

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0217.01 Ed DeCecco x4216

SENATE BILL 18-139

SENATE SPONSORSHIP

Cooke,

HOUSE SPONSORSHIP

Singer,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING STATEWIDE REGULATION OF PRODUCTS THAT CONTAIN
102 NICOTINE.

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://leg.colorado.gov>.)

Sections 2 through 4 of the bill establish a licensure requirement for retailers who sell cigarettes, tobacco products, or nicotine products (products). Beginning January 1, 2019, it is illegal for any person doing business in the state to sell or offer for sale products without first obtaining a license as a retailer from the division of liquor enforcement in the department of revenue (division). A retailer with more than one

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

location is required to have a separate license for each location.

The division will establish the license application and is required to grant a license to an applicant if it meets the statutory requirements. There is no fee for a license and the license is valid until it is surrendered or revoked. A retailer is required to conspicuously display the license. **Section 1** permits money that is appropriated to the division from the tobacco education programs fund to be used for the licensure of retailers, and it increases the required annual appropriation from the fund from \$300,000 to \$1 million.

Section 6 prohibits an entity from receiving a grant for tobacco education, prevention, and cessation if any money would be used to:

- ! Advocate for a local government to impose a license requirement, fee, or tax on a retailer or impose a tax on tobacco products in any manner; or
- ! Support a statewide ballot measure that would impose a local license requirement, fee, or tax on a retailer or impose any type of tax on cigarettes or tobacco products.

An entity is likewise prohibited from using a grant award to supplant other money that is in turn used for these prohibited purposes. Any prior grant that was to be used for these prohibited purposes must instead be used for tobacco education, prevention, or cessation.

Under current law, an amount equal to 27% of gross cigarette sales are distributed to cities and counties in the state, but to be eligible for this distribution a city and county must not impose a fee, license, or tax on any person as a condition for engaging in the business of selling cigarettes or impose a tax on cigarettes. **Section 8** expands the condition for receiving state money to include the same prohibitions for other tobacco products and nicotine products and it establishes another condition that a local government must not ban any person from selling cigarettes, other tobacco products, or nicotine products for any period of time.

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)(B) as follows:

4 **24-22-117. Tobacco tax cash fund - accounts - creation -**
5 **legislative declaration.** (2) There are 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 in the tobacco education programs fund shall be annually

1 appropriated by the general assembly as follows:

2 (B) ~~Up to three hundred fifty thousand~~ ONE MILLION dollars to the
3 division of liquor enforcement in the department of revenue for the
4 purpose of enforcing laws relating to the sale of tobacco to minors,
5 INCLUDING THE LICENSURE OF RETAILERS UNDER SECTION 24-35-502.5.

6 **SECTION 2.** In Colorado Revised Statutes, 24-35-501, **add** (3)
7 as follows:

8 **24-35-501. Legislative declaration.** (3) (a) THE GENERAL
9 ASSEMBLY FURTHER FINDS AND DECLARES THAT:

10 (I) THE STATE CONSTITUTION AND STATE LAW HAVE REQUIRED
11 AND ENCOURAGED THE DEVELOPMENT OF EFFECTIVE EVIDENCE-BASED
12 PREVENTION AND CESSATION STRATEGIES;

13 (II) COLORADO RETAILERS HAVE DEMONSTRATED A COMPLIANCE
14 RATE OF AGE-OF-SALES VERIFICATION THAT HAS SECURED FEDERAL
15 COMMUNITY GRANT DOLLARS AND HAVE HAD TO DEMONSTRATE
16 COMPLIANCE AT THE FEDERAL, STATE, AND LOCAL LEVELS; AND

17 (III) FOR THE PAST SEVERAL DECADES, THE STATE HAS
18 EFFECTIVELY REGULATED THE WHOLESALE DISTRIBUTION OF CIGARETTES
19 AND TOBACCO PRODUCTS THROUGH A STATEWIDE LICENSING PROGRAM.
20 IT HAS ALSO DISCOURAGED CITIES AND COUNTIES FROM REGULATING
21 CIGARETTES IN ANY MANNER BY MAKING ELIGIBILITY FOR A PORTION OF
22 REVENUE ATTRIBUTABLE TO STATE CIGARETTE TAXES CONTINGENT ON
23 THE LOCAL GOVERNMENTS NOT ADOPTING ANY TAXES, FEES, OR LICENSES
24 ON THE SALE OF CIGARETTES. STATE AGENCIES UPON THEIR OWN
25 INITIATIVE, HOWEVER, HAVE PROVIDED GRANTS OF MONEY FROM
26 AMENDMENT 35 WITH THE EXPLICIT INSTRUCTION THAT LOCAL
27 GOVERNMENTS ADOPT NONUNIFORM AND VARYING LEVELS OF LOCAL

