

CHAPTER 236

CRIMINAL LAW AND PROCEDURE

SENATE BILL 08-088

BY SENATOR(S) Tupa, Groff, Windels, Bacon, Boyd, Brophy, Hagedorn, Johnson, Sandoval, Tapia, Williams, Gibbs, Isgar, Morse, Romer, Shaffer, Veiga, and Wiens;
 also REPRESENTATIVE(S) Massey, Todd, Benefield, Kefalas, Kerr A., McGihon, Merrifield, Riesberg, Fischer, Looper, May M., and Summers.

AN ACT

CONCERNING REDUCING THE INCIDENCE OF TOBACCO USE BY PERSONS LESS THAN EIGHTEEN YEARS OF AGE, AND, IN CONNECTION THEREWITH, ENACTING THE "TEEN TOBACCO USE PREVENTION ACT".

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

SECTION 1. 18-13-121 (1), (2) (a), and (3), Colorado Revised Statutes, are amended, and the said 18-13-121 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-13-121. Furnishing cigarettes or tobacco products to minors. (1) (a) ~~Any person who knowingly furnishes~~ A PERSON SHALL NOT GIVE, SELL, DISTRIBUTE, OR OFFER FOR SALE to any person who is under eighteen years of age ~~by gift, sale, or any other means;~~ any cigarettes or tobacco products. ~~as defined in section 39-28.5-101 (5), C.R.S.;~~

(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.

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

(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 ~~which~~ THAT identified the ~~person~~ 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 ~~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 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.

(3) Nothing in this section shall be construed to prohibit any statutory or home-rule municipality from enacting an ordinance ~~which~~ THAT prohibits a person under eighteen years of age from purchasing any cigarettes or tobacco products ~~as defined in section 39-28.5-101 (5), C.R.S.~~; or imposes requirements more stringent than provided in this section.

(5) AS USED IN THIS SECTION, "TOBACCO PRODUCT" MEANS ANY PRODUCT THAT CONTAINS OR IS DERIVED FROM TOBACCO AND IS INTENDED TO BE INGESTED OR INHALED BY OR APPLIED TO THE SKIN OF AN INDIVIDUAL; EXCEPT THAT "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.

SECTION 2. Article 14 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 3
TOBACCO USE BY MINORS

25-14-301. Possession of cigarettes or tobacco products by a minor prohibited. (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "TEEN TOBACCO USE PREVENTION ACT".

(2) (a) POSSESSION OF A CIGARETTE OR TOBACCO PRODUCT BY A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED.

(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) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CIGARETTE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 39-28-202 (4), C.R.S.

(b) "POSSESSION" MEANS THAT A PERSON:

(I) HAS OR HOLDS ANY AMOUNT OF CIGARETTES OR TOBACCO PRODUCTS ANYWHERE ON HIS OR HER PERSON;

(II) OWNS OR HAS CUSTODY OF CIGARETTES OR TOBACCO PRODUCTS; OR

(III) HAS CIGARETTES OR TOBACCO PRODUCTS WITHIN HIS OR HER IMMEDIATE PRESENCE AND CONTROL.

(c) "TOBACCO PRODUCT" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 18-13-121 (5), C.R.S.

(4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT ANY STATUTORY OR HOME-RULE MUNICIPALITY FROM ENACTING AN ORDINANCE THAT PROHIBITS THE POSSESSION OF CIGARETTES OR TOBACCO PRODUCTS BY A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE OR IMPOSES REQUIREMENTS MORE STRINGENT THAN PROVIDED IN THIS SECTION.

(5) A VIOLATION OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION IS A NONCRIMINAL OFFENSE.

SECTION 3. 25-14-103.5 (2) (c), (2) (d), and (5), Colorado Revised Statutes, are amended to read:

25-14-103.5. Prohibition against the use of tobacco products on school property - legislative declaration - education program - special account. (2) As used in this section, unless the context otherwise requires:

(c) "Tobacco PRODUCT" ~~means cigarettes, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. "Tobacco" also includes cloves or any other product that is packaged for smoking~~ SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 18-13-121 (5), C.R.S.

(d) "Use" means the lighting, chewing, ~~and~~ smoking, INGESTION, OR APPLICATION of any tobacco product.

(5) The board of education of each school district is authorized to seek and accept gifts, donations, or grants of any kind from any private or charitable source or from any governmental agency to meet expenses required by this section. Such gifts, donations, and grants shall be accounted for separately, and, to the extent that such moneys are available, the board of education of each school district may maintain and operate an educational program designed to assist students, faculty, and staff to avoid and discontinue the use of tobacco PRODUCTS. Such program shall be offered

at each school under the board's direction and control.

SECTION 4. Effective date - applicability. This act shall take effect July 1, 2008, and shall apply to offenses committed on or after said date.

SECTION 5. 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: May 20, 2008