HOUSE BILL 20-1001

A BILL FOR AN ACT

CONCERNING NICOTINE PRODUCT REGULATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Sections 1 through 8 of the bill raise the minimum age of a person to whom cigarettes, tobacco products, and nicotine products (products) may be sold from 18 years of age to 21 years of age.

Under current law, if a minor purchases or attempts to purchase any one of the products, the minor may be convicted of a class 2 petty offense subject to a $100 fine. In addition to raising the minimum age from 18 years of age to 21 years of age, section 1 also repeals the criminal penalty for purchasing or attempting to purchase the products as a minor.
Section 7 also prohibits a retailer from permitting a person under 18 years of age to sell or participate in the sale of products.

Section 8 also increases the minimum number of compliance checks required of each retail location at which the products are sold to 2 per year or at least the minimum number annually required by federal regulation, whichever number is greater.

Section 9 requires every retailer of the products in the state, on and after July 1, 2021, to be licensed. The liquor enforcement division (division) of the department of revenue is charged with licensing retailers and coordinating with local authorities on retail location compliance checks and investigations of complaints about retailers.

Section 10 prohibits: New retail locations at which products are sold from being located within 500 feet of a school; retail locations that sell electronic smoking device products from advertising those products in a manner that is visible from outside the retail location; and delivery of products directly to consumers.

Section 11 governs enforcement of the licensing requirements.

Section 12 adjusts the fine amounts for violating the prohibition against selling products to minors from a maximum fine for a fifth or subsequent violation within 24 months of $1,000 to $15,000 to a maximum fine for a fourth or subsequent violation in 36 months of $1,000 to $15,000. Additionally, the division must prohibit a retailer who commits a second or subsequent violation within 36 months from selling products at the retail location where the violation occurred for a specified period of time, starting with at least 7 days for a second violation within 36 months, to at least 30 days for a third violation within 36 months, and finally for up to 3 years for a fourth or subsequent violation within 36 months.

Additionally, section 12 establishes fines for selling or offering to sell products without a valid state license on or after July 1, 2021, with the amount of fines ranging from $1,000 for a first violation to $3,000 for a third or subsequent violation. If a person sells or offers to sell products without a valid state license at least 3 times in a 36-month period, the person is not eligible to apply for a state license for 3 years thereafter.

Section 12 also adjusts the period within which a subsequent violation of the prohibition against selling products from a vending machine or the requirement to display a warning at the retail location is subject to an increased fee from 24 months to 36 months. Further, section 12 also applies the same fine structure as exists for selling products from a vending machine or failing to display the requisite warning to a violation of the prohibition against allowing a person under 18 years of age to sell or participate in the sale of products.

Sections 13 through 17 make conforming amendments.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-13-121, amend (1)(a), (1)(b), (1)(d), and (3); and repeal (2) as follows:

18-13-121. Furnishing cigarettes, tobacco products, or nicotine products to persons under twenty-one years of age. (1) (a) A person shall not give, sell, distribute, dispense, or offer for sale a cigarette, tobacco product, or nicotine product to any person who is under eighteen TWENTY-ONE years of age.

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

(d) It is an affirmative defense to a prosecution under paragraph (a) of this subsection (1) SUBSECTION (1)(a) OF THIS SECTION that the person furnishing the cigarette, tobacco product, or nicotine product was presented with and reasonably relied upon a document that identified the individual receiving the cigarette, tobacco product, or nicotine product as being eighteen TWENTY-ONE years of age or older.

(2) (a) A person who is under eighteen years of age and who purchases or attempts to purchase any cigarettes, tobacco products, or nicotine 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 is not 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,
tobacco products, or nicotine products to minors.

(3) (a) Nothing in this section prohibits a statutory or home rule
municipality, county, or city and county from enacting an ordinance or
resolution that prohibits a minor from purchasing the sale of any
cigarettes, tobacco products, or nicotine products to persons under
twenty-one years of age or imposes requirements more stringent than
provided in this section.

(b) A statutory or home rule municipality, county, or city
and county shall not enact an ordinance or resolution that
establishes a minimum age to purchase cigarettes, tobacco
products, or nicotine products that is under twenty-one years
of age.

SECTION 2. In Colorado Revised Statutes, 25-14-204, amend
(2)(b) and (3) as follows:

25-14-204. General smoking restrictions. (2) A cigar-tobacco
bar:

(b) Shall prohibit entry by any person under eighteen
twenty-one years of age and shall display signage in at least one
conspicuous place and at least four inches by six inches in size stating:

"Smoking allowed. Children PERSONS under eighteen TWENTY-ONE years of age may not enter."

