

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0539.01 Jennifer Berman x3286

**SENATE BILL 18-036**

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**SENATE SPONSORSHIP**

**Kagan,**

**HOUSE SPONSORSHIP**

**Wist,**

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**Senate Committees**

Judiciary

**House Committees**

Judiciary

Appropriations

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**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,**  
105 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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**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

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  
3rd Reading Unamended  
January 23, 2018

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. Appropriation.** (1) For the 2018-19 state fiscal  
8 year, \$1,328 is appropriated to the department of revenue for use by the  
9 liquor and tobacco enforcement division. This appropriation is from the  
10 tobacco education programs fund created in section 24-22-117 (2)(c)(I),  
11 C.R.S. To implement this act, the division may use this appropriation for  
12 operating expenses.

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

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

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

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

27 **SECTION 9. Act subject to petition - effective date.** This act

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