

~~Initiative Measure 2017—2018 # 29 original typewritten draft submitted for a review and comment hearing~~

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Proposed initiative measure 2017-2018 # ~~19 revision~~29 - Final Draft

Colorado Secretary of State

INITIATED STATUTE TO PROHIBIT THE SALE OF A SMARTPHONE IF THE INTENDED OWNER IS UNDER 13 YEARS OF AGE

~~Colorado Citizen Proposed Ballot Initiative,~~

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add Part 7 To Article 35 ~~Section of~~

Title 24 24-35-701. Short title. The short title of this act is “PRESERVATION OF NATURAL

CHILDHOOD” 24-35-702. Legislative declaration.

(1) ~~Whereas~~ WE THE PARENTS AND CONCERNED CITIZENS OF THIS MOST MAGNIFICENT STATE THROUGH FIRST HAND EXPERIENCE AND MOUNTING SCIENTIFIC DATA HAVE COME TO BELIEVE THAT SMARTPHONES ARE ADDICTIVE, HARMFUL, AND DANGEROUS IN THE HANDS OF CHILDREN.

(2) ~~Whereas~~ THE MANUFACTURES AND SERVICE PROVIDERS OF SMARTPHONES HAVE CONTINUED UNABATED TO PROMOTE THEIR USE IN A RECKLESS AND WANTON MANNER, WITH NO CONCERN FOR OUR CHILDREN'S HEALTH OR SAFETY.

(3) ~~Whereas~~ OUR GOVERNMENT BODIES ON ALL LEVELS HAVE FAILED TO GRASP THE LEVEL OF ADDICTION, THE SEVERITY OF THE HARM, OR THE UNMENTIONABLE STARK DEPRAVITY OF THE DANGERS.

(4) ~~Whereas~~ WE AS PARENTS FIND THIS MATTER TO BE SO WIDESPREAD, SO INSIDIOUS AND OF THE VERY HIGHEST PRIORITY. NO HALF MEASURES, INEFFECTUAL EDUCATION CAMPAIGNS, NEW APPLICATIONS, OR PROMISES FROM MEGA-CORPORATIONS OF IMPROVEMENT WILL SUFFICE TO CAUSE THE GREAT CHANGE (4) NECESSARY TO RESCUE THIS AND GENERATIONS OF CHILDREN TO COME FROM THE CARELESS AND EXPERIMENTAL INTRODUCTION OF SIMILAR ~~TECHNOLOGICAL~~ TECHNOLOGIC DEVICES AND ADVANCEMENTS BY PROFIT DRIVEN CORPORATIONS.

~~Henceforth any business or entity involved in the distribution or sale of smartphones shall require valid identification of intended owner to verify the age of the intended owner, at time of purchase. If intended owner has not reached the age of 13 years old then the business or entity may not lawfully complete the transaction without facing stiff monetary penalties.~~

24-35-703. Definitions. As used in this ~~24-35~~ part 7 , unless the context otherwise requires

(1) ~~“SMARTPHONE” IS DEFINED AS IT IS UNDERSTOOD IN COMMON MODERN ENGLISH. THE INITIAL MODEL BEING THE IPHONE, INTRODUCED IN 2007. ANY HAND HELD DEVICE WITH MOBILE INTERNET CONNECTIVITY, OR MOBILE DATA CONNECTIVITY OR WIFI CONNECTIVITY. FURTHER DEFINED AS: A MOBILE PHONE THAT PERFORMS MANY OF THE FUNCTIONS OF A PERSONAL COMPUTER, TYPICALLY HAVING A TOUCHSCREEN INTERFACE, MOBILE INTERNET ACCESS, AND AN OPERATING SYSTEM CAPABLE OF RUNNING DOWNLOADED APPLICATIONS.~~

(2) (1) ~~“CELLULAR PHONE” IS DEFINED AS~~ MEANS A MOBILE PHONE UTILIZING A TELEPHONE SYSTEM USING LOW-POWERED RADIO TRANSMITTERS, WITH EACH TRANSMITTER COVERING A DISTINCT GEOGRAPHICAL AREA (CELL) AND COMPUTER EQUIPMENT TO SWITCH A CALL FROM ONE AREA TO ANOTHER, THUS ENABLING PORTABLE PHONE SERVICE.

~~PORTABLE PHONE SERVICE.~~

~~(3)~~ (2) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

~~(4)~~(3) "PRETEEN MINOR" MEANS A PERSON UNDER THIRTEEN YEARS OF AGE.

~~(5)~~(4) "RETAILER" MEANS A BUSINESS OF ANY KIND AT A SPECIFIC LOCATION THAT SELLS SMARTPHONES, EITHER NEW OR USED, TO A USER OR CONSUMER, OR A PROVIDER THAT OPERATES IN ANOTHER JURISDICTION, BUT DELIVERS AND/OR SELLS SMARTPHONES, EITHER NEW OR USED, TO A USER OR CONSUMER IN COLORADO.

