 Fine</b>

### C.R.S. 24-35-503(4)

#### Selling cigarettes or tobacco products in quantities of less than 20 cigarettes or less than 0.60 ounces of roll-your-own tobacco

SYNOPSIS: Provides penalties for retail establishments selling 'loose' cigarettes or small quantities of packaged tobacco.

<b>Penalties:</b>	<b>1st Violation within a 24 month period</b>	<b>Written Warning</b>
	<b>2nd Violation within a 24 month period</b>	<b>\$250 Fine</b>
	<b>3rd Violation within a 24 month period</b>	<b>\$500 Fine</b>
	<b>4th Violation within a 24 month period</b>	<b>\$1,000 Fine</b>
	<b>5th Violation within a 24 month period</b>	<b>\$1,000-\$15,000 Fine</b>

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## **Checking Identification**

Per CRS 18-13-121(1)(b), (in part) before any person shall sell cigarettes or other tobacco products to an individual, that person shall request from the purchaser a government-issued form of identification and examine the form of identification presented. The form of identification must show that the person presenting the identification is eighteen years of age or older. The exception is that, in face-to-face transactions, if the purchaser appears to be older than thirty years of age, the requirement to check identification shall be waived.

When an employee examines an identification card they should examine, not only the date of birth to ensure the person is at least eighteen years of age, but also the photograph on the identification to ensure that the photo on the identification bears a reasonable resemblance to the person presenting it.

### **Determining the Validity of the Identification**

1. Be sure that the form of identification you have been presented is government-issued, includes a photo and shows a date of birth and that the form of identification presented is current, not expired.
  - A. Valid forms of identification include:
    - i. A driver's license issued by any state (within the United States), any US Territory, or any foreign country including Canada and Mexico.
    - ii. An identification card issued by any state for the purpose of proof of age as in accordance with CRS 42-2-302 and 42-2-303.
    - iii. A military identification card
    - iv. A passport
    - v. An alien registration card
    - vi. A valid employment authorization document issued by the US Department of Homeland Security.
2. Be sure to have the person presenting the identification take it out of their purse/wallet so you can put your hands on the identification. Most issued forms of identification are flat and smooth. If you feel any indentions or raised areas, there is a chance the identification has been altered.

**If you are not comfortable with the form of identification or if the identification is questionable, Refuse the Sale.**

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# *Resolving an Administrative Violation*

As a retailer, there are three (3) ways to resolve an administrative summons:

## *Pay the Fine*

The fine will be listed on the administrative summons. Retailers should submit a copy of the summons and a check for the indicated amount to the address listed on the summons within twenty (20) days of receipt. Delivery may be in person or by mail.

## *Administrative Hearing*

If the retailer would like to contest the violation, he/she, or their representative, may appear before a hearing officer and present a defense. The date and time of the hearing will be listed on the administrative summons. This is a formal hearing where both parties (the retailer and Department of Revenue) are able to present testimony and evidence in support of their case. The hearing officer will then render a decision and a formal order will be issued.

## *Pre-Hearing Conferences*

If the employer does not want to contest that the sale to minor violation occurred but wants to assert an affirmative defense\*\* in order to avoid the monetary fine, the Tobacco Enforcement Unit will schedule a pre-hearing conference with a unit supervisor. At this conference, the retailer must present compliance with 24-35-506(2) (see below). The fine, as assigned by CRS 24-35-506(1), may then be waived. If the affirmative defense is not accepted, however, the retailer must pay the fine, or appear before a hearing officer on the date specified on the administrative summons.

## **\*\*Explanation of an Affirmative Defense**

Colorado law, through CRS 24-35-506(2), provides business owners/corporations with the opportunity to assert an affirmative defense up to two (2) times within twenty-four months if sale to minor violations occur in their businesses. The four (4) requirements to successfully assert an affirmative defense are listed below. Each of the four requirements must be met in order to successfully assert the affirmative defense.

### CRS 24-35-506(2) (in part) – Eligibility for Affirmative Defense

(2) Notwithstanding the provisions of subsection (1) of this section, no fine for a violation of section 24-35-503 (1) shall be imposed upon a retailer that can establish an affirmative defense to the satisfaction of the division or the hearing officer that, prior to the date\*\* of the violation, it:

- (a) **Had adopted and enforced a written policy against selling cigarettes or tobacco products to persons under the age of eighteen years;**
- (b) **Had informed its employees of the applicable laws regarding the sale of cigarettes and tobacco products to persons under the age of eighteen years;**
- (c) **Required employees to verify the age of cigarette or tobacco product customers by way of photographic identification; and**
- (d) **Had established and imposed disciplinary sanctions for noncompliance.**

\*\* All of these requirements **MUST** have been met **PRIOR** to the sale to minor violations occurring. This includes the disciplinary sanctions for non-compliance. The employee that committed the first violation must have been sanctioned in some manner and the employer must provide proof of that sanction, whether it is a written warning in the file or a documented termination of employment.

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