

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

February 6, 2023
Date

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

HB23-1015 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, **amend** 39-28.5-101
4 as follows:

5 **39-28.5-101. Definitions.** As used in this article 28.5, unless the
6 context otherwise requires:

7 (1) "CONSUMER" MEANS ANY PERSON WHO HAS TITLE TO OR
8 POSSESSION OF TOBACCO PRODUCTS FOR THE PERSON'S OWN USE OR
9 CONSUMPTION IN THIS STATE AND NOT FOR RESALE.

10 ~~(1)~~ (2) (a) "Delivery sale" means, EXCEPT AS PROVIDED IN
11 SUBSECTION (2)(b) OF THIS SECTION, the sale of tobacco products to a
12 consumer in this state when:

13 ~~(a)~~ (I) The consumer submits an order for the tobacco products to
14 a delivery seller for sale by means other than an over-the-counter sale on
15 the delivery seller's premises, including, but not limited to, telephone or
16 other voice transmission, the mail or other delivery service, or the internet
17 or other online service; and

18 ~~(b)~~ (II) The tobacco products are delivered when the seller is not
19 in the physical presence of the consumer when the consumer obtains
20 possession of the tobacco products by use of a common carrier, private
21 delivery service, mail, or any other means.

22 (b) "DELIVERY SALE" DOES NOT INCLUDE THE SALE OF CIGARS OR
23 PIPE TOBACCO.

24 ~~(1.2)~~ (3) "Delivery seller" means a person located outside of this
25 state who makes delivery sales.

26 ~~(1.4)~~ (4) "Department" means the department of revenue.

27 ~~(1.5)~~ (5) "Distributing subcontractor" means every person, firm,

1 limited liability company, partnership, or corporation who purchases
2 tobacco products from a distributor for resale to a retailer in this state.

3 ~~(2)~~ (6) "Distributor" means every person who:
4 (a) First receives tobacco products in this state;
5 (b) Sells tobacco products in this state and is primarily liable for
6 the tobacco products tax on such products;
7 (c) First sells or offers for sale in this state tobacco products
8 imported into this state from any other state or country; or
9 (d) Is a delivery seller.

10 ~~(3)~~ (7) (a) "Manufacturer's list price" means, EXCEPT AS PROVIDED
11 IN SUBSECTIONS (7)(b) AND (7)(c) OF THIS SECTION, the invoice price for
12 which a manufacturer or supplier sells a tobacco product to a distributor
13 OR REMOTE RETAIL SELLER exclusive of any discount or other reduction.
14 IN THE CASE OF CIGARS AND PIPE TOBACCO, "MANUFACTURER'S LIST
15 PRICE" IS ALSO KNOWN AS THE ACQUISITION COST.

16 (b) FOR A DELIVERY OR REMOTE RETAIL SELLER, IF DETERMINING
17 THE INVOICE PRICE DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION IS
18 IMPRACTICABLE, THEN "MANUFACTURER'S LIST PRICE" MEANS THE
19 AVERAGE OF THE ACTUAL PRICE PAID, EXCLUSIVE OF ANY REBATES OR
20 DISCOUNTS APPLIED, FOR THE TOBACCO PRODUCT'S STOCK KEEPING UNIT
21 DURING THE PRECEDING CALENDAR YEAR. THE DEPARTMENT MAY, BY
22 WRITTEN NOTICE TO THE DELIVERY OR REMOTE RETAIL SELLER,
23 PROSPECTIVELY REQUIRE A DELIVERY OR REMOTE RETAIL SELLER TO
24 CALCULATE THE TAX ON THE INVOICE PRICE IF THE DEPARTMENT FINDS
25 THAT THE DELIVERY OR REMOTE RETAIL SELLER'S USE OF THE AVERAGE
26 PRICE PAID WAS FOR THE PURPOSE OF AVOIDING TAX.

