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2001



SENATE BILL 01-073

BY SENATOR(S) Anderson, Gordon, Hanna, Hernandez, Linkhart, Pascoe, Tupa, and Windels;
also REPRESENTATIVE(S) Mitchell, Boyd, Coleman, Groff, Grossman, Larson, Mace, Romanoff, Stengel, Veiga, and Williams S.

CONCERNING THE SALE OF TOBACCO TO MINORS, AND MAKING AN
APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 24-35-504 (3), Colorado Revised Statutes, is amended to read:

24-35-504. Enforcement authority - designation of agency - coordination - sharing of information. (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 to minors.

(b) THE DIVISION SHALL PERFORM AT LEAST THE MINIMUM NUMBER OF RANDOM INSPECTIONS OF BUSINESSES THAT SELL CIGARETTES AND

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

TOBACCO 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, TITLE 25, C.R.S.

SECTION 2. 24-35-506 (1), (3), and (4), Colorado Revised Statutes, are amended to read:

24-35-506. Limitation on fines. (1) For a violation of section 24-35-503 (1), the penalty shall be as follows:

(a) A written warning for a first violation committed within a ~~twelve-month~~ TWENTY-FOUR-MONTH period;

(b) A fine of two hundred fifty dollars for a second violation within a ~~twelve-month~~ TWENTY-FOUR-MONTH period;

(c) A fine of five hundred dollars for a third violation within a ~~twelve-month~~ TWENTY-FOUR-MONTH period;

(d) A fine of one thousand dollars for a fourth violation within a ~~twelve-month~~ 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 ~~twelve-month~~ TWENTY-FOUR-MONTH period.

(3) The affirmative defense established in subsection (2) of this section may be used by a retailer only twice at each location within any ~~twelve-month~~ TWENTY-FOUR-MONTH period.

(4) For a violation of section 24-35-503 (2) or (3), the penalty shall be as follows:

(a) (I) FOR A VIOLATION OF SECTION 24-35-503 (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), a written warning

for a first violation committed within a ~~twelve-month~~ TWENTY-FOUR-MONTH period;

(b) A fine of fifty dollars for a second violation within a ~~twelve-month~~ TWENTY-FOUR-MONTH period;

(c) A fine of one hundred dollars for a third violation within a ~~twelve-month~~ TWENTY-FOUR-MONTH period;

(d) A fine of two hundred fifty dollars for a fourth violation within a ~~twelve-month~~ 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 ~~twelve-month~~ TWENTY-FOUR-MONTH period.

SECTION 3. 24-35-508, Colorado Revised Statutes, is amended to read:

24-35-508. Repeal. This part 5 is repealed, effective July 1, ~~2001~~ 2011.

SECTION 4. 39-28-102, Colorado Revised Statutes, is amended to read:

39-28-102. Licensing of wholesalers - repeal. (1) It is unlawful for any wholesaler to sell or offer for sale in this state cigarettes without first obtaining a license therefor, granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such licenses shall be granted only to such wholesalers who own or operate the places from which such sales are to be made, and, in case sales are made from two or more separate places by any such wholesaler, a separate license for each place of business shall be required. Such licenses shall be renewable upon timely application and payment of the required fee prior to expiration. RENEWAL APPLICATIONS OF SUCH LICENSES SHALL INCLUDE A LIST OF THE NAMES, ADDRESSES, AND COLORADO SALES TAX LICENSE NUMBERS ISSUED PURSUANT TO SECTION 39-26-103, C.R.S., OF ALL PERSONS WHO PURCHASED FOR RESALE TO OTHERS CIGARETTES FROM THE WHOLESALER DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE APPLICATION. Such

licenses may be transferred in the discretion of and pursuant to the rules and regulations of the department. The license fee shall be ten dollars per year, and such license fees shall be credited to the general fund. Such license fees shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, revoke the license of any wholesaler violating any provision of this article, and no license shall be issued to such wholesaler within a period of two years thereafter. THE DEPARTMENT MAY SHARE INFORMATION ON THE NAMES AND ADDRESSES OF PERSONS WHO PURCHASED CIGARETTES FOR RESALE WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND COUNTY AND DISTRICT HEALTH DEPARTMENTS.

