

An Act

SENATE BILL 18-036

BY SENATOR(S) Kagan, Crowder, Kerr;
also REPRESENTATIVE(S) Wist, Rosenthal.

CONCERNING THE NONSUBSTANTIVE RELOCATION OF LAWS RELATED TO THE REGULATION OF TOBACCO SALES TO MINORS FROM TITLE 24, COLORADO REVISED STATUTES, TO A NEW TITLE 44 AS PART OF THE ORGANIZATIONAL RECODIFICATION OF TITLE 12, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, add title 44 as follows:

**TITLE 44
ACTIVITIES REGULATED BY THE
DEPARTMENT OF REVENUE**

**ARTICLE 1
Common Provisions**

44-1-101. Short title. THE SHORT TITLE OF THIS TITLE 44 IS THE "DEPARTMENT OF REVENUE ACTIVITIES REGULATION ACT".

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

44-1-102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) BEFORE THE ENACTMENT OF THIS TITLE 44, LAWS ADMINISTERED BY THE DEPARTMENT OF REVENUE THAT REGULATE A VARIETY OF ACTIVITIES WERE CODIFIED IN TWO TITLES OF THE COLORADO REVISED STATUTES, MOST PROMINENTLY IN TITLE 12, WHICH GOVERNS PROFESSIONS AND OCCUPATIONS;

(b) MOST PROFESSIONS AND OCCUPATIONS ARE REGULATED BY THE DEPARTMENT OF REGULATORY AGENCIES PURSUANT TO TITLE 12, BUT PRIOR TO THE 2017 LEGISLATIVE SESSION, TITLE 12 CONTAINED NUMEROUS LAWS THAT DID NOT PERTAIN TO THE REGULATION OF PROFESSIONS AND OCCUPATIONS AND WERE NOT ADMINISTERED BY THE DEPARTMENT OF REGULATORY AGENCIES;

(c) WITH THE ENACTMENT OF SECTION 2-3-510 IN 2016, THE GENERAL ASSEMBLY DIRECTED THE OFFICE OF LEGISLATIVE LEGAL SERVICES TO STUDY AN ORGANIZATIONAL RECODIFICATION OF TITLE 12 OF THE COLORADO REVISED STATUTES, INCLUDING RELOCATING LAWS THAT DO NOT PERTAIN TO PROFESSIONS AND OCCUPATIONS AND ARE NOT ADMINISTERED BY THE DEPARTMENT OF REGULATORY AGENCIES;

(d) BASED ON RECOMMENDATIONS FROM THE TITLE 12 RECODIFICATION STUDY, THE GENERAL ASSEMBLY ENACTED SEVERAL BILLS IN THE 2017 LEGISLATIVE SESSION TO RELOCATE OUT OF TITLE 12 MANY LAWS THAT ARE ADMINISTERED BY ENTITIES OTHER THAN THE DEPARTMENT OF REGULATORY AGENCIES;

(e) THE STUDY ALSO RECOMMENDED CREATING A NEW TITLE 44 FOR PURPOSES OF CONSOLIDATING LAWS ADMINISTERED BY THE DEPARTMENT OF REVENUE THAT REGULATE ACTIVITIES INTO A SINGLE TITLE IN ORDER TO FACILITATE BOTH:

(I) THE PUBLIC'S AND REGULATED ENTITIES' UNDERSTANDING OF THE LAWS THAT APPLY TO THEM; AND

(II) THE DEPARTMENT OF REVENUE'S ADMINISTRATION OF THESE LAWS; AND

(f) CREATING A NEW TITLE 44 CONSISTING OF LAWS ADMINISTERED BY THE DEPARTMENT OF REVENUE THAT REGULATE VARIOUS ACTIVITIES IS NECESSARY TO IMPLEMENT THE RECOMMENDATIONS OF THE TITLE 12 RECODIFICATION STUDY AND FACILITATE THE REORGANIZATION OF TITLE 12 PERTAINING TO THE REGULATION OF PROFESSIONS AND OCCUPATIONS.

44-1-103. Definitions. AS USED IN THIS TITLE 44, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE CREATED IN SECTION 24-1-117.

(2) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT.

SECTION 2. In Colorado Revised Statutes, **add with amended and relocated provisions** article 7 to title 44 as follows:

ARTICLE 7

Regulation of Tobacco Sales to Minors

44-7-101. [Formerly 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 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 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) to (d) (Deleted by amendment, L. 2014.)~~

44-7-102. [Formerly 24-35-502] Definitions. As used in this part 5 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. ~~C.R.S.~~

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

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

~~(4)~~ (3) "Hearing officer" means a person designated by the executive director of the department to conduct hearings held pursuant to section ~~24-35-505~~ SECTION 44-7-105.

~~(5)~~ (4) "Minor" means a person under eighteen years of age.

~~(6)~~ (5) "Retailer" means a business of any kind at a specific location that sells cigarettes, tobacco products, or nicotine products to a user or consumer.

44-7-103. [Formerly 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, 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 years of age or older.

(2) No retailer shall 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 inches, and must read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO PURCHASE CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE 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.

(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.

44-7-104. [Formerly 24-35-504] Enforcement authority - designation of agency - coordination - sharing of information. (1) The division has the power to enforce all state statutes relating to the prohibition of the sale of cigarettes, 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, 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, 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, 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, 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) SUBSECTION (3)(b) OF THIS SECTION, 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, tobacco products, or nicotine products to minors, the department ~~of revenue~~ may share information on the identification and address of retailers that sell cigarettes, tobacco products, or nicotine products with any state agency responsible for the enforcement of laws relating to the prohibition of the sale of cigarettes, tobacco products, or nicotine products to minors.