27 (c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER, A
28 REMOTE RETAIL SELLER, OR A RETAILER, AND WHO SELLS TOBACCO
29 PRODUCTS EXCLUSIVELY TO CONSUMERS AND NOT TO SUPPLIERS OR
30 DISTRIBUTORS, "MANUFACTURER'S LIST PRICE" MEANS THE
31 MANUFACTURER'S COST TO MANUFACTURE THE TOBACCO PRODUCT,
32 WHICH INCLUDES THE MANUFACTURING OVERHEAD AND THE COST OF ALL
33 DIRECT MATERIALS AND DIRECT LABOR USED.

34 ~~(3.3)~~ (8) "Modified risk tobacco product" means any tobacco
35 product for which the secretary of the United States department of health
36 and human services has issued an order authorizing the product to be
37 commercially marketed as a modified risk tobacco product in accordance
38 with 21 U.S.C. sec. 387k, or any successor section.

39 ~~(3.7)~~ (9) "Moist snuff" means any finely cut, ground, or powdered
40 tobacco that is not intended to be smoked but does not include any finely
41 cut, ground, or powdered tobacco that is intended to be placed in the nasal
42 cavity.

43 (10) (a) "REMOTE RETAIL SALE" MEANS THE SALE OF CIGARS OR

1 PIPE TOBACCO TO A CONSUMER IN THIS STATE WHEN:

2 (I) THE CONSUMER SUBMITS AN ORDER FOR THE CIGARS OR PIPE
3 TOBACCO TO A REMOTE RETAIL SELLER FOR SALE BY MEANS OTHER THAN
4 AN OVER-THE-COUNTER SALE ON THE REMOTE RETAIL SELLER'S PREMISES,
5 INCLUDING, BUT NOT LIMITED TO, TELEPHONE OR OTHER VOICE
6 TRANSMISSION, THE MAIL OR OTHER DELIVERY SERVICE, OR THE INTERNET
7 OR OTHER ONLINE SERVICE; AND

8 (II) THE CIGARS OR PIPE TOBACCO ARE DELIVERED TO THE
9 CONSUMER BY USE OF A COMMON CARRIER, PRIVATE DELIVERY SERVICE,
10 MAIL, OR ANY OTHER MEANS OF REMOTE DELIVERY, OR WHEN THE REMOTE
11 RETAIL SELLER IS NOT IN THE PHYSICAL PRESENCE OF THE CONSUMER
12 WHEN THE CONSUMER OBTAINS POSSESSION OF THE CIGARS OR PIPE
13 TOBACCO.

14 (b) "REMOTE RETAIL SALE" DOES NOT INCLUDE THE SALE OF
15 TOBACCO PRODUCTS OTHER THAN CIGARS OR PIPE TOBACCO.

16 (11) "REMOTE RETAIL SELLER" MEANS A PERSON LOCATED
17 OUTSIDE OF THIS STATE WHO MAKES REMOTE RETAIL SALES.

18 ~~(4)~~ (12) "Sale" means any transfer, exchange, or barter, in any
19 manner or by any means whatsoever, for a consideration, including all
20 sales made by any person. The term includes:

21 (a) A gift by a person engaged in the business of selling tobacco
22 products, for advertising, as a means of evading the provisions of this
23 ~~article~~ ARTICLE 28.5 or for any other purposes whatsoever; ~~and~~

24 (b) A delivery sale; AND

25 (c) A REMOTE RETAIL SALE.

26 (13) "STOCK KEEPING UNIT" MEANS THE UNIQUE IDENTIFIER
27 ASSIGNED BY THE DISTRIBUTOR OR REMOTE RETAIL SELLER TO VARIOUS
28 ITEMS IN ORDER TO TRACK INVENTORY.

