



## COLORADO HB20-1001 - Nicotine Product Regulation Overview

Signed by Governor Polis on July 14, 2020, Colorado House Bill 20-1001 (HB20-1001) is a win for tobacco control in Colorado. Prior to passage of the bill Colorado was one of only a handful of states that did not require retailers who sold tobacco products to be licensed. Effective July 1, 2021, all retailers who sell cigarettes, tobacco products or nicotine products are required to obtain a state license. Additionally, the minimum age for the sale of these deadly products has been increased from 18 to 21 years of age. HB20-1001 provides critical protections for Coloradans and sets the licensing foundation that local jurisdictions can, and should, build upon to establish comprehensive youth tobacco and nicotine product protections within communities.

### License Fees and Rules

- **A state license is required for all cigarette, tobacco product or nicotine product retailers beginning July 1, 2021.**<sup>i</sup> The license is valid for one year.<sup>ii</sup>
- **State License Fee Not to Exceed \$400:** The state license fee must not exceed \$400/year. The Department of Revenue, Division of Alcohol and Tobacco (Division) will create rules related to state license fees. If statewide retail compliance rates fall below 90% the Division may increase the maximum state license fee to \$600/year.<sup>iii</sup>
- **Large-operators:** The Division will determine if a “large-operator” license, a single license for retailers with more than 10 locations under the same corporate or business entity, will be allowed. If supported by the Division, rules for a “large-operator” license and guidelines for the “large-operator” license fee will be created by the Division.<sup>iv</sup>
- Coordination between the Division and local authorities of retail compliance checks and retail complaint resolutions is authorized.<sup>v</sup>
- The state license must be prominently displayed on the premises of a licensed retailer at all times.<sup>vi</sup>
- The state license is non-transferrable.<sup>vii</sup>
- State licenses and local licenses, where applicable, must have the same annual renewal date.<sup>viii</sup>
- Suspension or revocation of a local license requires suspension or revocation of the state license.<sup>ix</sup>

### Key Provisions

- **Minimum Legal Sales Age:** The minimum legal sales age for cigarettes, tobacco products and nicotine products is raised from 18 to 21 years of age.<sup>x</sup>
- **Minor in Possession (MIP) language removed:** The penalty for possession of cigarettes and tobacco products by persons under 18 years of age previously in Colorado’s Teen Tobacco Use

Prevention Act (TTUPA)<sup>xi</sup> has been removed and amended with language that prohibits the sale of cigarettes and tobacco products to persons under 21 years of age.<sup>xii</sup> This important change in state law shifts the focus away from punishing young people addicted to nicotine towards a focus on responsible retail practices. (Note that possession language still remains in state law under C.R.S. § 30-15-401-County Powers).