44-7-105. [Formerly 24-35-505] Hearings. (1) Subject to the limitations contained in section ~~24-35-506~~ 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 24-35-503~~ SECTION 44-7-103.

(2) (a) A retailer accused of violating ~~section 24-35-503~~ SECTION 44-7-103 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)~~ SECTION 44-7-106 (2) may waive their 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 24-35-503~~ SECTION 44-7-103.

(4) If the hearing officer finds, by a preponderance of the evidence, that the retailer violated ~~section 24-35-503~~ SECTION 44-7-103, the hearing officer may issue a written order or levy a fine against the retailer, subject to the provisions of ~~section 24-35-506~~ SECTION 44-7-106.

(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~~ 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 24-35-507~~ SECTION 44-7-107.

44-7-106. [Formerly 24-35-506] Limitation on fines. (1) For a violation of ~~section 24-35-503 (1) or (4)~~ SECTION 44-7-103 (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 subsection (1) of this section, no fine for a violation of ~~section 24-35-503 (1)~~ 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 24-35-503 (2) or (3)~~ SECTION 44-7-103 (2) OR (3), the penalty shall be as follows:

(a) (I) For a violation of ~~section 24-35-503 (2)~~ SECTION 44-7-103 (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)~~ SECTION 44-7-103 (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.

44-7-107. [Formerly 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~~ MONEY in the fund ~~are~~ IS subject to annual appropriation by the general assembly. Any interest derived from the deposit and investment of ~~moneys~~ MONEY in the fund remains in the fund. Any unexpended or unencumbered ~~moneys~~ MONEY remaining in the fund at the end of any fiscal year ~~remain~~ REMAINS in the fund and ~~do~~ DOES not revert or 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, tobacco products, or nicotine products to minors or to programs designed to prevent the use of cigarettes, tobacco products, or nicotine products by minors.

SECTION 3. Repeal of relocated provisions in this act. In Colorado Revised Statutes, repeal part 5 of article 35 of title 24.

SECTION 4. In Colorado Revised Statutes, 13-4-102, amend (2)(gg) as follows:

13-4-102. Jurisdiction. (2) The court of appeals has 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 44-7-105 (5);

SECTION 5. In Colorado Revised Statutes, amend 16-2.5-124 as follows:

16-2.5-124. Liquor enforcement investigator. A liquor enforcement investigator is a peace officer while engaged in the performance of his or her duties and while acting under proper orders or regulations whose primary authority shall be as stated in sections 12-47-904 (1) and ~~24-35-504, C.R.S.~~, 44-7-104 and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

SECTION 6. In Colorado Revised Statutes, 25-3.5-804, amend (1) as follows:

25-3.5-804. Tobacco education, prevention, and cessation programs - review committee - grants. (1) There is hereby created the tobacco education, prevention, and cessation grant program to provide funding for community-based and statewide tobacco education programs designed to reduce initiation of tobacco use by children and youth, promote cessation of tobacco use among youth and adults, and reduce exposure to secondhand smoke. Any such tobacco programs may be presented in combination with other substance abuse programs. The program shall be administered by the division within the department and coordinated with efforts pursuant to ~~part 5 of article 35 of title 24, C.R.S.~~ ARTICLE 7 OF TITLE 44. The state board shall award grants to selected entities from ~~moneys~~ MONEY appropriated to the department from the tobacco education programs fund created in section 24-22-117. ~~C.R.S.~~

SECTION 7. Appropriation. For the 2018-19 state fiscal year,

\$1,328 is appropriated to the department of revenue for use by the liquor and tobacco enforcement division. This appropriation is from the tobacco education programs fund created in section 24-22-117 (2)(c)(I), C.R.S. To implement this act, the division may use this appropriation for operating expenses.

SECTION 8. Appropriation. (1) For the 2018-19 state fiscal year, \$5,402 is appropriated to the department of revenue. This appropriation is from the liquor enforcement division and state licensing authority cash fund created in section 24-35-401, C.R.S. To implement this act, the department may use this appropriation as follows:

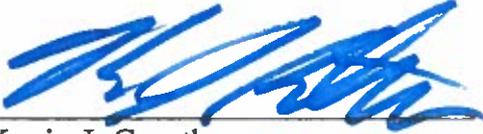
(a) \$772 for use by the liquor and tobacco enforcement division for operating expenses; and

(b) \$4,630 for the purchase of information technology services.

(2) For the 2018-19 state fiscal year, \$4,630 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(b) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of revenue.

SECTION 9. Act subject to petition - effective date. This act takes effect October 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be

held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Kevin J. Grantham
PRESIDENT OF
THE SENATE



Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



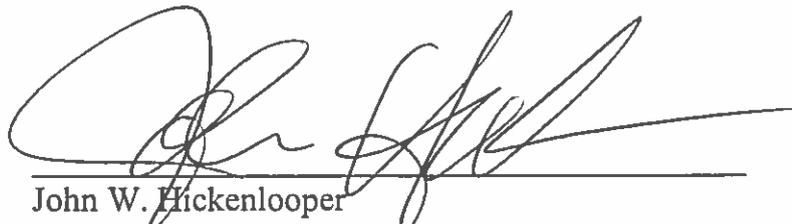
Effie Ameen
SECRETARY OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED

9:14 am 3/15/18



John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO