

CHAPTER 284

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**GOVERNMENT - STATE**

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**HOUSE BILL 98-1387**

BY REPRESENTATIVES Faatz, Anderson, Hefley, Leyba, Paschall, Schauer, Sullivan, Udall, and S. Williams;  
also SENATORS Lacy, Dennis, Reeves, Rupert, and Wedding.

**AN ACT**

CONCERNING THE ENFORCEMENT OF LAWS RELATING TO THE PURCHASE OF TOBACCO BY MINORS, AND  
MAKING AN APPROPRIATION THEREFOR.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 35 of title 24, Colorado Revised Statutes, is amended BY  
THE ADDITION OF A NEW PART to read:

**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

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions  
from existing statutes and such material not part of act.*

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 PRODUCTS" HAS THE SAME MEANING AS PROVIDED IN SECTION 39-28.5-101 (5), C.R.S.

**24-35-503. Sale of cigarettes or tobacco products to minors or in vending machines prohibited - warning sign.** (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 OR ATTEMPT TO PURCHASE  
CIGARETTES OR TOBACCO PRODUCTS  
AND, UPON CONVICTION, A \$100.00  
FINE MAY BE IMPOSED.

**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) 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.

(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), THE PENALTY SHALL BE AS FOLLOWS:

(a) A WRITTEN WARNING FOR A FIRST VIOLATION COMMITTED WITHIN A TWELVE-MONTH PERIOD;

(b) A FINE OF TWO HUNDRED FIFTY DOLLARS FOR A SECOND VIOLATION WITHIN A TWELVE-MONTH PERIOD;

(c) A FINE OF FIVE HUNDRED DOLLARS FOR A THIRD VIOLATION WITHIN A TWELVE-MONTH PERIOD;

(d) A FINE OF ONE THOUSAND DOLLARS FOR A FOURTH VIOLATION WITHIN A TWELVE-MONTH PERIOD; AND

(e) A FINE OF BETWEEN ONE THOUSAND DOLLARS AND FIFTEEN THOUSAND DOLLARS FOR A FIFTH OR SUBSEQUENT VIOLATION WITHIN A TWELVE-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 TWELVE-MONTH PERIOD.

(4) FOR A VIOLATION OF SECTION 24-35-503 (2) OR (3), THE PENALTY SHALL BE AS FOLLOWS:

(a) A WRITTEN WARNING FOR A FIRST VIOLATION COMMITTED WITHIN A TWELVE-MONTH PERIOD;

(b) A FINE OF FIFTY DOLLARS FOR A SECOND VIOLATION WITHIN A TWELVE-MONTH PERIOD;

(c) A FINE OF ONE HUNDRED DOLLARS FOR A THIRD VIOLATION WITHIN A TWELVE-MONTH PERIOD;

(d) A FINE OF TWO HUNDRED FIFTY DOLLARS FOR A FOURTH VIOLATION WITHIN A TWELVE-MONTH PERIOD; AND

(e) A FINE OF BETWEEN TWO HUNDRED FIFTY DOLLARS AND ONE THOUSAND DOLLARS FOR A FIFTH OR SUBSEQUENT VIOLATION WITHIN A TWELVE-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.

**24-35-508. Repeal.** THIS PART 5 IS REPEALED, EFFECTIVE JULY 1, 2001.

**SECTION 2.** 18-13-121 (2) and (4), Colorado Revised Statutes, are amended to read:

**18-13-121. Furnishing cigarettes or tobacco products to minors - sale of cigarettes or tobacco products in vending machines prohibited - warning sign.**

(2) (a) Any person who is under eighteen years of age and who purchases OR ATTEMPTS TO PURCHASE any cigarettes or tobacco products, as defined in section 39-28.5-101 (5), C.R.S., commits a class 2 petty offense, and, upon conviction thereof, shall be punished by a fine of ~~forty~~ FIFTY ONE HUNDRED dollars, or the court shall allow such person 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.

(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.

~~(4) (a) Any person who sells or offers to sell any cigarettes or tobacco products, as defined in section 39-28.5-101 (5), C.R.S., by use of a vending machine or other coin-operated machine commits a class 2 petty offense, and, upon conviction thereof, shall be punished by a fine of two hundred dollars; except that cigarettes may be sold at retail through vending machines only in:~~

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

~~(II) Places to which persons under the age of eighteen years are not permitted access; or~~

~~(III) 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.~~

~~(b) Any person who sells or offers to sell any cigarettes or tobacco products shall display a warning sign, as specified in this paragraph (b). Any person who fails to display said warning sign commits a class 2 petty offense, and, upon conviction thereof, shall be punished by a fine of two hundred dollars. Said warning sign shall be displayed in a prominent place in the building and on such machine at all times and 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 \$50.00  
FINE MAY BE IMPOSED.~~

~~Any violation of the provisions of this paragraph (b) shall not constitute a violation of any other provisions of this section.~~

**SECTION 3.** 18-1-901 (3) (1) (III), Colorado Revised Statutes, is amended to read:

**18-1-901. Definitions.** (3) (1) (III) "Peace officer, level II," means an inspector of the state licensing authority under the "Colorado Beer Code" or the liquor enforcement division under section 12-47-904, C.R.S. OR PART 5 OF ARTICLE 35 OF TITLE 24, C.R.S.; an authorized investigator of the state lottery division pursuant to section 24-35-205 (3) or 24-35-206 (7), C.R.S.; any authorized investigator and the director of the division of gaming and the executive director of the department of revenue pursuant to section 12-47.1-204, C.R.S.; any fire arson investigator appointed by the chief of any fire department and approved by the sheriff or the chief of police of the jurisdiction in which such fire arson investigator performs duties; any officer, guard, or supervisory employee within the department of corrections, except any investigator employed by the department of corrections; a security guard employed by the state of Colorado; a security officer as defined in section 24-7-101, C.R.S.; a district wildlife manager, special district wildlife manager, or parks and recreation officer defined as a peace officer pursuant to section 33-1-102, C.R.S., and acting under the authority of a peace officer pursuant to sections 33-6-101 and 33-15-101, C.R.S.; an investigator for the division of racing events and the investigator's supervisors, including the director of the division of racing events pursuant to section 12-60-203, C.R.S., or a railroad employee defined as a peace officer pursuant to section 40-32-104.5, C.R.S., who shall have access to Colorado bureau of investigation fugitive and stolen property records. "Peace officer, level II," has the authority to enforce all the laws of the state of Colorado while acting within the scope of his authority and in the performance of his duties, and section 18-1-106 (1.5) and section 18-3-107 shall apply to "peace officer, level II".

**SECTION 4.** 13-4-102 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**13-4-102. Jurisdiction.** (2) The court of appeals shall have initial jurisdiction to:

(gg) REVIEW FINAL ACTIONS AND ORDERS APPROPRIATE FOR JUDICIAL REVIEW OF THE DEPARTMENT OF REVENUE RELATING TO PENALTIES FOR VIOLATIONS OF STATUTES RELATING TO THE SALE OF CIGARETTES AND TOBACCO PRODUCTS TO MINORS PURSUANT TO SECTION 24-35-505 (5), C.R.S.

**SECTION 5. Appropriations.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, liquor enforcement division, for the fiscal year beginning July 1, 1998, the sum of one hundred forty thousand eight hundred six

dollars (\$140,806) and 2.5 FTE, or so much thereof as may be necessary, for the implementation of this act. Said amount is exempt from the statutory limit on state general fund appropriations pursuant to section 24-75-201.1 (1) (a) (III) (A), Colorado Revised Statutes.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 1998, the sum of seven thousand three hundred sixty-six dollars (\$7,366) and 0.1 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of revenue related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of revenue out of the appropriation made in subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the tobacco use prevention fund created in section 24-35-507, Colorado Revised Statutes, not otherwise appropriated, to the department of human services, alcohol and drug abuse division, for the fiscal year beginning July 1, 1998, the sum of twenty-two thousand dollars (\$22,000), or so much thereof as may be necessary, for the implementation of this act.

**SECTION 6. Effective date - applicability.** This act shall take effect July 1, 1998, and shall apply to violations occurring on or after said date.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1998