

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0739.01 Jennifer Berman x3286

HOUSE BILL 16-1370

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A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF NICOTINE PRODUCT RETAILERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

There is not currently a comprehensive list of retailers in the state that sell cigarettes, tobacco products, or nicotine products (retailers). Commencing in 2017, **section 2** of the bill requires retailers to register with the liquor enforcement division in the department of revenue (division). The division is required to keep a retailer's registration information confidential. The division is authorized to impose a \$500 fine on a retailer that fails to register with the division.

Section 1 increases the appropriation to the division from the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

tobacco education programs fund, which fund consists of 16% of the money collected from cigarette and tobacco taxes, from \$350,000 to \$500,000 and directs the division to use up to \$150,000 of the money for the administration of the retailers registry.

Section 3 applies the hearing procedures established for other nicotine product sales violations to violations of the requirement that a retailer register with the division.

Section 4 increases the civil penalties a retailer would face for violating the prohibitions against selling cigarettes, tobacco products, or nicotine products to minors or selling individual cigarettes, a pack of cigarettes containing fewer than twenty cigarettes, or roll-your-own tobacco in a package containing less than 0.60 ounces of tobacco.

From state cigarette tax money, the state currently apportions 27% to cities, towns, and counties (local governments) in proportion to the amount of state sales tax revenues collected within the boundaries of the local governments. A local government is prohibited from receiving its allocation of this money if it imposes its own fees, licenses, or taxes on cigarette sales. **Section 5** expands the arrangement to cover other tobacco product tax revenues and to prohibit a local government from receiving its allocation of the money if the local government imposes its own fees, licenses, or taxes on tobacco product or nicotine product sales.

Under current law, if a tobacco product distributor ships or transports tobacco products to a consumer outside of the state between September 1, 2015, and September 1, 2018, and reports and pays the taxes on those tobacco products, the department of revenue may credit the tax to the distributor. **Section 6** modifies that tax credit provision to apply indefinitely.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-22-117, **amend**
3 (2) (c) (III) introductory portion and (2) (c) (III) (B) as follows:

4 **24-22-117. Tobacco tax cash fund - accounts - creation -**
5 **legislative declaration.** (2) There is hereby created in the state treasury
6 the following funds:

7 (c) (III) For fiscal year 2005-06 and each fiscal year thereafter,
8 ~~moneys~~ MONEY in the tobacco education programs fund shall be annually
9 appropriated by the general assembly as follows:

10 (B) ~~Up to three hundred fifty~~ FIVE HUNDRED thousand dollars to

1 the ~~division~~ of liquor enforcement DIVISION in the department of revenue
2 for the purpose of enforcing laws relating to the sale of CIGARETTES,
3 tobacco PRODUCTS, AND NICOTINE PRODUCTS to ~~minors~~ PERSONS UNDER
4 EIGHTEEN YEARS OF AGE. THE LIQUOR ENFORCEMENT DIVISION IS
5 AUTHORIZED TO EXPEND UP TO ONE HUNDRED FIFTY THOUSAND OF THE
6 FIVE HUNDRED THOUSAND DOLLARS FOR ADMINISTRATION OF THE
7 CIGARETTE, TOBACCO PRODUCT, AND NICOTINE PRODUCT RETAILERS
8 REGISTRY DESCRIBED IN SECTION 24-35-503.5.

9 **SECTION 2.** In Colorado Revised Statutes, **add** 24-35-503.5 as
10 follows:

11 **24-35-503.5. Nicotine retailers registry - creation - rules.**

12 (1)(a) ON AND AFTER JANUARY 1, 2017, A RETAILER SHALL NEITHER SELL
13 NOR PERMIT THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE
14 PRODUCTS WITHOUT FIRST HAVING REGISTERED WITH THE DIVISION. A
15 RETAILER SHALL REGISTER WITH THE DIVISION ANNUALLY.

16 (b) IF A RETAILER FAILS TO REGISTER PURSUANT TO THIS SECTION,
17 THE DIVISION MAY IMPOSE A FINE AGAINST THE RETAILER IN AN AMOUNT
18 OF FIVE HUNDRED DOLLARS PER RETAIL LOCATION. IF A RETAILER
19 PREVIOUSLY REGISTERED BUT FAILS TO REREGISTER, THE DIVISION MAY
20 IMPOSE A FINE AGAINST THE RETAILER IN AN AMOUNT OF TWENTY-FIVE
21 DOLLARS PER RETAIL LOCATION. THE DIVISION SHALL TRANSFER ANY
22 FINES COLLECTED PURSUANT TO THIS SECTION TO THE STATE TREASURER
23 FOR DEPOSIT INTO THE GENERAL FUND.

24 (2) THE DIVISION SHALL DEVELOP AN ONLINE REGISTRATION FORM
25 AND POST IT CONSPICUOUSLY ON THE DIVISION'S WEBSITE. THE ONLINE
26 REGISTRATION FORM MUST ALLOW A RETAILER TO REGISTER MULTIPLE
27 LOCATIONS AT ONCE.

1 (3) THE DIVISION MAY PROMULGATE RULES AS NECESSARY TO
2 IMPLEMENT THIS SECTION.

3 **SECTION 3.** In Colorado Revised Statutes, 24-35-505, **amend**
4 (1), (2) (a), (3), and (4) as follows:

5 **24-35-505. Hearings.** (1) Subject to the limitations contained in
6 section 24-35-506, the division, on its own motion or on a complaint from
7 another governmental agency responsible for the enforcement of laws
8 relating to the prohibition of the sale of cigarettes, tobacco products, or
9 nicotine products to minors, has the power to penalize retailers for
10 ~~violations~~ A VIOLATION of section 24-35-503 OR 24-35-503.5.

11 (2) (a) A retailer accused of violating section 24-35-503 ~~shall be~~
12 OR 24-35-503.5 IS entitled to written notice of the time and place of the
13 hearing personally delivered to the retailer at the actual retail location or
14 mailed to the retailer at the last known address as shown by the records
15 of the department. The retailer ~~is also entitled to~~ MAY be represented by
16 counsel, ~~to~~ present evidence, and ~~to~~ cross-examine witnesses.

17 (3) A hearing pursuant to this section shall be conducted at a
18 location designated by the division before a hearing officer. The hearing
19 officer ~~shall have the power to~~ MAY administer oaths and issue subpoenas
20 to require the presence of persons and the production of documents
21 relating to any alleged violation of section 24-35-503 OR 24-35-503.5.

22 (4) (a) If the hearing officer finds, by a preponderance of the
23 evidence, that the retailer violated section 24-35-503, the hearing officer
24 may issue a written order or levy a fine against the retailer, subject to ~~the~~
25 ~~provisions of~~ THE PENALTY LIMITS SET FORTH IN section 24-35-506.

26 (b) IF THE HEARING OFFICER FINDS, BY A PREPONDERANCE OF THE
27 EVIDENCE, THAT THE RETAILER VIOLATED SECTION 24-35-503.5, THE

1 HEARING OFFICER MAY ISSUE A WRITTEN ORDER OR LEVY A FINE AGAINST
2 THE RETAILER, SUBJECT TO THE PENALTY LIMITS SET FORTH IN SECTION
3 24-35-503.5 (1) (b).

4 **SECTION 4.** In Colorado Revised Statutes, 24-35-506, **amend**
5 (1) as follows:

6 **24-35-506. Limitation on fines.** (1) For a violation of section
7 24-35-503 (1) or (4), the penalty ~~shall be~~ IS as follows:

8 (a) A written warning for a first violation committed within a
9 twenty-four-month period;

10 (b) A fine of ~~two hundred fifty~~ FIVE HUNDRED dollars for a second
11 violation within a twenty-four-month period;

12 (c) A fine of ~~five hundred~~ ONE THOUSAND dollars for a third
13 violation within a twenty-four-month period;

14 (d) A fine of ~~one~~ TWO thousand dollars for a fourth violation
15 within a twenty-four-month period; and

16 (e) A fine of between ~~one~~ TWO thousand dollars and fifteen
17 thousand dollars for a fifth or subsequent violation within a
18 twenty-four-month period.

19 **SECTION 5.** In Colorado Revised Statutes, 39-22-623, **amend**
20 (1) (a) (II) (A) and (1) (c); **repeal** (1) (e); and **add** (1) (g) as follows:

21 **39-22-623. Disposition of collections - definitions.** (1) The
22 proceeds of all ~~moneys~~ MONEY collected under this article, less the
23 reserve retained for refunds, shall be credited as follows:

24 (a) (II) (A) Effective July 1, 1987, an amount equal to
25 twenty-seven percent of the gross state cigarette AND OTHER TOBACCO
26 PRODUCT tax shall be apportioned to incorporated cities and incorporated
27 towns ~~which~~ THAT levy taxes and adopt formal budgets and to counties.

1 For the purposes of this section, a city and county ~~shall be~~ IS considered
2 as a city. The city or town share shall be apportioned according to the
3 percentage of state sales tax revenues collected by the department of
4 revenue in an incorporated city or town as compared to the total state
5 sales tax collections that may be allocated to all political subdivisions in
6 the state; the county share ~~shall be~~ IS the same as that which the
7 percentage of state sales tax revenues collected in the unincorporated area
8 of the county bears to total state sales tax revenues ~~which~~ THAT may be
9 allocated to all political subdivisions in the state. The department of
10 revenue shall certify to the state treasurer, at least annually, the
11 percentage for allocation to each city, town, and county, and such
12 percentage for allocation so certified shall be applied by ~~said~~ THE
13 department in all distributions to cities, towns, and counties until changed
14 by certification to the state treasurer. In order to qualify for distributions
15 of state income tax ~~moneys~~ MONEY, units of local government are
16 prohibited from imposing fees, licenses, or taxes on any person as a
17 condition for engaging in the business of selling cigarettes, TOBACCO
18 PRODUCTS, OR NICOTINE PRODUCTS OR ANY COMBINATION THEREOF, or
19 from attempting in any manner to impose a tax on cigarettes, TOBACCO
20 PRODUCTS, NICOTINE PRODUCTS, OR ANY COMBINATION THEREOF. For
21 purposes of this paragraph (a), the "gross state cigarette AND OTHER
22 TOBACCO PRODUCT tax" means the total tax before the discount provided
23 for in section 39-28-104 (1).

24 (c) Distribution to each city, town, and county shall be made
25 monthly, no later than the fifteenth day of the second successive month
26 after the month for which cigarette OR OTHER TOBACCO PRODUCT tax
27 collections are made, commencing in October 1973.

1 (e) ~~Where, prior to July 1, 1973, a city or town has pledged the~~
2 ~~proceeds of all or a portion of its local cigarette, tax or tax on the~~
3 ~~occupation of selling cigarettes, for the payment of bonds or other~~
4 ~~obligations, the city or town shall pledge or place in trust an equivalent~~
5 ~~amount from its share of the proceeds of the state cigarette, tax for the~~
6 ~~payment of such bonds or other obligations.~~

7 (g) AS USED IN THIS SECTION, "CIGARETTE, TOBACCO PRODUCT, OR
8 NICOTINE PRODUCT" HAS THE SAME MEANING AS SET FORTH IN SECTION
9 18-13-121 (5), C.R.S.

10 **SECTION 6.** In Colorado Revised Statutes, 39-28.5-107, **amend**
11 (1) as follows:

12 **39-28.5-107. When credit may be obtained for tax paid.**

13 (1) Where tobacco products, upon which the tax imposed by this article
14 has been reported and paid, are shipped or transported by the distributor
15 to retailers without the state to be sold by those retailers, are shipped or
16 transported by the distributor to a consumer without the state on or after
17 September 1, 2015, ~~but prior to September 1, 2018~~, or are returned to the
18 manufacturer by the distributor or destroyed by the distributor, credit of
19 ~~such~~ THE tax may be made to the distributor in accordance with
20 regulations prescribed by the department.

21 **SECTION 7. Act subject to petition - effective date -**

22 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
23 the expiration of the ninety-day period after final adjournment of the
24 general assembly (August 10, 2016, if adjournment sine die is on May 11,
25 2016); except that, if a referendum petition is filed pursuant to section 1
26 (3) of article V of the state constitution against this act or an item, section,
27 or part of this act within such period, then the act, item, section, or part

1 will not take effect unless approved by the people at the general election
2 to be held in November 2016 and, in such case, will take effect on the
3 date of the official declaration of the vote thereon by the governor.

4 (2) This act applies to offenses committed, fines levied,
5 distributions made, and taxes credited on or after the applicable effective
6 date of this act.