(3) A retail tobacco business:

(a) Shall prohibit entry by any person under eighteen TWENTY-ONE years of age; and

(b) Shall display signage in at least one conspicuous place and at least four inches by six inches in size stating either:

(I) "Smoking allowed. Children PERSONS under eighteen TWENTY-ONE years of age may not enter."; or

(II) In the case of a retail tobacco business that desires to allow the use of ESDs but not other forms of smoking on the premises, "Vaping allowed. Children PERSONS under eighteen TWENTY-ONE years of age may not enter."

SECTION 3. In Colorado Revised Statutes, 25-14-208.5, amend (2) introductory portion, (2)(a), and (2)(b) as follows:

25-14-208.5. Violations relating to signage and admission of persons under twenty-one years of age - limitation on fines.

(2) Notwithstanding subsection (1) of this section, no fine for a violation of section 25-14-204 (2) or (3) shall NOT be imposed upon a person that can establish as an affirmative defense that, prior to the date of the violation, it THE PERSON:

(a) Had adopted and enforced a written policy against allowing persons under eighteen TWENTY-ONE years of age to enter the premises;

(b) Had informed its THE PERSON'S employees of the applicable laws regarding the prohibition AGAINST persons under eighteen TWENTY-ONE years of age ENTERING OR REMAINING in
areas where smoking is permitted;

SECTION 4. In Colorado Revised Statutes, 25-14-301, amend
(2) and (4) as follows:

25-14-301. Sale of cigarettes, tobacco products, or nicotine
products to persons under twenty-one years of age prohibited -
definitions. (2) (a) Possession THE SALE of a cigarette or tobacco product
by TO a person who is under eighteen TWENTY-ONE years of age is
prohibited.

(b) It shall is not be an offense under paragraph (a) of this
subsection (2) SUBSECTION (2)(a) OF THIS SECTION if the UNDERAGE
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.

(4) (a) Nothing in this section prohibits a statutory or home rule
municipality, county, or city and county from enacting an ordinance or
resolution that prohibits the possession of cigarettes, tobacco products, or
nicotine products by a minor TO A PERSON UNDER TWENTY-ONE YEARS OF
AGE or imposes requirements more stringent than provided in this section.

(b) A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY
AND COUNTY SHALL NOT ENACT AN ORDINANCE OR RESOLUTION THAT
ESTABLISHES A MINIMUM AGE TO PURCHASE CIGARETTES, TOBACCO
PRODUCTS, OR NICOTINE PRODUCTS THAT IS UNDER TWENTY-ONE YEARS
OF AGE.

SECTION 5. In Colorado Revised Statutes, 30-15-401, amend
(1.5) as follows:

30-15-401. General regulations - definitions. (1.5) In addition
to any other powers, the board of county commissioners has the power to adopt a resolution or an ordinance to:

(a) Regulate the possession or purchasing sale of cigarettes, tobacco products, or nicotine products, as defined by section 18-13-121(5), by to a minor or to regulate the sale of cigarettes, tobacco products, or nicotine products to minors; and CONSISTENT WITH SECTION 18-13-121(3);

(b) Limit smoking, as defined in section 25-14-203(16), in any manner that is no less restrictive than the limitations set forth in the "Colorado Clean Indoor Air Act", part 2 of article 14 of title 25; AND

(c) LICENSE OR OTHERWISE REGULATE THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS.

SECTION 6. In Colorado Revised Statutes, amend 44-7-102 as follows:

44-7-102. Definitions. As used in this article 7, unless the context otherwise requires:

(1) "Cigarette, tobacco product, or nicotine product" has the same meaning as provided in section 18-13-121(5).

(2) (a) "DISTRIBUTOR" MEANS A PERSON WHO SELLS OR DISTRIBUTES CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO LICENSED RETAILERS IN THIS STATE.

(b) "DISTRIBUTOR" INCLUDES A "DISTRIBUTOR" OR "DISTRIBUTING SUBCONTRACTOR" AS THOSE TERMS ARE DEFINED IN SECTION 39-28.5-101.

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

(4) "ELECTRONIC SMOKING DEVICE" HAS THE MEANING SET FORTH IN SECTION 25-14-203 (4.5).
(3) (5) "Hearing officer" means a person designated by the executive director to conduct hearings held pursuant to section 44-7-105.

(6) "LOCAL AUTHORITY" MEANS THE GOVERNING BODY OF A LOCAL GOVERNMENT OR ANY AUTHORITY DESIGNATED BY A MUNICIPAL OR COUNTY CHARTER, MUNICIPAL ORDINANCE, OR COUNTY RESOLUTION TO REGULATE RETAILERS.

(7) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY.

(4)(8) "Minor" means a person under eighteen TWENTY-ONE years of age.

(9) "NEW RETAIL LOCATION" MEANS A RETAIL LOCATION IN THE STATE AT WHICH CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WERE NOT SOLD BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (9).

(5) (10) "Retailer" means THE OWNER OR OPERATOR OF a business of any kind at a specific location that sells cigarettes, tobacco products, or nicotine products to a user or consumer.

(11) "SCHOOL" HAS THE MEANING SET FORTH IN SECTION 44-3-103 (50).

(12) "STATE LICENSE" MEANS A LICENSE ISSUED BY THE DIVISION IN ACCORDANCE WITH SECTION 44-7-104.5.

(13) (a) "WHOLESALER" MEANS A PERSON ENGAGED IN THE WHOLESALE DISTRIBUTION OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS IN THIS STATE.

(b) "WHOLESALER" INCLUDES A "WHOLESALER" AND "WHOLESALE SUBCONTRACTOR" AS THOSE TERMS ARE DEFINED IN SECTION 39-28-101.

SECTION 7. In Colorado Revised Statutes, 44-7-103, amend (1),
(2), and (3); and add (4.5) as follows:

**44-7-103. Sale of cigarettes, tobacco products, or nicotine products to persons under twenty-one years of age or in vending machines prohibited - warning sign - small quantity sales prohibited.**

(1) No A retailer shall NOT sell or permit the sale of cigarettes, tobacco products, or nicotine products to a minor; except that it is not a violation if the retailer establishes that the person selling the cigarette, tobacco product, or nicotine product was presented with and reasonably relied upon a photographic identification that identified the person purchasing the cigarette, tobacco product, or nicotine product as being eighteen TWENTY-ONE years of age or older.

(2) No A retailer shall NOT sell or offer to sell any cigarettes, tobacco products, or nicotine 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 cigarettes, tobacco products, or nicotine products shall display a warning sign as specified in this subsection (3). The warning sign must be displayed in a prominent place in the building and on any vending or coin-operated machine at all times, must have a minimum height of three inches and a width of six
WARNING

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

(4.5) A RETAILER SHALL NOT PERMIT A PERSON UNDER EIGHTEEN
YEARS OF AGE TO SELL OR PARTICIPATE IN THE SALE OF CIGARETTES,
TOBACCO PRODUCTS, OR NICOTINE PRODUCTS.

SECTION 8. In Colorado Revised Statutes, 44-7-104, amend
(3)(b) and (4); and add (5) as follows:

44-7-104. Enforcement authority - designation of agency -
coordination - sharing of information - rules. (3) (b) (I) EACH YEAR,
the division shall perform OR CAUSE TO BE PERFORMED at least TWO
COMPLIANCE CHECKS AT EACH RETAIL LOCATION AT WHICH CIGARETTES,
TOBACCO PRODUCTS, OR NICOTINE PRODUCTS ARE SOLD OR AT LEAST the
minimum number of random inspections of businesses that sell cigarettes,
tobacco products, or nicotine products at retail as ANNUAL COMPLIANCE
CHECKS required by federal regulations, WHICHEVER IS GREATER. THE
DIVISION SHALL PERFORM A COMPLIANCE CHECK BY ENGAGING A PERSON
UNDER TWENTY-ONE YEARS OF AGE TO ENTER A RETAIL LOCATION TO
PURCHASE CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS.

(II) IF A COMPLIANCE CHECK OF A RETAIL LOCATION PERFORMED
PURSUANT TO SUBSECTION (3)(b)(I) OF THIS SECTION REVEALS A
VIOLATION OF THIS ARTICLE 7, THE DIVISION, OR A LOCAL AUTHORITY IN
COORDINATION WITH THE DIVISION PURSUANT TO SECTION 44-7-104.5

(4)(c)(I), SHALL CONDUCT AN ADDITIONAL COMPLIANCE CHECK OF THE
RETAIL LOCATION WITHIN THREE TO SIX MONTHS AFTER THE COMPLIANCE
CHECK AT WHICH THE VIOLATION WAS DISCOVERED.

