

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0539.01 Jennifer Berman x3286

SENATE BILL 18-036

SENATE SPONSORSHIP

Kagan,

HOUSE SPONSORSHIP

Wist,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE NONSUBSTANTIVE RELOCATION OF LAWS RELATED**
102 **TO THE REGULATION OF TOBACCO SALES TO MINORS FROM**
103 **TITLE 24, COLORADO REVISED STATUTES, TO A NEW TITLE 44 AS**
104 **PART OF THE ORGANIZATIONAL RECODIFICATION OF TITLE 12.**

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/>.)

Committee on Legal Services. Current law directs the office of legislative legal services to study the organizational recodification of title 12 of the Colorado Revised Statutes, which relates to professions and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
January 22, 2018

1 LAWS THAT DID NOT PERTAIN TO THE REGULATION OF PROFESSIONS AND
2 OCCUPATIONS AND WERE NOT ADMINISTERED BY THE DEPARTMENT OF
3 REGULATORY AGENCIES;

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

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

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

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

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

23 (f) CREATING A NEW TITLE 44 CONSISTING OF LAWS ADMINISTERED
24 BY THE DEPARTMENT OF REVENUE THAT REGULATE VARIOUS ACTIVITIES
25 IS NECESSARY TO IMPLEMENT THE RECOMMENDATIONS OF THE TITLE 12
26 RECODIFICATION STUDY AND FACILITATE THE REORGANIZATION OF TITLE
27 12 PERTAINING TO THE REGULATION OF PROFESSIONS AND OCCUPATIONS.

1 ~~(b) to (d) (Deleted by amendment, L. 2014.)~~

2 **44-7-102. [Formerly 24-35-502] Definitions.** As used in this part
3 5 ARTICLE 7, unless the context otherwise requires:

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

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

7 ~~(3)~~(2) "Division" means the division of liquor enforcement within
8 the department.

9 ~~(4)~~ (3) "Hearing officer" means a person designated by the
10 executive director of the department to conduct hearings held pursuant to
11 ~~section 24-35-505~~ SECTION 44-7-105.

12 ~~(5)~~ (4) "Minor" means a person under eighteen years of age.

13 ~~(6)~~ (5) "Retailer" means a business of any kind at a specific
14 location that sells cigarettes, tobacco products, or nicotine products to a
15 user or consumer.

16 **44-7-103. [Formerly 24-35-503] Sale of cigarettes, tobacco**
17 **products, or nicotine products to minors or in vending machines**
18 **prohibited - warning sign - small quantity sales prohibited.** (1) No
19 retailer shall sell or permit the sale of cigarettes, tobacco products, or
20 nicotine products to a minor; except that it is not a violation if the retailer
21 establishes that the person selling the cigarette, tobacco product, or
22 nicotine product was presented with and reasonably relied upon a
23 photographic identification that identified the person purchasing the
24 cigarette, tobacco product, or nicotine product as being eighteen years of
25 age or older.

26 (2) No retailer shall sell or offer to sell any cigarettes, tobacco
27 products, or nicotine products by use of a vending machine or other

1 coin-operated machine; except that cigarettes may be sold at retail
2 through vending machines only in:

3 (a) Factories, businesses, offices, or other places not open to the
4 general public;

5 (b) Places to which minors are not permitted access; or

6 (c) Establishments where the vending machine dispenses
7 cigarettes through the operation of a device that enables an adult
8 employee of the establishment to prevent the dispensing of cigarettes to
9 minors.

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

16 WARNING

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

22 (4) No retailer shall sell or offer to sell individual cigarettes, or
23 any pack or container of cigarettes containing fewer than twenty
24 cigarettes, or roll-your-own tobacco in any package containing less than
25 0.60 ounces of tobacco.

26 (5) Nothing in this section affects federal laws concerning
27 cigarettes, tobacco products, or nicotine products, as they apply to

1 military bases and Indian reservations within the state.

2 **44-7-104. [Formerly 24-35-504] Enforcement authority -**
3 **designation of agency - coordination - sharing of information.** (1) The
4 division has the power to enforce all state statutes relating to the
5 prohibition of the sale of cigarettes, tobacco products, or nicotine
6 products to minors. The division is designated as the lead state agency for
7 the enforcement of state statutes in compliance with federal laws relating
8 to the prohibition of the sale of cigarettes, tobacco products, or nicotine
9 products to minors.

