

18-13-122. Illegal possession or consumption of ethyl alcohol by an underage person - definitions - adolescent substance abuse prevention and treatment fund - legislative declaration.

(1) As used in this section, unless the context otherwise requires:

(a) "Establishment" means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group, or residence, and any real property, including buildings and improvements, connected therewith, and shall also include any members, employees, and occupants associated therewith.

(b) "Ethyl alcohol" means any substance which is or contains ethyl alcohol.

(c) "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his immediate presence and control.

(d) "Private property" means any dwelling and its curtilage which is being used by a natural person or natural persons for habitation and which is not open to the public and privately owned real property which is not open to the public. "Private property" shall not include:

(I) Any establishment which has or is required to have a license pursuant to article 46, 47, or 48 of title [12](#), C.R.S.; or

(II) Any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or

(III) Any establishment which leases, rents, or provides accommodations to members of the public generally.

(2) (a) Any person under twenty-one years of age who possesses or consumes ethyl alcohol anywhere in the state of Colorado commits illegal possession or consumption of ethyl alcohol by an underage person.

Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

(b) (I) Upon conviction of a first offense, illegal possession or consumption of ethyl alcohol by an underage person shall be punished by a fine of not more than two hundred fifty dollars. The court, upon sentencing a defendant pursuant to this paragraph (b), may, in addition to any fine, order that the defendant perform up to twenty-four hours of useful public service, subject to the conditions and restrictions of section [18-1.3-507](#), and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program at such defendant's own expense.

(II) Upon conviction of a second offense, illegal possession or consumption of ethyl alcohol by an underage person shall be punished by a fine of not more than five hundred dollars, and the court shall order the defendant to submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program, at the defendant's own expense. The court may further order the defendant to perform up to twenty-four hours of useful public service, subject to the conditions and restrictions specified in section [18-1.3-507](#).

(III) Upon conviction of a third or subsequent offense, illegal possession or consumption of ethyl alcohol by an underage person shall be a class 2 misdemeanor, and the court, in addition to sentencing the defendant pursuant to the provisions of section [18-1.3-501](#), shall order the defendant to submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program, at the defendant's own expense.

- (IV) A person convicted of a violation of this section is subject to an additional penalty surcharge of twenty-five dollars that shall be administered to the adolescent substance abuse prevention and treatment fund.
- (3) It shall be an affirmative defense to the offense described in subsection (2) of this section that the ethyl alcohol was possessed or consumed by a person under twenty-one years of age under the following circumstances:
- (a) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of his parent or legal guardian who was present during such possession or consumption; or
- (b) When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by section [25-5-410](#) (1) (i) (II), C.R.S.; or the ingestion of any substance which was manufactured, designed, or intended primarily for a purpose other than oral human ingestion; or the ingestion of any substance which was manufactured, designed, or intended solely for medicinal or hygienic purposes; or solely from the ingestion of a beverage which contained less than one-half of one percent of ethyl alcohol by weight.
- (c) The person is a student who:
- (I) Tastes but does not imbibe an alcohol beverage only while under the direct supervision of an instructor who is at least twenty-one years of age and employed by a post-secondary school;
- (II) Is enrolled in a university or a post-secondary school accredited or certified by an agency recognized by the United States department of education, a nationally recognized accrediting agency or association, or the "Private Occupational Education Act of 1981", article [59](#) of title [12](#), C.R.S.;
- (III) Is participating in a culinary arts, food service, or restaurant management degree program; and
- (IV) Tastes but does not imbibe the alcohol beverage for instructional purposes as a part of a required course in which the alcohol beverage, except the portion the student tastes, remains under the control of the instructor.
- (4) The possession or consumption of ethyl alcohol shall not constitute a violation of this section if such possession or consumption takes place for religious purposes protected by the first amendment to the United States constitution.
- (4.5) An underage person and one or two other persons shall be immune from criminal prosecution under this section if they establish the following:
- (a) One of the underage persons called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption;
- (b) The underage person who called 911 and, if applicable, one or two other persons acting in concert with the underage person who called 911 provided each of their names to the 911 operator;
- (c) The underage person was the first person to make the 911 report; and
- (d) The underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.
- (5) Prima facie evidence of a violation of subsection (2) of this section shall consist of:

- (a) Evidence that the defendant was under the age of twenty-one years and possessed or consumed ethyl alcohol anywhere in this state; or
- (b) Evidence that the defendant was under the age of twenty-one years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication or impairment while present anywhere in this state.
- (6) During any trial for a violation of subsection (2) of this section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can, or other container as "beer", "ale", "malt beverage", "fermented malt beverage", "malt liquor", "wine", "champagne", "whiskey" or "whisky", "gin", "vodka", "tequila", "schnapps", "brandy", "cognac", "liqueur", "cordial", "alcohol", or "liquor" shall constitute prima facie evidence that the contents of the bottle, can, or other container was composed in whole or in part of ethyl alcohol.
- (7) A parent or legal guardian of a person under twenty-one years of age or any natural person who has the permission of such parent or legal guardian may give or permit the possession and consumption of ethyl alcohol to or by a person under the age of twenty-one years under the conditions described in paragraph (a) of subsection (3) of this section. This subsection (7) shall not be construed to permit any establishment which is or is required to be licensed pursuant to article 46, 47, or 48 of title [12](#), C.R.S., or any members, employees, or occupants of any such establishment to give, provide, make available, or sell ethyl alcohol to a person under twenty-one years of age.
- (8) Nothing in this section shall be construed to prohibit any statutory or home rule municipality from enacting any ordinance which prohibits persons under the age of twenty-one years from possessing or consuming ethyl alcohol, which ordinance is at least as restrictive or more restrictive than this section.
- (9) Nothing in this section shall be construed to limit or preclude prosecution for any offense pursuant to article 46, 47, or 48 of title [12](#), C.R.S., except as provided in such articles.
- (10) Upon the expiration of one year from the date of a conviction for a violation of subsection (2) of this section, any person convicted of such violation may petition the court in which the conviction was entered for an order sealing the record of such conviction. The court shall grant such petition if the petitioner has not been arrested for, charged with, or convicted of any felony, misdemeanor, or petty offense during the period of one year following the date of such petitioner's conviction for a violation of subsection (2) of this section.
- (11) The qualitative result of an alcohol test or tests shall be admissible at the trial of any person charged with a violation of subsection (2) of this section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the executive director of the department of public health and environment.
- (12) Official records of the department of public health and environment relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records of the state. Copies of such records, attested by the executive director of the department of public health and environment or his deputy and accompanied by a certificate bearing the official seal for said department, which state that the executive director of the department has custody of such records, shall be admissible in all courts of record and shall constitute prima facie evidence of the information contained in such records. The official seal of the department described in this subsection (12) may consist of a rubber stamp producing a facsimile of the seal stamped upon the document.

(13) In any judicial proceeding in any court of this state concerning a charge under subsection (2) of this section, the court shall take judicial notice of methods of testing a person's blood, breath, saliva, or urine for the presence of alcohol and of the design and operation of devices certified by the department of public health and environment for testing a person's blood, breath, saliva, or urine for the presence of alcohol. This subsection (13) shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection (13) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

(14) No law enforcement officer shall enter upon any private property to investigate any violation of this section without probable cause.

(15) Repealed.

(16) (a) The general assembly hereby finds and declares that:

(I) There are many children in Colorado who struggle with substance abuse, and their substance abuse problems have a direct social and economic impact on the state;

(II) It is estimated that in Colorado there are thirty thousand children and youth between the ages of twelve and seventeen with a substance abuse problem that often continues into young adulthood;

(III) At any one time, sixty to eighty percent of the youth in the juvenile justice system have a substance abuse problem, and thirty percent of the referrals for substance abuse problems in the juvenile justice system have co-occurring disorders;

(IV) Colorado does not have the capacity to provide substance abuse treatment for all children who need the treatment. In fiscal year 2004, only four thousand three hundred eighty children received publicly funded substance abuse treatment, representing only fifteen percent of the children in the state who needed substance abuse treatment.

(V) It is necessary for the state of Colorado to provide more adolescent substance abuse treatment in a developmentally, intellectually, and socially appropriate manner and therefore it is necessary to create the adolescent substance abuse prevention and treatment fund for that purpose.

(b) The surcharge collected pursuant to subparagraph (IV) of paragraph (b) of subsection (2) of this section shall be transmitted to the state treasurer, who shall credit the same to the adolescent substance abuse prevention and treatment fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the division of alcohol and drug abuse in the department of human services, established in part 2 of article [1](#) of title [25](#), C.R.S., for adolescent substance abuse prevention and treatment programs. The division of alcohol and drug abuse is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund. Any unexpended moneys in the fund may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: **L. 90:** Entire section added, p. 1000, § 1, effective May 22. **L. 93:** (15) repealed, p. 1735, § 28, effective July 1. **L. 94:** (11) and (13) amended, p. 2736, § 360, effective July 1. **L. 99:** (2)(b) amended, p. 795, § 7, effective July 1. **L. 2002:** (2)(b) amended, p. 1518, § 210, effective October 1. **L. 2004:** (3)(c) added, p. 1096, § 1, effective July 1. **L. 2005:** (2) amended and (4.5) added, pp. 1244, 1245, §§ 5, 7, effective July 1. **L. 2006:** (2)(b)(IV) and (16) added, pp. 1537, 1536, §§ 2, 1, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2005 act amending subsection (2) and enacting subsection (4.5), see section 1 of chapter 282, Session Laws of Colorado 2005.

ANNOTATION

General assembly's reenactment of criminal code provisions do not supersede provisions of the liquor code, and person violating liquor code must be prosecuted for those violations and not provisions of the criminal code. *People v. O'Donnell*, 926 P.2d 114 (Colo. App. 1996).