(4) In order to enforce laws relating to the prohibition of the sale
of cigarettes, tobacco products, or nicotine products to minors, the
department of revenue may share information on
shall maintain and publish on the division's public website the identification and address
business addresses of state-licensed retailers that sell cigarettes,
tobacco products, or nicotine products and may share the list or
information included in the list with any state or local agency
responsible for the enforcement of laws relating to the prohibition of the
sale of cigarettes, tobacco products, or nicotine products to minors.

(5) (a) To ensure the protection of public health, the
executive director shall promulgate rules concerning the
division's enforcement of this article 7, including rules:

(I) To set necessary and reasonable fee amounts that:

(A) Will cover the cost of enforcement and
administration, but the total amount of fees must not exceed
the total cost of the licensing program, except in accordance
with any adjustments made pursuant to subsection (5)(a)(I)(B) of
this section; and

(B) May be adjusted in accordance with changes in the
United States department of labor bureau of labor statistics
consumer price index for Denver-Aurora-Lakewood for all
items and urban consumers, or its successor index; and

(II) In accordance with subsections (2) and (3)(b) of this
SECTION, REGARDING THE NUMBER AND MANNER OF COMPLIANCE CHECKS
OF RETAIL LOCATIONS THAT THE DIVISION SHALL PERFORM OR CAUSE TO
BE PERFORMED EACH YEAR.

(b) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES
AUTHORIZING A PERSON TO APPLY FOR A TEMPORARY STATE LICENSE AND
REQUIRING THE PAYMENT OF A TEMPORARY STATE LICENSE FEE. IF THE
EXECUTIVE DIRECTOR PROMULGATES SUCH RULES, THE RULES MUST
SPECIFY THAT THE TEMPORARY STATE LICENSE REMAINS IN EFFECT FOR NO
MORE THAN THIRTY DAYS AND IS NOT RENEWABLE.

(c) IN PROMULGATING RULES PURSUANT TO THIS SUBSECTION (5),
THE EXECUTIVE DIRECTOR MAY CONSULT WITH THE DEPARTMENT OF
HUMAN SERVICES, THE DEPARTMENT OF PUBLIC HEALTH AND
ENVIRONMENT, LOCAL GOVERNMENTS, AND ANY OTHER STATE OR LOCAL
AGENCIES THE EXECUTIVE DIRECTOR DEEMS APPROPRIATE.

SECTION 9. In Colorado Revised Statutes, add 44-7-104.5 as
follows:

44-7-104.5. License required - fees - rules - repeal.
(1) (a) (I) ON OR AFTER JULY 1, 2021, A RETAILER DOING BUSINESS IN
THIS STATE SHALL NOT SELL OR OFFER FOR SALE CIGARETTES, TOBACCO
PRODUCTS, OR NICOTINE PRODUCTS IN THIS STATE WITHOUT FIRST
OBTAINING A STATE LICENSE AS A RETAILER FROM THE DIVISION.

(II) A STATE LICENSE IS VALID FOR ONE YEAR AND MAY BE
RENEWED BY APPLICATION IN THE FORM AND MANNER PRESCRIBED BY THE
DIVISION AND BY PAYMENT OF A FEE SET BY RULE PURSUANT TO SECTION
44-7-104 (5)(a)(I).

(b) AN OWNER OF MULTIPLE RETAIL LOCATIONS IN THE STATE AT
WHICH CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS ARE
SOLD OR OFFERED FOR SALE MUST APPLY FOR A SEPARATE STATE LICENSE FOR EACH RETAIL LOCATION. IF THE EXECUTIVE DIRECTOR WISHES TO AUTHORIZE AN OWNER OF MULTIPLE RETAIL LOCATIONS IN THE STATE TO APPLY SIMULTANEOUSLY FOR STATE LICENSES FOR EACH RETAIL LOCATION OWNED BY SUBMITTING A JOINT APPLICATION, THE EXECUTIVE DIRECTOR MAY ESTABLISH BY RULE:

(I) The process by which the owner may apply for state licenses for multiple retail locations in a joint application; and

(II) A joint application fee.

(2) (a) Except as provided in subsection (4)(b) of this section, the division shall approve or deny a state license application within sixty days after receiving the application. The division may deny an application only for good cause. If the division denies an application, the division shall inform the applicant in writing of the reasons for the denial, and the applicant, within fourteen days after receiving the written denial, may request that a hearing be held on the matter in accordance with section 44-7-105.