- **Retail tobacco businesses, including vape shops, and cigar-tobacco bars** are required to prohibit persons under 21 years of age from entering these businesses.<sup>xiii</sup> Signage is required at these locations indicating that entry is restricted to persons who are at least 21 years of age.<sup>xiv</sup>
- **Identification:** Retailers must request and examine a valid government-issued photo identification of the purchaser of cigarettes, tobacco or nicotine products who appears to be under 50 years of age.<sup>xv</sup>
- **Vending:** Cigarettes, tobacco products or nicotine products cannot be sold in vending machines<sup>xvi</sup> except in age-restricted areas of licensed gaming establishments.<sup>xvii</sup> Signage is required on all vending machines in gaming establishments indicating that purchasers of the products must be at least 21 years of age.<sup>xviii</sup>
- **Clerk Age Restrictions:**
  - Retailers cannot allow employees under 18 years of age to sell or participate in the sale of cigarettes, tobacco products or nicotine products.<sup>xix</sup>
  - Employees 18 years of age and older may handle or otherwise have contact with cigarettes, tobacco products or nicotine products at work.<sup>xx</sup>
- **Retailer Distance from Schools:**
  - Unless a local jurisdiction approves, a state license will not be approved for any cigarette, tobacco product or nicotine product retailer located within 500' of a school.<sup>xxi</sup> This distance requirement does not apply to:
    - businesses that sold cigarettes, tobacco products or nicotine products prior to July 1, 2021,<sup>xxii</sup> or
    - businesses that sold cigarettes, tobacco products or nicotine products prior to July 1, 2021 that are sold to a new owner on or before July 1, 2021.
  - Local jurisdictions can enact ordinances or resolutions that exempt certain types of schools from the 500' distance requirement or allow distances less than 500' between schools and cigarette, tobacco product or nicotine product retailers.<sup>xxiii</sup>
- **Advertising:** Retailers who sell electronic smoking devices (ESD) cannot advertise or promote ESDs in a manner such that promotion of these products is visible from outside of the store.<sup>xxiv</sup>
- **Shipment and Delivery of Cigarettes, Tobacco Products or Nicotine Products:**
  - Direct shipment of cigarettes, tobacco products or nicotine products is not allowed in Colorado<sup>xxv</sup> except direct shipment of cigars and pipe tobacco to persons over 21 years of age is permitted.<sup>xxvi</sup>
  - Direct delivery of cigarettes, tobacco products or nicotine products to consumers is allowed only by state licensed retailers or employee(s) of state licensed retailers who are at least 21 years of age<sup>xxvii</sup> if:
    - the delivery is not to another licensed retailer,<sup>xxviii</sup> and
    - the age of the recipient at delivery is verified by the licensee or licensee's employee by examination of the recipient's valid, government-issued photographic identification verifying that the recipient is at least 21 years of age.<sup>xxix</sup>

- The Division will create rules that further define product delivery requirements and product delivery permits.<sup>xxx</sup>
- **County Powers:** Boards of County Commissioners are authorized to license or otherwise regulate the sale of cigarettes, tobacco products or nicotine products to persons under 21 years of age.<sup>xxxii</sup> A county cannot enact a local license that permits a minimum legal sales age of cigarettes, tobacco products or nicotine products to persons younger than 21 years of age.

### Enforcement Authority of the Department of Revenue, Division of Alcohol and Tobacco

- **Annual Retail Compliance Checks:** Contingent upon fees collected by the state, two compliance checks will be conducted annually at each licensed retail location where cigarettes, tobacco products, or nicotine products are sold. If adequate fees are not collected the number of annual compliance checks will be determined by federal law.<sup>xxxii</sup>
- **Re-check for Violations:** Compliance check violations require a re-check of the retailer for compliance within three to six months.<sup>xxxiii</sup>
- **Publish List of Retailers:** The Division will maintain and publish on the Department of Revenue’s website the business names and addresses of state licensed retailers. Retailer information may be shared with state or local agencies responsible for the enforcement of cigarette, tobacco product, or nicotine product laws.<sup>xxxiv</sup>

### Retailer Penalties for Violations

Sale of cigarettes, tobacco products or nicotine products to persons under 21	C.R.S.§ 44-7-103(1)	Violation(s) w/in 24 months: 1 <sup>st</sup> \$250-\$500 2 <sup>nd</sup> \$500-750 7 day no sales 3 <sup>rd</sup> \$750-\$1000 30 days no sales 4 <sup>th</sup> \$1000-\$15k up to 3 yrs. no sales
Sale of cigarettes in less than 20 packages, RYO Cigarettes	C.R.S.§ 44-7-103(4)	1 <sup>st</sup> Written warning 2 <sup>nd</sup> \$250 3 <sup>rd</sup> \$500 4 <sup>th</sup> \$1000 5 <sup>th</sup> \$1000-\$15k
Sale of cigarettes, tobacco products or nicotine products without a license	C.R.S.§ 44-7-106(1)(c)(l)	1 <sup>st</sup> \$1000 2 <sup>nd</sup> \$2000 3 <sup>rd</sup> \$3000 3 <sup>rd</sup> stop order-no sales 3yr Each sale is separate and distinct.
Electronic smoking device advertisements visible outside of retail location	C.R.S.§ 44-7-104.7(2)	1 <sup>st</sup> \$1000 2 <sup>nd</sup> \$2000 3 <sup>rd</sup> \$3000
Delivery of cigarettes, tobacco products or nicotine products	C.R.S.§ 44-7-104.7(3)	1 <sup>st</sup> \$1000 2 <sup>nd</sup> \$2000 3 <sup>rd</sup> \$3000
Prohibited sale of cigarettes, tobacco products or nicotine products in vending machines	44-7-103(2)	1 <sup>st</sup> \$25.00 2 <sup>nd</sup> \$50.00 3 <sup>rd</sup> \$ 100 4 <sup>th</sup> \$ 250 5 <sup>th</sup> \$ 250-1000
Clerk under the age of 18	44-7-103(4.5)	1 <sup>st</sup> \$25.00 2 <sup>nd</sup> \$50.00 3 <sup>rd</sup> \$ 100 4 <sup>th</sup> \$ 250