29 ~~(5)~~ (14) "Tobacco products" means cigars, cheroots, stogies,
30 periques, granulated, plug cut, crimp cut, ready rubbed, and other
31 smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco,
32 fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings,
33 cuttings and sweepings of tobacco and other kinds and forms of tobacco,
34 prepared in such manner as to be suitable for chewing or for smoking in
35 a pipe or otherwise, or both for chewing and smoking, but does not
36 include cigarettes ~~which~~ THAT are taxed separately pursuant to article 28
37 of this ~~title~~ TITLE 39.

38 **SECTION 2.** In Colorado Revised Statutes, 39-28.5-102, **amend**
39 (4) as follows:

40 **39-28.5-102. Tax levied.** (4) (a) The tax set forth in this section
41 is collected by the department. ~~and is imposed at the time the distributor:~~

42 (b) IN THE CASE OF A DISTRIBUTOR, THE TAX SET FORTH IN THIS
43 SECTION IS IMPOSED AT THE TIME THE DISTRIBUTOR:

- 1 (a) (I) Brings, or causes to be brought, into this state from without
2 the state tobacco products for sale;
- 3 (b) (II) Makes, manufactures, or fabricates tobacco products in
4 this state for sale in this state;
- 5 (c) (III) Ships or transports tobacco products to retailers in this
6 state to be sold by those retailers; or
- 7 (d) (IV) Makes a delivery sale.
- 8 (b)c) IN THE CASE OF A REMOTE RETAIL SELLER, THE TAX SET FORTH
9 IN THIS SECTION IS IMPOSTED AT THE TIME THE REMOTE RETAIL SELLER
10 MAKES A REMOTE RETAIL SALE.

11 **SECTION 3.** In Colorado Revised Statutes, **amend**
12 39-28.5-102.5 as follows:

13 **39-28.5-102.5. Tax levied - state constitution.** Pursuant to
14 section 21 of article X of the state constitution, there is levied, in addition
15 to the tax levied pursuant to section 39-28.5-102, a tax on the sale, use,
16 consumption, handling, or distribution of tobacco products by distributors
17 AND REMOTE RETAIL SELLERS, at a rate of twenty percent of the
18 manufacturer's list price. The tax shall be paid to and collected by the
19 department. The tax shall be imposed in the same manner as the tax
20 described in section 39-28.5-102.

21 **SECTION 4.** In Colorado Revised Statutes, 39-28.5-104, **amend**
22 (1) as follows:

23 **39-28.5-104. Licensing required - rules - fines.** (1) It is
24 unlawful for any person to engage in the business of a distributor of
25 tobacco products at any place of business OR TO MAKE DELIVERY OR
26 REMOTE RETAIL SALES without first obtaining a license granted and issued
27 by the department, which license shall be in effect until June 30 following
28 the date of issue, unless sooner revoked. IN THE CASE OF A DISTRIBUTOR
29 LOCATED IN THIS STATE, such license shall be granted only to a person
30 who owns or operates the place from which the person engages in the
31 business of a distributor of tobacco products, and, if such business is
32 operated in two or more separate places IN THIS STATE by any such
33 person, a separate license for each place of business shall be required.
34 Such license shall be renewed only upon timely application and payment
35 of the required fee prior to expiration. Such licenses may be transferred
36 in the discretion of and pursuant to the rules adopted by the department.
37 The fee for a license shall be ten dollars per year, and such fee shall be
38 credited to the general fund. Such fee shall be reduced at the rate of two
39 dollars and fifty cents for each expired quarter of the license year. The
40 department shall, on reasonable notice and after a hearing, suspend or
41 revoke the license of any person violating any provision of this ~~article~~
42 ARTICLE 28.5, and no license shall be issued to such person within a
43 period of two years thereafter. The department may share information on

1 the names and addresses of persons who purchased tobacco products for
2 resale with the department of public health and environment and county
3 and district public health agencies. The department shall refuse to issue
4 a new or renewal distributor OR REMOTE RETAIL SELLER license, and shall
5 revoke a distributor's OR REMOTE RETAIL SELLER'S license, if the
6 distributor OR REMOTE RETAIL SELLER owes the state any delinquent taxes
7 administered by the department or interest thereon pursuant to this ~~title~~
8 TITLE 39 that have been determined by law to be due and unpaid, unless
9 the distributor OR REMOTE RETAIL SELLER has entered into an agreement
10 approved by the department to pay the amount due. The department shall
11 only issue a new or renewal distributor OR REMOTE RETAIL SELLER license
12 to a distributor OR REMOTE RETAIL SELLER that has a current license issued
13 pursuant to section 39-26-103.

