

# COLORADO LAWS RELATED TO TOBACCO SALES TO MINORS

## SECTION 18-13-12, C.R.S. PART 5, ARTICLE 35, TITLE 24, C.R.S.

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### PART 5 REGULATION OF TOBACCO SALES TO MINORS

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**18-13-121. Furnishing cigarettes or tobacco products to minors.** (1) (a) A person shall not give, sell, distribute, or offer for sale to any person who is under eighteen years of age any cigarettes or tobacco products.

(b) Before selling to any individual any cigarette or tobacco product, a person shall request from the individual and examine a government-issued photographic identification that establishes that the individual is eighteen years of age or older; except that, in face-to-face transactions, this requirement shall be waived if the individual appears older than thirty years of age.

(c) A person who violates paragraph (a) or (b) of this subsection (1) commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of two hundred dollars.

(d) It shall be an affirmative defense to a prosecution under paragraph (a) of this subsection (1) that the person furnishing the cigarette or tobacco product was presented with and reasonably relied upon a document that identified the individual receiving the cigarette or tobacco product as being eighteen years of age or older.

(2) (a) Any person who is under eighteen years of age and who purchases or attempts to purchase any cigarettes or tobacco products commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of one hundred dollars; except that, following a conviction or adjudication for a first offense under this subsection (2), the court in lieu of the fine may sentence the person to participate in a tobacco education program. The court may allow a person convicted under this subsection (2) to perform community service and be granted credit against the fine and court costs at the rate of five dollars for each hour of work performed for up to fifty percent of the fine and court costs.

(b) It shall not be an offense under paragraph (a) of this subsection (2) if the person under eighteen years of age was acting at the direction of an employee of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of cigarettes and tobacco products to minors.

(3) Nothing in this section shall be construed to prohibit any statutory or home-rule municipality from enacting an ordinance that prohibits a person under eighteen years of age from purchasing any cigarettes or tobacco products or imposes requirements more stringent than provided in this section.

(4) (Deleted by amendment, L. 98, p. 1185, 2, effective July 1, 1998.)

(5) (a) As used in this section, "tobacco product" means:

(I) Any product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or

(II) Any electronic device that can be used to deliver nicotine to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, cigarillo, or pipe.

(b) Notwithstanding any provision of paragraph (a) of this subsection (5) to the contrary, "tobacco product" does not mean any product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.

**PART 5  
REGULATION OF TOBACCO SALES TO MINORS**

**24-35-501. Legislative declaration.** (1) The general assembly finds that:

(a) The use of tobacco creates dangerous risks to the health of the people of the state of Colorado;  
(b) Studies have shown that most people who use tobacco started using it when they were minors; and  
(c) The costs of health care for persons suffering from diseases caused by the use of tobacco are borne by all of the people of the state of Colorado.

(2) The general assembly also recognizes that:

(a) Federal regulations now require states through designated state agencies to develop programs to reduce the use of tobacco by minors as demonstrated by random inspection of businesses that sell tobacco at retail;

(b) As of January 1, 1998, there is no state agency specifically assigned the responsibility of enforcing the statutes of the state of Colorado prohibiting the sale of tobacco to minors or coordinating the inspection of businesses that sell tobacco;

(c) The liquor enforcement division of the department of revenue has experience in enforcing laws relating to the sale of liquor to minors; and

(d) The liquor enforcement division would be the most cost-effective state agency to enforce state laws relating to the sale of tobacco to minors.

**24-35-502. Definitions.** As used in this part 5, unless the context otherwise requires:

(1) "Department" means the department of revenue.

(2) "Division" means the division of liquor enforcement within the department.

(3) "Hearing officer" means a person designated by the executive director of the department to conduct hearings held pursuant to section 24-35-505.

(4) "Minor" means a person under eighteen years of age.

(5) "Retailer" means a business of any kind at a specific location that sells cigarettes or tobacco products to a user or consumer.

(6) "Tobacco product" has the same meaning as provided in section 18-13-121, C.R.S.

**24-35-503. Sale of cigarettes or tobacco products to minors or in vending machines prohibited - warning sign - small quantity sales prohibited.** (1) No retailer shall sell or permit the sale of cigarettes or tobacco products to a minor; except that it shall not be a violation if the retailer establishes that the person selling the cigarette or tobacco product was presented with and reasonably relied upon a photographic identification that identified the person purchasing the cigarette or tobacco product as being eighteen years of age or older.

(2) No retailer shall sell or offer to sell any cigarettes or tobacco products by use of a vending machine or other coin-operated machine; except that cigarettes may be sold at retail through vending machines only in:

(a) Factories, businesses, offices, or other places not open to the general public;

(b) Places to which minors are not permitted access; or

(c) Establishments where the vending machine dispenses cigarettes through the operation of a device that enables an adult employee of the establishment to prevent the dispensing of cigarettes to minors.

(3) Any person who sells or offers to sell any cigarettes or tobacco products shall display a warning sign, as specified in this subsection (3). The warning sign shall be displayed in a prominent place in the building and on any vending or coin-operated machine at all times, shall have a minimum height of three inches and a width of six inches, and shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO PURCHASE CIGARETTES AND TOBACCO PRODUCTS AND, UPON CONVICTION, A \$100.00 FINE MAY BE IMPOSED.