(5)"SMARTPHONE" MEANS A MOBILE PHONE THAT PERFORMS MANY OF THE FUNCTIONS OF A PERSONAL COMPUTER. TYPICALLY HAVING A TOUCHSCREEN INTERFACE, MOBILE INTERNET ACCESS, AND AN OPERATING SYSTEM CAPABLE OF RUNNING DOWNLOADED APPLICATIONS. FURTHER DEFINED AS ANY HAND HELD DEVICE WITH MOBILE INTERNET CONNECTIVITY OR MOBILE DATA CONNECTIVITY.

~~(6)~~ (6) "VALID IDENTIFICATION" MEANS THE SAME AS IN SECTION 42-5-105 (2)(b)-~~(I)(II)(III)(IV)~~.

~~24-35-704. SALE OF A SMARTPHONE TO PRETEEN MINORS PROHIBITED. SALE OF A SMARTPHONE TO ANY PERSON THAT VERBALLY STATES THEY ARE GIVING THE SMARTPHONE TO A PRETEEN MINOR - PROHIBITED. RETAILER RESPONSIBILITIES AND SELF REPORTING.~~

24-35-704. Sale of a smartphone to preteens prohibited - sale of a smartphone to any person that verbally states they are giving the smartphone to a preteen prohibited - retailer responsibilities and self reporting.

(1) NO LIMITS, IMPLIED OR OTHERWISE ARE IMPOSED BY THIS MEASURE ON THE SALE OF CELLULAR PHONES, INCLUDING CELLULAR PHONES WITH TEXTING AND GPS CAPABILITIES.

(2) NO RETAILER SHALL SELL OR PERMIT THE SALE OF A SMARTPHONE TO A PRETEEN MINOR; EXCEPT THAT IT IS NOT A VIOLATION IF THE RETAILER ESTABLISHES THAT THE PERSON SELLING THE SMARTPHONE WAS PRESENTED WITH AND REASONABLY RELIED UPON A VALID IDENTIFICATION THAT IDENTIFIED THE PERSON PURCHASING THE SMARTPHONE AS BEING THIRTEEN YEARS OF AGE OR OLDER.

(3) NO RETAILER SHALL SELL OR PERMIT THE SALE OF A SMARTPHONE TO ANY PERSON OF ANY AGE IF THE PURCHASER STATES THE SMARTPHONE WILL BE WHOLLY, OR PRIMARILY OWNED BY A PRETEEN MINOR.

(4) RETAILER SHALL VERBALLY INQUIRE ABOUT THE AGE OF INTENDED PRIMARY OWNER PRIOR TO COMPLETING THE SALE OF ANY SMARTPHONE.

(5) RETAILER ~~MUST~~SHALL DOCUMENT THE RESPONSE OF PURCHASER AND KEEP A RECORD OF THIS RESPONSE.

(6) RETAILER ~~MUST~~SHALL FILE A MONTHLY REPORT TO THE DEPARTMENT THAT PROVIDES A LISTING OF:

(a) THE TYPE OF PHONE THAT WAS PURCHASED EITHER SMARTPHONE OR CELLULAR.

(b) THE AGE OF THE INTENDED PRIMARY OWNER AT TIME OF PURCHASE.

(7) RETAILER ~~TO~~SHALL PAY THE FILING FEE ASSOCIATED WITH THIS MONTHLY REPORT.

(a) THE MONTHLY FILING FEE FOR THE REPORT IS \$20.00 ~~THROUGHOUT~~ FOR THE FIRST CALENDAR YEAR OF THE ENACTMENT OF THIS MEASURE.

(b) THE ~~MONTHLY~~ FILING FEE WILL CHANGE YEARLY ACCORDING TO THE REVENUE NEEDS OF THE DEPARTMENT TO ENFORCE THIS MEASURE SO THAT THIS MEASURE REMAINS REVENUE NEUTRAL.

24-35-705. ~~ENFORCEMENT AUTHORITY. EXECUTIVE DIRECTOR DUTIES~~ Enforcement authority - executive director duties

(1) THE DEPARTMENT HAS THE POWER TO ENFORCE ALL STATE STATUTES RELATING TO THE PROHIBITION OF THE SALE OF SMARTPHONES TO PRETEEN MINORS.

(2) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL DETERMINE AND IMPLEMENT THE RESOURCES NECESSARY TO CARRY OUT THE ENFORCEMENT OF THIS MEASURE INCLUDING:

(a) THE CREATION OF A WEBSITE PORTAL TO CAPTURE THE MONTHLY REPORT AND FEE.

(b) INVESTIGATION OF INFRACTIONS SUSPECTED OR REPORTED TO THE DEPARTMENT: AND

(c) COLLECTION OF FEES AND PENALTIES.

~~(3) THE EXECUTIVE DIRECTOR OF~~ TO DETERMINE THE AMOUNT OF THE MONTHLY FILING FEE SUBSEQUENT TO THE FIRST YEAR OF IMPLEMENTATION. THE DEPARTMENT SHALL FIRST DETERMINE THE TOTAL FISCAL EXPENSES OF THE CURRENT YEAR USED TO IMPLEMENT THIS MEASURE.

~~(a) THE DEPARTMENT SHALL THEN ESTIMATE THE TOTAL FISCAL NEEDS FOR IMPLEMENTATION~~ IMPLEMENTING THIS MEASURE DURING THE SUBSEQUENT YEAR INCLUDING ALL REASONABLE GROWTH PROJECTIONS AND ~~SET~~ DEMOGRAPHIC CHANGES.

~~(3)(b)~~ THE AMOUNT OF THE MONTHLY FILING FEE ~~ON A YEARLY BASIS~~ SHALL BE THE AMOUNT NEEDED TO COVER THE TOTAL ESTIMATED ~~COSTS FOR THE SUBSEQUENT YEAR~~ FISCAL NEEDS.

24-35-706. ~~HEARINGS~~ Hearings.

(1) SUBJECT TO THE LIMITATIONS CONTAINED IN SECTION 24-35-704, THE DEPARTMENT, ON ITS OWN MOTION OR ON A COMPLAINT FROM ANOTHER GOVERNMENTAL AGENCY OR CITIZEN HAS THE POWER TO PENALIZE RETAILERS FOR VIOLATIONS OF SECTION 24-35-704.

(2) A RETAILER ACCUSED OF VIOLATING SECTION 24-35-704 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.

(a) A RETAILER THAT DOES NOT CLAIM AN AFFIRMATIVE DEFENSE PURSUANT TO SECTION 24-35-707 (2) MAY WAIVE THEIR 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 DEPARTMENT 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 24-35-704.

(4) IF THE HEARING OFFICER FINDS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE RETAILER VIOLATED SECTION 24-35-704, THE HEARING OFFICER MAY ISSUE A WRITTEN ORDER OR LEVY A FINE AGAINST THE RETAILER, SUBJECT TO THE PROVISIONS OF SECTION 24-35-707.

(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 24-35-704 SHALL BE FORWARDED TO THE DEPARTMENT FOR COSTS ASSOCIATED WITH THE ADMINISTRATION OF ~~SECTION 24-35-THIS PART 7~~, ANY PROCEEDS IN EXCESS OF DEPARTMENT NEEDS SHALL BE FORWARDED TO THE TREASURER OF THE STATE WHO SHALL CREDIT THEM TO THE DEPARTMENT OF EDUCATION FOR USE IN ELEMENTARY SCHOOL FUNDING.

24-35-707. ~~LIMITATION ON FINES~~ Limitation on fines.

(1) FOR A VIOLATION OF SECTION 24-35-704 (2),(3)(6) OR (7), 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 FIVE HUNDRED DOLLARS FOR A SECOND VIOLATION WITHIN A TWENTY-FOUR-MONTH PERIOD;
- (c) A FINE OF ONE THOUSAND DOLLARS FOR A THIRD VIOLATION WITHIN A TWENTY-FOUR-MONTH PERIOD;
- (d) A FINE OF TWO THOUSAND DOLLARS FOR A FOURTH VIOLATION WITHIN A TWENTY-FOUR-MONTH PERIOD; AND
- (e) A FINE OF BETWEEN TWO THOUSAND DOLLARS AND TWENTY 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 24-35-704 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 SMARTPHONES TO PERSONS UNDER THIRTEEN YEARS OF AGE;
- (b) HAD INFORMED ITS EMPLOYEES OF THE APPLICABLE LAWS REGARDING THE SALE OF SMARTPHONES TO PERSONS UNDER THIRTEEN YEARS OF AGE;
- (c) REQUIRED EMPLOYEES TO VERIFY THE AGE OF SMARTPHONE 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) A VIOLATION FOR NON-COMPLIANCE OF SECTION 24-35-704 (6) ~~AND/OR~~ (7), SHALL BE DEEMED TO HAVE OCCURED ~~90~~THIRTY DAYS AFTER THE END OF THE MONTH FOR WHICH THE MONTHLY REPORT WAS DUE.

~~(a) PRIOR TO 90 DAYS THE FINES FOR NON-COMPLIANCE WITH SECTION 24-35-704 (6) SHALL BE AS FOLLOWS:~~

~~I. \$50.00 FROM 31 TO 60 DAYS~~

~~II. \$100.00 FROM 61 TO 89 DAYS~~

~~III. AS DETERMINED BY THE OUTCOME
OF PROCEEDINGS PURSUANT TO
SECTIONS 24-35-706 AND 24-35-~~

707

24-35-708. ~~EFFECTIVE DATE~~ Effective date.

~~EFFECTIVE DATE~~ THIS PART 7 TAKES EFFECT JANUARY 1, 2019