14 **SECTION 5.** In Colorado Revised Statutes, 39-28.5-105, **add** (5)
15 as follows:

16 **39-28.5-105. Books and records to be preserved.** (5) EVERY
17 REMOTE RETAIL SELLER SHALL KEEP COMPLETE AND ACCURATE RECORDS
18 NECESSARY FOR THE DETERMINATION OF THE CORRECT TAX LIABILITY,
19 INCLUDING ITEMIZED INVOICES TO VALIDATE THE ACTUAL COSTS PAID BY
20 THE REMOTE RETAIL SELLER FOR ALL CIGARS AND PIPE TOBACCO OFFERED
21 IN REMOTE RETAIL SALES TO THE CONSUMER WITHIN THIS STATE.

22 **SECTION 6.** In Colorado Revised Statutes, 39-28.5-106, **amend**
23 (1), (2), and (4)(a) as follows:

24 **39-28.5-106. Returns and remittance of tax - civil penalty.**
25 (1) Every distributor AND REMOTE RETAIL SELLER shall file a return with
26 the department each quarter. The return, which shall be upon forms
27 prescribed and furnished by the department, shall contain, among other
28 things, the total amount of tobacco products purchased by the distributor
29 OR REMOTE RETAIL SELLER during the preceding quarter and the tax due
30 thereon.

31 (2) Every distributor AND REMOTE RETAIL SELLER shall file a
32 return with the department by the twentieth day of the month following
33 the month reported and shall therewith remit the amount of tax due, less
34 three and one-third percent of any sum so remitted that consists of tax
35 collected after July 1, 2005, but before January 1, 2021, and less one and
36 six-tenths percent of any sum so remitted that consists of tax collected on
37 or after January 1, 2021, to cover the distributor's OR REMOTE RETAIL
38 SELLER'S expense in the collection and remittance of said tax; except that
39 no part of the tax imposed pursuant to section 39-28.5-102.5 and section
40 21 of article X of the state constitution shall be subject to the discount
41 provided for in this subsection (2). If any distributor OR REMOTE RETAIL
42 SELLER is delinquent in remitting said tax, other than in unusual
43 circumstances shown to the satisfaction of the executive director of the

1 department, the distributor OR REMOTE RETAIL SELLER shall not be
2 allowed to retain any amounts to cover his or her expense in collecting
3 and remitting said tax, and in addition the penalty imposed under section
4 39-28.5-110 (2)(b) shall apply.

5 (4) (a) Any person, firm, limited liability company, partnership,
6 or corporation, other than a distributor OR REMOTE RETAIL SELLER, in
7 possession of tobacco products for which taxes have not otherwise been
8 remitted pursuant to this section shall be liable and responsible for the
9 uncollected tax that is levied pursuant to section 39-28.5-102 and section
10 21 of article X of the state constitution on behalf of the distributor OR
11 REMOTE RETAIL SELLER who failed to pay the tax. The person or entity
12 shall make the payment to the department within thirty days of first taking
13 possession of the tobacco product. The department shall establish a form
14 to be used for remittance of the payment. The department shall remit the
15 proceeds it receives pursuant to this ~~paragraph (a)~~ SUBSECTION (4)(a) to
16 the state treasurer for distribution as follows:

17 **SECTION 7.** In Colorado Revised Statutes, 39-28.5-107, **amend**
18 (2)(a), (2)(b)(I), (2)(b)(III), (2)(c), (2)(d) as follows:

19 **39-28.5-107. When credit may be obtained for tax paid.**

20 (2) (a) Credit shall be given by the department to a distributor OR
21 REMOTE RETAIL SELLER for all taxes levied pursuant to this ~~article~~
22 ARTICLE 28.5 and section 21 of article X of the state constitution and paid
23 pursuant to the provisions of this ~~article~~ ARTICLE 28.5 that are bad debts.
24 Such credit shall offset taxes levied pursuant to this ~~article~~ ARTICLE 28.5
25 and section 21 of article X of the state constitution and paid pursuant to
26 the provisions of this ~~article~~ ARTICLE 28.5 only. No credit shall be given
27 unless the bad debt has been charged off as uncollectible on the books of
28 the distributor OR REMOTE RETAIL SELLER. Subsequent to receiving the
29 credit, if the distributor OR REMOTE RETAIL SELLER receives a payment for
30 the bad debt, the distributor OR REMOTE RETAIL SELLER shall be liable to
31 the department for the amount received and shall remit this amount in the
32 next payment to the department under section 39-28.5-106.

33 (b) Any claim for a bad debt credit under this subsection (2) shall
34 be supported by all of the following:

35 (I) A copy of the original invoice issued by the distributor OR
36 REMOTE RETAIL SELLER;

37 (III) Evidence that the person who ordered and received the
38 tobacco products did not pay the distributor OR REMOTE RETAIL SELLER
39 for them and that the distributor OR REMOTE RETAIL SELLER used
40 reasonable collection practices in attempting to collect the debt.

41 (c) If credit is given to a distributor OR REMOTE RETAIL SELLER for
42 a bad debt, the person who ordered and received the tobacco products but
43 did not pay the distributor OR REMOTE RETAIL SELLER for them shall be

1 liable in an amount equal to the credit for the tax imposed in this ~~article~~
2 ARTICLE 28.5 on the tobacco products. Subsequent to receiving the credit,
3 if the distributor OR REMOTE RETAIL SELLER receives a payment for the
4 bad debt and the distributor OR REMOTE RETAIL SELLER makes a payment
5 to the department, the amount of taxes owed by such person shall be
6 reduced by the amount paid to the department.

7 (d) As used in this subsection (2), "bad debt" means the taxes
8 attributable to any portion of a debt that is related to a sale of tobacco
9 products subject to tax under this ~~article~~ ARTICLE 28.5, that is not
10 otherwise deductible or excludable, that has become worthless or
11 uncollectible in the time after the tax has been paid pursuant to section
12 39-28.5-106, and that is eligible to be claimed as a deduction pursuant to
13 section 166 of the federal "Internal Revenue Code of 1986", as amended.
14 A bad debt shall not include any interest on the wholesale price of
15 tobacco products, uncollectible amounts on property that remain in the
16 possession of the distributor OR REMOTE RETAIL SELLER until the full
17 purchase price is paid, expenses incurred in attempting to collect any
18 account receivable or any portion of the debt recovered, an account
19 receivable that has been sold to a third party for collection, or repossessed
20 property.

21 **SECTION 8.** In Colorado Revised Statutes, 39-28.5-110, **amend**
22 (1) as follows:

23 **39-28.5-110. Prohibited acts - penalties.** (1) It is unlawful for
24 any ~~distributor~~ PERSON to sell and distribute any tobacco products in this
25 state without a license as required in section 39-28.5-104, or to willfully
26 make any false or fraudulent return or false statement on any return, or to
27 willfully evade the payment of the tax, or any part thereof, as imposed by
28 this ~~article~~ ARTICLE 28.5. Any distributor, REMOTE RETAIL SELLER, or
29 agent thereof who willfully violates any provision of this ~~article~~ ARTICLE
30 28.5 shall be punished as provided by section 39-21-118.

31 **SECTION 9.** In Colorado Revised Statutes, **amend** 39-28.5-112
32 as follows:

33 **39-28.5-112. List of licensed distributors and remote retail**
34 **sellers - published on website.** ~~On or before December 31, 2009,~~ The
35 department shall publish on its website a list of the names and addresses
36 of all licensed distributors AND REMOTE RETAIL SELLERS. The list shall be
37 updated within seven days of any changes to the list.

38 **SECTION 10.** In Colorado Revised Statutes, 39-28.6-102,
39 **amend** (5) and (7)(b) as follows:

40 **39-28.6-102. Definitions.** As used in this article 28.6, unless the
41 context otherwise requires:

42 (5) (a) "Manufacturer's list price" means, EXCEPT AS PROVIDED IN
43 SUBSECTIONS (5)(b) AND (5)(c) OF THIS SECTION, the invoice price for

1 which a manufacturer or supplier sells a nicotine product to a distributor
2 exclusive of any discount or other reduction.

3 (b) FOR A DELIVERY SELLER, IF DETERMINING THE INVOICE PRICE
4 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION IS IMPRACTICABLE,
5 THEN "MANUFACTURER'S LIST PRICE" MEANS THE AVERAGE OF THE
6 ACTUAL PRICE PAID, EXCLUSIVE OF ANY REBATES OR DISCOUNTS APPLIED,
7 FOR THE NICOTINE PRODUCT'S STOCK KEEPING UNIT DURING THE
8 PRECEDING CALENDAR YEAR. THE DEPARTMENT MAY, BY WRITTEN NOTICE
9 TO THE DELIVERY SELLER, PROSPECTIVELY REQUIRE A DELIVERY SELLER
10 TO CALCULATE THE TAX ON THE INVOICE PRICE IF THE DEPARTMENT FINDS
11 THAT THE DELIVERY SELLER'S USE OF THE AVERAGE PRICE PAID WAS FOR
12 THE PURPOSE OF AVOIDING TAX.

13 (c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER OR A
14 RETAILER, AND WHO SELLS NICOTINE PRODUCTS EXCLUSIVELY TO
15 CONSUMERS AND NOT TO SUPPLIERS OR DISTRIBUTORS, "MANUFACTURER'S
16 LIST PRICE" MEANS THE MANUFACTURER'S COST TO MANUFACTURE THE
17 NICOTINE PRODUCT, WHICH INCLUDES THE MANUFACTURING OVERHEAD
18 AND THE COST OF ALL DIRECT MATERIALS AND DIRECT LABOR USED.

19 (7) "Nicotine product" means a product that contains nicotine
20 derived from tobacco or created synthetically that is intended for human
21 consumption, whether by vaporizing, chewing, smoking, absorbing,
22 dissolving, inhaling, snorting, sniffing, aerosolizing, or by any other
23 means, and that is not:

24 (b) Tobacco products, as defined in section ~~39-28.5-101(5)~~
25 39-28.5-101 (14); or

26 **SECTION 11.** In Colorado Revised Statutes, 18-8-204, **amend**
27 (2)(m) as follows:

28 **18-8-204. Introducing contraband in the second degree -**
29 **definition.** (2) As used in this section, "contraband" means any of the
30 following, but does not include any article or thing referred to in section
31 18-8-203:

32 (m) For purposes of a facility of the department of corrections or
33 any private contract prison, any cigarettes or tobacco products, as defined
34 in section ~~39-28.5-101(5)~~ 39-28.5-101 (14);

35 **SECTION 12. Act subject to petition - effective date.** This act
36 takes effect January 1, 2024; except that, if a referendum petition is filed
37 pursuant to section 1 (3) of article V of the state constitution against this
38 act or an item, section, or part of this act within the ninety-day period
39 after final adjournment of the general assembly, then the act, item,
40 section, or part will not take effect unless approved by the people at the
41 general election to be held in November 2024 and, in such case, will take
42 effect on the date of the official declaration of the vote thereon by the
43 governor."

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