(4) No retailer shall sell or offer to sell individual cigarettes, or any pack or container of cigarettes containing fewer than twenty cigarettes, or roll-your-own tobacco in any package containing less than 0.60 ounces of tobacco.

**24-35-504. Enforcement authority - designation of agency - coordination - sharing of information.**

(1) The division shall have the power to enforce all state statutes relating to the prohibition of the sale of cigarettes and tobacco products to minors. The division is designated as the lead state agency for the enforcement of state statutes in compliance with federal laws relating to the prohibition of the sale of cigarettes and tobacco products to minors.

(2) The division shall coordinate the enforcement of state laws relating to the prohibition of the sale of cigarettes and tobacco products to minors by multiple state agencies to avoid duplicative inspections of the same retailer by multiple state agencies.

(3) (a) The division shall work with the department of human services and the department of public health and environment to ensure compliance with federal regulations for continued receipt of all federal funds contingent upon compliance with laws related to the prohibition of the sale of cigarettes and tobacco products to minors.

(b) The division shall perform at least the minimum number of random inspections of businesses that sell cigarettes and tobacco products at retail as required by federal regulations.

(c) In order to pay for the inspections required by paragraph (b) of this subsection (3), the division shall apply for a grant from the tobacco education, prevention, and cessation program established in part 8 of article 3.5 of title 25, C.R.S.

(4) In order to enforce laws relating to the prohibition of the sale of cigarettes and tobacco products to persons under eighteen years of age, the department of revenue is authorized to share information on the identification and address of retailers that sell cigarettes and tobacco products with any state agency responsible for the enforcement of laws relating to the prohibition of the sale of cigarettes and tobacco products to minors.

**24-35-505. Hearings.** (1) Subject to the limitations contained in section 24-35-506, the division, on its own motion or on a complaint from another governmental agency responsible for the enforcement of laws relating to the prohibition of the sale of cigarettes and tobacco products to minors, shall have the power to penalize retailers for violations of section 24-35-503.

(2) (a) A retailer accused of violating section 24-35-503 shall be entitled to written notice of the time and place of the hearing personally delivered to the retailer at the actual retail location or mailed to the retailer at the last known address as shown by the records of the department. The retailer is also entitled to be represented by counsel, to present evidence, and to cross-examine witnesses.

(b) A retailer that does not claim an affirmative defense pursuant to section 24-35-506 (2) may waive their right to a hearing and pay the appropriate fine.

(3) A hearing pursuant to this section shall be conducted at a location designated by the division before a hearing officer. The hearing officer shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of documents relating to any alleged violation of section 24-35-503.

(4) If the hearing officer finds, by a preponderance of the evidence, that the retailer violated section 24-35-503, the hearing officer may issue a written order or levy a fine against the retailer, subject to the provisions of section 24-35-506.

(5) The findings of the hearing officer shall be a final agency order. Any appeal of the decision of the hearing officer shall be filed with the Colorado court of appeals pursuant to section 24-4-106 (11).

(6) Any unpaid fine levied pursuant to this section together with reasonable attorney fees may be collected in a civil action filed by the attorney general.

(7) Any fines collected for violations of section 24-35-503 shall be forwarded to the state treasurer who shall credit the same to the tobacco use prevention fund created in section 24-35-507.

**24-35-506. Limitation on fines.** (1) For a violation of section 24-35-503 (1) or (4), the penalty shall be as follows:

- (a) A written warning for a first violation committed within a twenty-four-month period;
- (b) A fine of two hundred fifty dollars for a second violation within a twenty-four-month period;
- (c) A fine of five hundred dollars for a third violation within a twenty-four-month period;
- (d) A fine of one thousand dollars for a fourth violation within a twenty-four-month period; and
- (e) A fine of between one thousand dollars and fifteen thousand dollars for a fifth or subsequent violation within a twenty-four-month period.

(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.

(3) The affirmative defense established in subsection (2) of this section may be used by a retailer only twice at each location within any twenty-four-month period.

(4) For a violation of section 24-35-503 (2) or (3), the penalty shall be as follows:

- (a) (I) For a violation of section 24-35-503 (2), a fine of twenty-five dollars for a first violation committed within a twenty-four-month period;
- (II) For a violation of section 24-35-503 (3), a written warning for a first violation committed within a twenty-four-month period;
- (b) A fine of fifty dollars for a second violation within a twenty-four-month period;
- (c) A fine of one hundred dollars for a third violation within a twenty-four-month period;
- (d) A fine of two hundred fifty dollars for a fourth violation within a twenty-four-month period; and
- (e) A fine of between two hundred fifty dollars and one thousand dollars for a fifth or subsequent violation within a twenty-four-month period.

**24-35-507. Tobacco use prevention fund - grants.** (1) There is hereby created in the state treasury the tobacco use prevention fund, referred to in this section as the "fund". Moneys in the fund shall be subject to annual appropriation by the general assembly. Any interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended or unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not revert or be transferred to the general fund or any other fund of the state.

(2) Subject to annual appropriations by the general assembly, the department of human services may make grants from the fund to programs designed to develop training materials for retailers related to the prohibition of the sale of cigarettes and tobacco products to minors or to programs designed to prevent the use of cigarettes and tobacco products by minors.