(b)(I) If a retailer that sold or offered to sell cigarettes, tobacco products, or nicotine products at a retail location in the state before July 1, 2021, has applied for a state license from the division and paid the state license fee on or before July 1, 2021, the retailer may continue to sell or offer to sell cigarettes, tobacco products, or nicotine products on or after July 1, 2021, without a state license during the pendency of the division's review of the retailer's state license application.

(II) This subsection (2)(b) is repealed, effective July 1, 2022.
(3) (a) Upon obtaining a state license from the division for a retail location, a retailer shall conspicuously display the state license at the retail location.

(b) (I) State licenses are not transferable. If a licensee ceases to be a retailer at a retail location by reason of discontinuance, sale, or transfer of the licensee's business, the licensee shall notify the division in writing on or before the date on which the discontinuance, sale, or transfer takes effect.

(II) If a person to whom a retailer's retail location is sold applies for a state license for the retail location within thirty days after taking ownership of the retail location, which date of taking ownership must be demonstrated in the application in a manner determined by the division, the person may continue to sell or offer to sell cigarettes, tobacco products, or nicotine products without a state license during the pendency of the division's review of the person's state license application.

(4) (a) If a local government imposes licensing requirements on retailers, the licensing requirements must be as stringent as, and may be more stringent than, the statewide licensing requirements set forth in this article 7.

(b) If a retailer applies for a state license from the division pursuant to this section for a retail location that is within the jurisdiction of a local government that imposes licensing requirements on retailers, the division shall not issue a state license to the retailer until the retailer has obtained a local license and provided a copy of the local license to the division.
(c) The division shall collaborate with any local authority:

(I) On the performance of compliance checks to avoid duplicative inspections of the same retail location and to ensure that a local authority's compliance check of a retail location, which counts toward the number of compliance checks required by rule pursuant to section 44-7-104 (5)(a)(II), comports with the division's standards; and

(II) To ensure that complaints received by the division are forwarded to the appropriate local authority and that complaints received by the local authority are forwarded to the division for the timely investigation into and action taken on the complaints.

(5) (a) Ninety days before the expiration date of an existing state license, the division shall notify the licensee of the expiration date of the state license by electronic mail or by first-class mail, as determined by the executive director, at the mailing address that the division has on file for the licensee. The division shall establish a process for a licensee to confirm receipt of a notice sent pursuant to this subsection (5)(a). The division shall describe the confirmation process in the notice itself and on the division's website.

(b)(I) If the state license concerns a retail location that is located within the jurisdiction of a local authority that imposes licensing requirements on retailers, the division shall not renew the licensee's state license until the licensee has demonstrated to the division that the licensee is operating
UNDER A VALID LOCAL LICENSE OR HAS APPLIED TO THE LOCAL AUTHORITY TO RENEW LOCAL LICENSE AND THE RENEWAL APPLICATION IS PENDING.

(II) If, pursuant to subsection (5)(b)(I) of this section, a retailer applying to renew a state license has demonstrated to the division that the applicant has applied to renew a local license but the local license renewal application is still pending at the time of application to the division:

(A) The division shall not renew the applicant's state license until the applicant has submitted documentation showing that the local authority has renewed the applicant's local license; and

(B) Unless the division denies the applicant's state license renewal application for reasons other than a lack of documentation showing that the local authority has renewed the applicant's local license, the applicant's current state license is extended until both the local authority and the division have taken final action on the license renewal applications.

(c) If the retailer's state license concerns a retail location that is located within the jurisdiction of a local authority that imposes licensing requirements on retailers and the local authority:

(I) Suspends the retailer's local license, the division shall, pursuant to the notice and hearing process set forth in section 44-7-105 (1)(b), suspend the retailer's state license until the retailer can demonstrate to the division's satisfaction that the local license has been reinstated; or
(II) REVOKE THE RETAILER'S LOCAL LICENSE, THE DIVISION
shall, pursuant to the notice and hearing process set forth in
section 44-7-105 (1)(b), revoke the retailer's state license.

(6) THE DIVISION SHALL TRANSFER ANY FEES COLLECTED IN
accordance with this article 7 to the state treasurer, who shall
credit the fees to the liquor enforcement division and state
licensing authority cash fund created in section 44-6-101.

SECTION 10. In Colorado Revised Statutes, add 44-7-104.7 as
follows:

44-7-104.7. Restrictions on sales - minimum distance
requirement - advertising restriction - online sales prohibited.

(1) (a) The division shall not approve a state license application
for a new retail location that is located within five hundred
feet of a school. The distance between the new retail location
and the school is measured from the nearest property line of
land used for school purposes to the nearest portion of the
building where cigarettes, tobacco products, or nicotine
products will be sold, using a route of direct pedestrian access.