10 (2) The division shall coordinate the enforcement of state laws
11 relating to the prohibition of the sale of cigarettes, tobacco products, or
12 nicotine products to minors by multiple state agencies to avoid
13 duplicative inspections of the same retailer by multiple state agencies.

14 (3) (a) The division shall work with the department of human
15 services and the department of public health and environment to ensure
16 compliance with federal regulations for continued receipt of all federal
17 funds contingent upon compliance with laws related to the prohibition of
18 the sale of cigarettes, tobacco products, or nicotine products to minors.

19 (b) The division shall perform at least the minimum number of
20 random inspections of businesses that sell cigarettes, tobacco products,
21 or nicotine products at retail as required by federal regulations.

22 (c) In order to pay for the inspections required by ~~paragraph (b)~~
23 ~~of this subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION, the division
24 shall apply for a grant from the tobacco education, prevention, and
25 cessation program established in part 8 of article 3.5 of title 25. ~~C.R.S.~~

26 (4) In order to enforce laws relating to the prohibition of the sale
27 of cigarettes, tobacco products, or nicotine products to minors, the

1 department of revenue may share information on the identification and
2 address of retailers that sell cigarettes, tobacco products, or nicotine
3 products with any state agency responsible for the enforcement of laws
4 relating to the prohibition of the sale of cigarettes, tobacco products, or
5 nicotine products to minors.

6 **44-7-105. [Formerly 24-35-505] Hearings.** (1) Subject to the
7 limitations contained in section ~~24-35-506~~ 44-7-106, the division, on its
8 own motion or on a complaint from another governmental agency
9 responsible for the enforcement of laws relating to the prohibition of the
10 sale of cigarettes, tobacco products, or nicotine products to minors, has
11 the power to penalize retailers for violations of ~~section 24-35-503~~
12 SECTION 44-7-103.

13 (2) (a) A retailer accused of violating ~~section 24-35-503~~ SECTION
14 44-7-103 shall be entitled to written notice of the time and place of the
15 hearing personally delivered to the retailer at the actual retail location or
16 mailed to the retailer at the last-known address as shown by the records
17 of the department. The retailer is also entitled to be represented by
18 counsel, to present evidence, and to cross-examine witnesses.

19 (b) A retailer that does not claim an affirmative defense pursuant
20 to ~~section 24-35-506 (2)~~ SECTION 44-7-106 (2) may waive ~~their~~ ITS right
21 to a hearing and pay the appropriate fine.

22 (3) A hearing pursuant to this section shall be conducted at a
23 location designated by the division before a hearing officer. The hearing
24 officer shall have the power to administer oaths and issue subpoenas to
25 require the presence of persons and the production of documents relating
26 to any alleged violation of ~~section 24-35-503~~ SECTION 44-7-103.

27 (4) If the hearing officer finds, by a preponderance of the

1 evidence, that the retailer violated ~~section 24-35-503~~ SECTION 44-7-103,
2 the hearing officer may issue a written order or levy a fine against the
3 retailer, subject to the provisions of ~~section 24-35-506~~ SECTION 44-7-106.

4 (5) The findings of the hearing officer shall be a final agency
5 order. Any appeal of the decision of the hearing officer shall be filed with
6 the Colorado court of appeals pursuant to section 24-4-106 (11).

7 (6) Any unpaid fine levied pursuant to this section together with
8 reasonable attorney fees may be collected in a civil action filed by the
9 attorney general.

10 (7) Any fines collected for violations of section ~~24-35-503~~
11 44-7-103 shall be forwarded to the state treasurer, who shall credit them
12 to the cigarette, tobacco product, and nicotine product use by minors
13 prevention fund created in section ~~24-35-507~~ SECTION 44-7-107.

14 **44-7-106. [Formerly 24-35-506] Limitation on fines.** (1) For a
15 violation of ~~section 24-35-503 (1) or (4)~~ SECTION 44-7-103 (1) OR (4), the
16 penalty shall be as follows:

17 (a) A written warning for a first violation committed within a
18 twenty-four-month period;

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

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

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

25 (e) A fine of between one thousand dollars and fifteen thousand
26 dollars for a fifth or subsequent violation within a twenty-four-month
27 period.