(2) (a) THE STATE AUDITOR SHALL CONDUCT AN AUDIT OF THE PROCEDURE WHEREBY THE WHOLESALERS' RENEWAL APPLICATIONS PURSUANT TO THIS SECTION AND THE DISTRIBUTORS OF TOBACCO PRODUCTS PURSUANT TO SECTION 39-28.5-104 INCLUDE INFORMATION ON PERSONS WHO PURCHASE CIGARETTES OR TOBACCO PRODUCTS FOR RESALE TO DETERMINE THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION. THE AUDIT SHALL BE COMPLETED BY JULY 1, 2004.

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JULY 1, 2005.

SECTION 5. 39-28.5-104, Colorado Revised Statutes, is amended to read:

39-28.5-104. Licensing required. It is unlawful for any person to engage in the business of a distributor of tobacco products at any place of business without first obtaining a license granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such license shall be granted only to a person who owns or operates the place from which ~~he~~ THE PERSON engages in the business of a distributor of tobacco products, and, if such business is operated in two or more separate places by any such person, a separate license for each place of business shall be required. Such license shall be renewable upon timely application and payment of the required fee prior to expiration. RENEWAL APPLICATIONS OF SUCH LICENSES SHALL INCLUDE A LIST OF THE NAMES, ADDRESSES, AND COLORADO SALES TAX LICENSE NUMBERS ISSUED PURSUANT TO SECTION 39-26-103, C.R.S., OF ALL PERSONS WHO PURCHASED FOR RESALE TO OTHERS TOBACCO PRODUCTS FROM THE DISTRIBUTOR DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING

THE FILING OF THE APPLICATION. Such license may be transferred in the discretion of and pursuant to the rules and regulations of the department. The fee for a license shall be ten dollars per year, and such fee shall be credited to the general fund. Such fee shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, revoke the license of any person violating any provision of this article, and no license shall be issued to such person within a period of two years thereafter. THE DEPARTMENT MAY SHARE INFORMATION ON THE NAMES AND ADDRESSES OF PERSONS WHO PURCHASED TOBACCO PRODUCTS FOR RESALE WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND COUNTY AND DISTRICT HEALTH DEPARTMENTS.

SECTION 6. 18-13-121 (2) (a), Colorado Revised Statutes, is amended to read:

18-13-121. Furnishing cigarettes or tobacco products to minors - sale of cigarettes or tobacco products in vending machines prohibited - warning sign. (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. ~~or The court shall~~ MAY allow ~~such person~~ 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.

SECTION 7. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys received from a grant from the tobacco education, prevention, and cessation program established in part 8 of article 3.5, title 25, Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, liquor enforcement division, for the fiscal year beginning July 1, 2001, the sum of three hundred twenty-one thousand six hundred thirty dollars (\$321,630) and 5.0 FTE, or so much thereof as may be necessary, for the implementation of section 1 of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, liquor enforcement division, for the fiscal year beginning July 1, 2001, the sum of one hundred fifty thousand nine hundred seventy-one dollars (\$150,971) and 2.5 FTE, or so much thereof as may be necessary for the implementation of the remaining portions of this act. Said amount is exempt from the statutory limit on state general fund appropriations pursuant to section 24-75-201.1 (1) (a) (III) (A), Colorado Revised Statutes.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2001, the sum of five thousand eight hundred sixty dollars (\$5,860) and 0.1 FTE, or so much thereof as may be necessary for the provision of legal services to the department of revenue related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of revenue out of the appropriation made in subsection (1) of this section.

SECTION 8. Effective date - applicability. Section 6 of this act shall take effect on July 1, 2001, and shall apply to offenses committed on or after said date, and the remaining portions of this act shall take effect upon passage.

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.

Stan Matsunaka
PRESIDENT OF
THE SENATE

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO