

CHAPTER 113

GOVERNMENT - STATE

SENATE BILL 14-018

BY SENATOR(S) Nicholson and Jones, Aguilar, Newell, Schwartz, Steadman, Todd, Ulibarri;
also REPRESENTATIVE(S) Hamner and Young, Becker, Court, Fischer, Labuda, Moreno, Primavera, Rosenthal, Ryden.

AN ACT

CONCERNING THE PROHIBITION AGAINST FURNISHING NICOTINE PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE.

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

SECTION 1. In Colorado Revised Statutes, **amend** 18-13-121 as follows:

18-13-121. Furnishing cigarettes, tobacco products, or nicotine products to minors. (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 years of age. ~~any cigarettes or tobacco products.~~

(b) Before ~~GIVING,~~ selling, ~~DISTRIBUTING,~~ DISPENSING, OR OFFERING TO SELL to ~~any~~ AN individual any cigarette, ~~or~~ 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 years of age or older; except that, in face-to-face transactions, this requirement ~~shall be~~ IS 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~~ IS an affirmative defense to a prosecution under paragraph (a) of this subsection (1) that the person furnishing the cigarette, ~~or~~ tobacco PRODUCT, OR NICOTINE product was presented with and reasonably relied upon a document that identified the individual receiving the cigarette, ~~or~~ tobacco PRODUCT, OR NICOTINE product as being eighteen years of age or older.

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

(2) (a) ~~Any~~ A person who is under eighteen years of age and who purchases or attempts to purchase any cigarettes, ~~or~~ 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 ~~shall~~ IS 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, OR NICOTINE products to minors.

(3) Nothing in this section ~~shall be construed to prohibit any~~ PROHIBITS A 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 NICOTINE products or imposes requirements more stringent than provided in this section.

(3.5) NOTHING IN THIS SECTION AFFECTS FEDERAL LAWS CONCERNING CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, AS THEY APPLY TO MILITARY BASES AND INDIAN RESERVATIONS WITHIN THE STATE.

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

(5) (a) As used in this section, "CIGARETTE, tobacco PRODUCT, OR NICOTINE product" means:

(I) ~~Any~~ A 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 TOBACCO OR 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, "CIGARETTE, tobacco PRODUCT, OR NICOTINE product" does not mean ~~any~~ A 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. In Colorado Revised Statutes, **amend** 24-35-501 as follows:

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

(a) The use of CIGARETTES, tobacco PRODUCTS, OR NICOTINE PRODUCTS creates dangerous risks to the health of the people of the state of Colorado;

(b) Studies have shown that most people who use CIGARETTES, tobacco PRODUCTS, OR NICOTINE PRODUCTS started using ~~it when they were minors~~ THEM BEFORE THE AGE OF EIGHTEEN; and

(c) The costs of health care for persons suffering from diseases caused by the use of CIGARETTES, tobacco PRODUCTS, OR NICOTINE PRODUCTS 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 CIGARETTES, tobacco PRODUCTS, OR NICOTINE PRODUCTS by minors as demonstrated by random inspection of businesses that sell CIGARETTES, tobacco PRODUCTS, OR NICOTINE PRODUCTS 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.~~

SECTION 3. In Colorado Revised Statutes, **amend** 24-35-502 as follows:

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

(1) "CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT" HAS THE SAME MEANING AS PROVIDED IN SECTION 18-13-121, C.R.S.

~~(2)~~ (2) "Department" means the department of revenue.

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

~~(4)~~ (4) "Hearing officer" means a person designated by the executive director of the department to conduct hearings held pursuant to section 24-35-505.

~~(5)~~ (5) "Minor" means a person under eighteen years of age.

~~(6)~~ (6) "Retailer" means a business of any kind at a specific location that sells cigarettes, ~~or~~ tobacco products, OR NICOTINE PRODUCTS to a user or consumer.

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

SECTION 4. In Colorado Revised Statutes, 24-35-503, **amend** (1), (2) introductory portion, and (3); and **add** (5) as follows:

24-35-503. Sale of cigarettes, tobacco products, or nicotine 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, OR NICOTINE products to a minor; except that it ~~shall~~ IS NOT be a violation if the retailer establishes that the person selling the cigarette, ~~or~~ tobacco PRODUCT, OR NICOTINE product was presented with and reasonably relied upon a photographic identification that identified the person purchasing the cigarette, ~~or~~ tobacco PRODUCT, OR NICOTINE product as being eighteen years of age or older.

(2) No retailer shall sell or offer to sell any cigarettes, ~~or~~ 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:

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

WARNING

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

(5) NOTHING IN THIS SECTION AFFECTS FEDERAL LAWS CONCERNING CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, AS THEY APPLY TO MILITARY BASES AND INDIAN RESERVATIONS WITHIN THE STATE.

SECTION 5. In Colorado Revised Statutes, **amend** 24-35-504 as follows:

24-35-504. Enforcement authority - designation of agency - coordination - sharing of information. (1) The division ~~shall have~~ HAS the power to enforce all state statutes relating to the prohibition of the sale of cigarettes, ~~and~~ tobacco PRODUCTS, OR NICOTINE 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, OR NICOTINE 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, OR NICOTINE 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, OR NICOTINE products to minors.

(b) The division shall perform at least the minimum number of random inspections of businesses that sell cigarettes, ~~and~~ tobacco PRODUCTS, OR NICOTINE 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, OR NICOTINE products to ~~persons under eighteen years of age~~ MINORS, the department of revenue ~~is authorized to~~ MAY share information on the identification and address of retailers that sell cigarettes, ~~and~~ tobacco PRODUCTS, OR NICOTINE products with any state agency responsible for the enforcement of laws relating to the prohibition of the sale of cigarettes, ~~and~~ tobacco PRODUCTS, OR NICOTINE products to minors.

SECTION 6. In Colorado Revised Statutes, 24-35-505, **amend** (1) and (7) as follows:

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, OR NICOTINE products to minors, ~~shall have~~ HAS the power to penalize retailers for violations of section 24-35-503.

(7) Any fines collected for violations of section 24-35-503 shall be forwarded to the state treasurer, who shall credit ~~the same~~ THEM to the CIGARETTE, tobacco PRODUCT, AND NICOTINE PRODUCT use BY MINORS prevention fund created in section 24-35-507.

SECTION 7. In Colorado Revised Statutes, 24-35-506, **amend** (2) as follows:

24-35-506. Limitation on fines. (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, OR NICOTINE products to persons under ~~the age of~~ eighteen years OF AGE;

(b) Had informed its employees of the applicable laws regarding the sale of cigarettes, ~~and~~ tobacco PRODUCTS, OR NICOTINE products to persons under ~~the age of~~ eighteen years OF AGE;

(c) Required employees to verify the age of cigarette, ~~or~~ tobacco PRODUCT, OR NICOTINE product customers by way of photographic identification; and

(d) Had established and imposed disciplinary sanctions for noncompliance.

SECTION 8. In Colorado Revised Statutes, **amend** 24-35-507 as follows:

24-35-507. Cigarette, tobacco product, and nicotine product use by minors prevention fund - grants. (1) There is hereby created in the state treasury the CIGARETTE, tobacco PRODUCT, AND NICOTINE PRODUCT use BY MINORS prevention fund, referred to in this section as the "fund". Moneys in the fund ~~shall be~~ ARE 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~~ REMAINS IN 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~~ DO not revert or ~~be transferred~~ TRANSFER 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, OR NICOTINE products to minors or to programs designed to prevent the use of cigarettes, ~~and~~ tobacco PRODUCTS, OR NICOTINE products by minors.

SECTION 9. 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: April 11, 2014