1 (2) Notwithstanding subsection (1) of this section, no fine for a
2 violation of ~~section 24-35-503 (1)~~ SECTION 44-7-103 (1) shall be imposed
3 upon a retailer that can establish an affirmative defense to the satisfaction
4 of the division or the hearing officer that, prior to the date of the
5 violation, it:

6 (a) Had adopted and enforced a written policy against selling
7 cigarettes, tobacco products, or nicotine products to persons under
8 eighteen years of age;

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

12 (c) Required employees to verify the age of cigarette, tobacco
13 product, or nicotine product customers by way of photographic
14 identification; and

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

17 (3) The affirmative defense established in subsection (2) of this
18 section may be used by a retailer only twice at each location within any
19 twenty-four-month period.

20 (4) For a violation of ~~section 24-35-503 (2) or (3)~~ SECTION
21 44-7-103 (2) OR (3), the penalty shall be as follows:

22 (a) (I) For a violation of ~~section 24-35-503 (2)~~ SECTION 44-7-103
23 (2), a fine of twenty-five dollars for a first violation committed within a
24 twenty-four-month period;

25 (II) For a violation of ~~section 24-35-503 (3)~~ SECTION 44-7-103 (3),
26 a written warning for a first violation committed within a
27 twenty-four-month period;

1 (b) A fine of fifty dollars for a second violation within a
2 twenty-four-month period;

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

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

7 (e) A fine of between two hundred fifty dollars and one thousand
8 dollars for a fifth or subsequent violation within a twenty-four-month
9 period.

10 **44-7-107. [Formerly 24-35-507] Cigarette, tobacco product,**
11 **and nicotine product use by minors prevention fund - grants.**

12 (1) There is hereby created in the state treasury the cigarette, tobacco
13 product, and nicotine product use by minors prevention fund, referred to
14 in this section as the "fund". ~~Moneys~~ MONEY in the fund ~~are~~ IS subject to
15 annual appropriation by the general assembly. Any interest derived from
16 the deposit and investment of ~~moneys~~ MONEY in the fund remains in the
17 fund. Any unexpended or unencumbered ~~moneys~~ MONEY remaining in the
18 fund at the end of any fiscal year ~~remain~~ REMAINS in the fund and ~~do~~
19 DOES not revert or transfer to the general fund or any other fund of the
20 state.

21 (2) Subject to annual appropriations by the general assembly, the
22 department of human services may make grants from the fund to
23 programs designed to develop training materials for retailers related to the
24 prohibition of the sale of cigarettes, tobacco products, or nicotine
25 products to minors or to programs designed to prevent the use of
26 cigarettes, tobacco products, or nicotine products by minors.

27 **SECTION 3. Repeal of relocated provisions in this act. In**

1 Colorado Revised Statutes, **repeal** part 5 of article 35 of title 24.

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

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

6 (gg) Review final actions and orders appropriate for judicial
7 review of the department of revenue relating to penalties for violations of
8 statutes relating to the sale of cigarettes and tobacco products to minors
9 pursuant to ~~section 24-35-505 (5), C.R.S.~~ SECTION 44-7-105 (5);

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

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

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

21 **25-3.5-804. Tobacco education, prevention, and cessation**
22 **programs - review committee - grants.** (1) There is hereby created the
23 tobacco education, prevention, and cessation grant program to provide
24 funding for community-based and statewide tobacco education programs
25 designed to reduce initiation of tobacco use by children and youth,
26 promote cessation of tobacco use among youth and adults, and reduce
27 exposure to secondhand smoke. Any such tobacco programs may be

1 presented in combination with other substance abuse programs. The
2 program shall be administered by the division within the department and
3 coordinated with efforts pursuant to ~~part 5 of article 35 of title 24, C.R.S.~~
4 ARTICLE 7 OF TITLE 44. The state board shall award grants to selected
5 entities from ~~moneys~~ MONEY appropriated to the department from the
6 tobacco education programs fund created in section 24-22-117. ~~C.R.S.~~

7 **SECTION 7. Act subject to petition - effective date.** This act
8 takes effect October 1, 2018; except that, if a referendum petition is filed
9 pursuant to section 1 (3) of article V of the state constitution against this
10 act or an item, section, or part of this act within the ninety-day period
11 after final adjournment of the general assembly, then the act, item,
12 section, or part will not take effect unless approved by the people at the
13 general election to be held in November 2018 and, in such case, will take
14 effect on the date of the official declaration of the vote thereon by the
15 governor.