(b) This subsection (1) does not apply to retail locations
at which cigarettes, tobacco products, or nicotine products
were sold before the effective date of this subsection (1).

(c) If a retail location that was in existence as of the
effective date of this subsection (1) is transferred to a new
owner after the effective date of this subsection (1), the new
owner need not comply with this subsection (1).

(d) A local authority may by ordinance or resolution:

(I) Eliminate one or more types of schools from the
DISTANCE RESTRICTION SET FORTH IN SUBSECTION (1)(a) OF THIS SECTION; OR

(II) ADOPT SHORTER DISTANCE RESTRICTIONS.

(2) A RETAILER SHALL NOT ADVERTISE AN ELECTRONIC SMOKING DEVICE PRODUCT IN A MANNER THAT IS VISIBLE FROM OUTSIDE THE RETAIL LOCATION AT WHICH THE PRODUCT IS OFFERED FOR SALE.

(3) (a) A PERSON SHALL NOT SHIP OR DELIVER CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS DIRECTLY TO A CONSUMER IN THIS STATE. EXCEPT AS PROVIDED IN SUBSECTIONS (3)(b) AND (3)(c) OF THIS SECTION, ONLY A RETAILER LICENSED UNDER THIS ARTICLE 7, A WHOLESALER, OR A DISTRIBUTOR MAY RECEIVE A SHIPMENT OR DELIVERY OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS IN THIS STATE.

(b) CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS MAY BE SOLD TO A CONSUMER ONLINE ONLY IF THE CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS ARE DELIVERED TO A LICENSED RETAILER THAT AGREES, WHETHER OR NOT FOR COMPENSATION, TO HOLD THE PRODUCTS AT THE LICENSED RETAILER'S RETAIL LOCATION UNTIL THE CONSUMER PICKS UP THE PRODUCTS AT THE RETAIL LOCATION.

(c) THE PROHIBITION SET FORTH IN SUBSECTION (3)(a) OF THIS SECTION DOES NOT APPLY TO THE DIRECT SHIPMENT OR DELIVERY OF CIGARS TO A CONSUMER.

SECTION 11. In Colorado Revised Statutes, amend 44-7-105 as follows:

44-7-105. Enforcement - fines - suspension and revocation - injunctive relief - hearings - appeals. (1) (a) (I) Subject to the FINE limitations contained in section SECTIONS 44-7-104.5 (7)(a)(I) AND
44-7-106, 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, tobacco products, or nicotine products to minors, has the power to penalize retailers for violations of section 44-7-103 THIS ARTICLE 7.

(II) THE DIVISION, IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO AND THROUGH THE ATTORNEY GENERAL OF THE STATE OF COLORADO, MAY APPLY FOR AN INJUNCTION IN ANY COURT OF COMPETENT JURISDICTION TO ENJOIN ANY PERSON FROM COMMITTING AN ACT PROHIBITED BY THIS ARTICLE 7. IF THE DIVISION ESTABLISHES THAT THE DEFENDANT HAS BEEN OR IS COMMITTING AN ACT PROHIBITED BY THIS ARTICLE 7, THE COURT SHALL ENTER A DECREE ENJOINING THE DEFENDANT FROM FURTHER COMMITTING THE ACT. AN INJUNCTIVE PROCEEDING MAY BE BROUGHT PURSUANT TO THIS ARTICLE 7 IN ADDITION TO, AND NOT IN LIEU OF, PENALTIES AND OTHER REMEDIES PROVIDED IN THIS ARTICLE 7 AND THE RULES PROMULGATED PURSUANT TO THIS ARTICLE 7 OR OTHERWISE PROVIDED BY LAW.

(b) IN ADDITION TO ANY OTHER SANCTIONS PRESCRIBED BY THIS ARTICLE 7 OR RULES PROMULGATED PURSUANT TO THIS ARTICLE 7, THE DIVISION MAY, AFTER INVESTIGATION AND A PUBLIC HEARING AT WHICH A RETAILER MUST BE AFFORDED AN OPPORTUNITY TO BE HEARD, FINE A RETAILER OR, IF THE RETAILER HOLDS A STATE LICENSE, SUSPEND OR REVOKE THE RETAILER'S STATE LICENSE FOR A VIOLATION OF THIS ARTICLE 7 OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE 7 COMMITTED BY THE RETAILER OR BY ANY AGENT OR EMPLOYEE OF THE RETAILER.

(2) (a) A retailer accused of violating section 44-7-103 shall be THIS ARTICLE 7 OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE
7 is 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 DIVISION. 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 44-7-106 (2) may waive its 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 44-7-103 THIS ARTICLE 7 OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE 7.

(4) If the hearing officer finds, by a preponderance of the evidence, that the retailer violated section 44-7-103 THIS ARTICLE 7 OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE 7, the hearing officer may issue a written order TO SUSPEND OR REVOKE THE RETAILER'S STATE LICENSE or TO levy a fine against the retailer subject to the provisions of section 44-7-106.

(5) The findings DECISION of the hearing officer shall be IS a final agency order ACTION. 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) The division shall forward any fines collected for violations of section 44-7-103 shall be forwarded to the state treasurer, who shall credit them to the cigarette, tobacco product, and nicotine product use by minors prevention fund created in section 44-7-107.

(8) Nothing in this section or section 44-7-106 prohibits a local government from imposing sanctions on a retailer for a violation of a local ordinance or resolution.

SECTION 12. In Colorado Revised Statutes, amend 44-7-106 as follows:

44-7-106. Limitation on fines. (1) (a) For a violation of section 44-7-103 (1), or (4), the penalty shall be as follows:

(I) A fine in an amount of at least two hundred fifty dollars but not more than five hundred dollars for a first violation committed within a thirty-six-month period;

(II) A fine in an amount of at least five hundred dollars but not more than seven hundred fifty dollars for a second violation within a thirty-six-month period and a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for at least seven days following the date that the fine is imposed;

(III) A fine in an amount of at least seven hundred fifty dollars but not more than one thousand dollars for a third violation within a thirty-six-month period and a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred.
OCCURRED FOR AT LEAST THIRTY DAYS FOLLOWING THE DATE THAT THE FINE IS IMPOSED; AND

(IV) A fine in an amount of at least one thousand dollars but not more than fifteen thousand dollars for a fourth or subsequent violation within a thirty-six-month period and a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for up to three years following the date that the fine is imposed.

(b) For a violation of section 44-7-103 (4), the penalty is as follows:

(a) (I) A written warning for a first violation committed within a twenty-four-month thirty-six-month period;

(b) (II) A fine of two hundred fifty dollars for a second violation within a twenty-four-month thirty-six-month period;

(c) (III) A fine of five hundred dollars for a third violation within a twenty-four-month thirty-six-month period;

(d) (IV) A fine of one thousand dollars for a fourth violation within a twenty-four-month thirty-six-month period; and

(e) (V) A fine of between at least one thousand dollars and but not more than fifteen thousand dollars for a fifth or subsequent violation within a twenty-four-month thirty-six-month period.

(c) (I) On or after July 1, 2021, a person who sells or offers to sell cigarettes, tobacco products, or nicotine products without a valid state license issued pursuant to this section is subject to the following civil fines for each retail location at which the person sells or offers to sell cigarettes, tobacco products, or nicotine products.
PRODUCTS, OR NICOTINE PRODUCTS WITHOUT A VALID STATE LICENSE:

(A) ONE THOUSAND DOLLARS FOR THE FIRST VIOLATION;

(B) TWO THOUSAND DOLLARS FOR THE SECOND VIOLATION WITHIN THIRTY-SIX MONTHS; AND

(C) THREE THOUSAND DOLLARS FOR THE THIRD OR SUBSEQUENT VIOLATION WITHIN THIRTY-SIX MONTHS.

(II) EACH SALE OF OR OFFER TO SELL CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHOUT A VALID STATE LICENSE IS A DISTINCT VIOLATION OF THIS SECTION SUBJECT TO A FINE.

(III) IF THE DIVISION FINDS THAT A PERSON HAS VIOLATED THIS SUBSECTION (1)(c) THREE TIMES WITHIN THIRTY-SIX MONTHS, THE DIVISION SHALL ISSUE THE PERSON AN ORDER PROHIBITING THE PERSON FROM SELLING CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, WHICH ORDER RENDERS THE PERSON INELIGIBLE TO APPLY FOR A STATE LICENSE FOR THREE YEARS FOLLOWING THE DATE OF THE ORDER.

(IV) THE FINE AMOUNTS SET FORTH IN SUBSECTION (1)(c)(I) OF THIS SECTION ALSO APPLY TO VIOLATIONS OF SECTION 44-7-104.7 (2) AND (3).

(2) Notwithstanding subsection (1) of this section, no fine for a violation of section 44-7-103 (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, tobacco products, or nicotine products to persons under eighteen years of age;

(b) Had informed its employees of the applicable laws regarding the sale of cigarettes, tobacco products, or nicotine products to persons
under eighteen years of age;

(c) Required employees to verify the age of cigarette, tobacco product, or nicotine 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 44-7-103 (2) or (3), the penalty shall be as follows:

(4) (2) (a) (I) The penalty for a violation of section 44-7-103 (2) or (4.5) is a fine of twenty-five dollars for a first violation committed within a twenty-four-month thirty-six-month period.

(II) The penalty for a violation of section 44-7-103 (3) is a written warning for a first violation committed within a twenty-four-month thirty-six-month period.

(b) For a violation of section 44-7-103 (2), (3), or (4.5), the penalty is as follows:

(b) (I) A fine of fifty dollars for a second violation within a twenty-four-month thirty-six-month period;

(c) (II) A fine of one hundred dollars for a third violation within a twenty-four-month thirty-six-month period;

(d) (III) A fine of two hundred fifty dollars for a fourth violation within a twenty-four-month thirty-six-month period; and

(e) (IV) A fine of between at least two hundred fifty dollars and but not more than one thousand dollars for a fifth or subsequent
violation within a twenty-four-month THIRTY-SIX-MONTH period.

SECTION 13. In Colorado Revised Statutes, 8-84-202, amend (4) as follows:

8-84-202. Definitions. As used in this part 2, unless the context otherwise requires:

(4) "Vending facility" means automatic vending machines, a café, a cafeteria, a restaurant, a snack bar, a concession stand, or any other facility at which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are regularly sold.

SECTION 14. In Colorado Revised Statutes, 19-2-104, amend (1) introductory portion and (1)(a)(I) as follows:

19-2-104. Jurisdiction. (1) Except as otherwise provided by law, the juvenile court shall have HAS exclusive original jurisdiction in proceedings:

(a) Concerning any juvenile ten years of age or older who has violated:

(I) Any federal or state law, except nonfelony state traffic, game and fish, and parks and recreation laws or rules; the offenses specified in section 18-13-121, concerning tobacco products; the offense specified in section 18-13-122, concerning the illegal possession or consumption of ethyl alcohol or marijuana by an underage person or illegal possession of marijuana paraphernalia by an underage person; the offenses specified in section 18-18-406 (5)(a)(I), (5)(b)(I), and (5)(b)(II), concerning marijuana and marijuana concentrate; and the civil infraction in section 18-7-109 (3), concerning exchange of a private image by a juvenile;

SECTION 15. In Colorado Revised Statutes, 19-2-513, amend (3)(a) introductory portion as follows:
19-2-513. Petition form and content. (3) (a) Pursuant to the provisions of section 19-1-126, in those delinquency proceedings to which the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901 et seq., as amended, applies, including but not limited to status offenses such as the illegal possession or consumption of ethyl alcohol or marijuana by an underage person or illegal possession of marijuana paraphernalia by an underage person, as described in section 18-13-122, C.R.S.; purchase or attempted purchase of cigarettes or tobacco products by a person under eighteen years of age, as described in section 18-13-121, C.R.S.; and possession of handguns by juveniles, as described in section 18-12-108.5, C.R.S.; the petition shall MUST:

SECTION 16. In Colorado Revised Statutes, 24-33.5-1202, amend (15) as follows:

24-33.5-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(15) "Wholesale dealer" means

(a) any person, other than a manufacturer, who sells cigarettes, or tobacco products, or NICOTINE PRODUCTS to retail dealers or other persons for purposes of resale. and

(b) Any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

SECTION 17. In Colorado Revised Statutes, amend 44-6-101 as follows:

44-6-101. Liquor enforcement division and state licensing authority cash fund. There is hereby created in the state treasury the liquor enforcement division and state licensing authority cash fund. The
fund shall consist of money transferred in accordance with sections 44-3-502 (1), and 44-4-105 (2), and 44-7-104.5 (6). The general assembly shall make annual appropriations from the fund for a portion of the direct and indirect costs of the liquor enforcement division and the state licensing authority in the administration and enforcement of articles 3 to 5 and 7 of this title 44. Any money remaining in the fund at the end of each fiscal year shall remain in the fund and shall not revert to the general fund or any other fund. The fund shall be maintained in accordance with section 24-75-402.

SECTION 18. Applicability. This act applies to offenses committed on or after the effective date of this act.

SECTION 19. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.