		5 <sup>th</sup> \$ 250-1000
Warning sign violations	44-7-103(3)	1 <sup>st</sup> \$25.00 2 <sup>nd</sup> \$50.00 3 <sup>rd</sup> \$ 100 4 <sup>th</sup> \$ 250 5 <sup>th</sup> \$ 250-1000

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- <sup>i</sup> C.R.S. § 44-7-104.5(1)(a)(I)
  - <sup>ii</sup> C.R.S. § 44-7-104.5(1)(a)(II)
  - <sup>iii</sup> C.R.S. § 44-7-104(5)(a)(I)
  - <sup>iv</sup> C.R.S. § 44-7-104(5)(a)(II)
  - <sup>v</sup> C.R.S. § 44-7-104.5(b)(II)(C)
  - <sup>vi</sup> C.R.S. § 44-7-104.5(3)(a)
  - <sup>vii</sup> C.R.S. § 44-7-104.5(3)(b)(I)
  - <sup>viii</sup> C.R.S. § 44-7-104.5(b)(II)(A), (B)
  - <sup>ix</sup> C.R.S. § 44-7-104.5(c)(I), (II)
  - <sup>x</sup> C.R.S. § 18-13-121(1)(a)
  - <sup>xi</sup> C.R.S. § 25-14-301(2)(a)
  - <sup>xii</sup> *ibid.*
  - <sup>xiii</sup> C.R.S. § 25-14-204(2)(b), (3)
  - <sup>xiv</sup> *ibid.*
  - <sup>xv</sup> C.R.S. § 44-7-103(1)
  - <sup>xvi</sup> *ibid.*
  - <sup>xvii</sup> C.R.S. § 44-7-103(2)
  - <sup>xviii</sup> C.R.S. § 44-7-103(3)
  - <sup>xix</sup> C.R.S. § 44-7-103(4.5)
  - <sup>xx</sup> *ibid.*
  - <sup>xxi</sup> C.R.S. § 44-7-104.7
  - <sup>xxii</sup> C.R.S. § 44-7-104.7(1)(b)
  - <sup>xxiii</sup> C.R.S. § 44-7-104.7(1)(d)(I), (II)(2)
  - <sup>xxiv</sup> C.R.S. § 44-7-104.7(2)
  - <sup>xxv</sup> C.R.S. § 44-7-104.7(3)(a)
  - <sup>xxvi</sup> C.R.S. § 44-7-104.7(3)(c)
  - <sup>xxvii</sup> C.R.S. § 44-7-104.7(3)(b)(I)(B)
  - <sup>xxviii</sup> C.R.S. § 44-7-104.7(3)(b)(I)(A)
  - <sup>xxix</sup> C.R.S. § 44-7-104.7(3)(b)(I)(C)
  - <sup>xxx</sup> C.R.S. § 44-7-104.7(3)(b)(II)
  - <sup>xxxi</sup> C.R.S. § 30-15-401(a)(c)
  - <sup>xxxii</sup> C.R.S. § 44-7-104(3)(b)(I)
  - <sup>xxxiii</sup> C.R.S. § 44-7-104(3)(b)(II)
  - <sup>xxxiv</sup> C.R.S. § 44-7-104(4)