1 LICENSURE. THIS HAS CREATED A UNNECESSARY BURDEN ON THE RETAIL
2 COMMUNITY. TO AVOID PIECEMEAL LOCAL LICENSING AND UNNECESSARY
3 BURDENS ON RETAILERS, IT IS NECESSARY FOR THE STATE TO FORMALLY
4 ESTABLISH A SINGLE, STATE-WIDE REGULATORY SYSTEM.

5 (b) NOW, THEREFORE, THE GENERAL ASSEMBLY DETERMINES THAT
6 REGULATION OF CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE
7 PRODUCTS THROUGH UNIFORM STATE LICENSURE OF RETAILERS IS A
8 MATTER OF STATEWIDE CONCERN.

9 **SECTION 3.** In Colorado Revised Statutes, 24-35-502, **add** (4.5)
10 as follows:

11 **24-35-502. Definitions.** As used in this part 5, unless the context
12 otherwise requires:

13 (4.5) "LICENSE" MEANS A LICENSE ISSUED BY THE DIVISION IN
14 ACCORDANCE WITH SECTION 24-35-502.5.

15 **SECTION 4.** In Colorado Revised Statutes, **add** 24-35-502.5 as
16 follows:

17 **24-35-502.5. Licensing of retailers - rules.** (1) ON AND AFTER
18 JANUARY 1, 2019, A PERSON DOING BUSINESS IN THIS STATE SHALL NOT
19 SELL OR OFFER FOR SALE IN THIS STATE CIGARETTES, TOBACCO PRODUCTS,
20 OR NICOTINE PRODUCTS, WITHOUT FIRST OBTAINING A LICENSE AS A
21 RETAILER FROM THE DIVISION.

22 (2)(a) AN APPLICANT FOR A LICENSE MUST FILE WITH THE DIVISION
23 AN APPLICATION THAT IS IN A FORM AND MANNER PRESCRIBED BY THE
24 DIVISION, WHICH MUST INCLUDE A STATEMENT THAT THE APPLICATION IS
25 SIGNED UNDER OATH AND UNDER THE PENALTY OF PERJURY IN THE
26 SECOND DEGREE, AS DEFINED IN SECTION 18-8-503, AND ANY OTHER
27 INFORMATION REQUIRED BY THE DIVISION. THE DIVISION SHALL ISSUE A

1 LICENSE TO AN APPLICANT IF THE APPLICATION IS IN PROPER FORM, HAS
2 BEEN ACCEPTED FOR FILING, AND MEETS THE OTHER CONDITIONS AND
3 REQUIREMENTS OF THIS SECTION. A LICENSE IS VALID UNTIL IT IS
4 SURRENDERED BY THE RETAILER OR REVOKED BY THE DIVISION.

5 (b) THE DIVISION SHALL NOT CHARGE A RETAILER A FEE TO OBTAIN
6 A LICENSE.

7 (c) THE DIVISION SHALL NOT ISSUE A LICENSE UNLESS THE
8 RETAILER HAS A CURRENT LICENSE ISSUED PURSUANT TO SECTION
9 39-26-103. THE DIVISION MAY REFUSE TO ISSUE A LICENSE IF THE DIVISION
10 FINDS, AFTER AFFORDING THE APPLICANT DUE NOTICE AND AN
11 OPPORTUNITY TO BE HEARD, THAT THE APPLICATION:

12 (I) WAS FILED BY ANY PERSON WHOSE LICENSE FOR THE LOCATION
13 IS CURRENTLY REVOKED;

14 (II) CONTAINS ANY MISREPRESENTATION, MISSTATEMENT, OR
15 OMISSION OF MATERIAL INFORMATION REQUIRED BY THE APPLICATION; OR

16 (III) WAS FILED BY SOME PERSON OTHER THAN THE REAL PERSON
17 IN INTEREST WHOSE LICENSE HAS BEEN PREVIOUSLY SUSPENDED OR
18 REVOKED BY THE DIVISION.

19 (3) A RETAILER SHALL CONSPICUOUSLY DISPLAY ITS LICENSE IN
20 THE ESTABLISHED PLACE OF BUSINESS OF THE LICENSEE. A RETAILER THAT
21 HAS MORE THAN ONE LOCATION SHALL OBTAIN A SEPARATE LICENSE FOR
22 EACH LOCATION AND DISPLAY THE APPROPRIATE LICENSE AT EACH
23 LOCATION.

24 (4) (a) WHEN A PERSON CEASES TO BE A RETAILER BY REASON OF
25 DISCONTINUANCE, SALE, OR TRANSFER OF THE PERSON'S BUSINESS AT ANY
26 LOCATION, THE PERSON SHALL NOTIFY THE DIVISION IN WRITING AT THE
27 TIME THE DISCONTINUANCE, SALE, OR TRANSFER TAKES EFFECT. THE

1 NOTICE MUST STATE THE DATE OF DISCONTINUANCE AND, IN THE EVENT OF
2 SALE OR TRANSFER, THE NAME AND ADDRESS OF THE PURCHASER OR
3 TRANSFEREE.

4 (b) THE DIVISION MAY ESTABLISH RULES TO ALLOW A LICENSE TO
5 BE TRANSFERRED AND MAY ALLOW A LICENSE TO BE TRANSFERRED IN
6 ACCORDANCE WITH THOSE RULES.

7 (5) (a) ANY PERSON DOING BUSINESS IN THIS STATE WHO, ON OR
8 AFTER APRIL 1, 2019, SELLS OR OFFERS FOR SALE IN THIS STATE
9 CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, WITHOUT
10 FIRST OBTAINING A LICENSE IS SUBJECT TO A CIVIL FINE OF ONE THOUSAND
11 DOLLARS PER VIOLATION.

12 (b) THE DIVISION IS AUTHORIZED TO WAIVE, FOR GOOD CAUSE
13 SHOWN, ANY CIVIL PENALTY ASSESSED PURSUANT TO THIS SUBSECTION (5).

14 (c) THE STATE TREASURER SHALL CREDIT ALL MONEY COLLECTED
15 IN ACCORDANCE WITH THIS SUBSECTION (5) TO THE CIGARETTE, TOBACCO
16 PRODUCT, AND NICOTINE PRODUCT USE BY MINORS PREVENTION FUND
17 CREATED IN SECTION 24-35-507.

18 (6) UPON A HEARING OFFICER'S FINDING IN ACCORDANCE WITH
19 SECTION 24-35-505 OF A FIFTH OR SUBSEQUENT VIOLATION OF ANY
20 PROVISION OF SECTION 24-35-503, THE DIVISION MAY REVOKE OR SUSPEND
21 A RETAILER'S LICENSE. IF A HEARING OFFICER'S FINDINGS ARE APPEALED,
22 THEN THE DIVISION SHALL NOT REVOKE OR SUSPEND A RETAILER'S LICENSE
23 UNTIL THE VIOLATION HAS BEEN UPHOLD ON FINAL APPEAL. IF A RETAILER
24 HAS MORE THAN ONE LOCATION, THEN VIOLATIONS ARE LOCATION
25 SPECIFIC, AND THE DIVISION MAY NOT REPEAL A LICENSE FOR ONE
26 LOCATION BASED ON VIOLATIONS AT ANOTHER LOCATION. IF A LICENSE IS
27 REVOKED AT A LOCATION, THEN THE DIVISION SHALL NOT ISSUE A NEW

1 LICENSE FOR THE PERSON AT THE SAME LOCATION FOR ONE YEAR AFTER
2 THE DATE OF THE REVOCATION.

3 (7) THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE
4 MONEY FROM THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN
5 SECTION 24-22-117 AND THE CIGARETTE, TOBACCO PRODUCT, AND
6 NICOTINE PRODUCT USE BY MINORS PREVENTION FUND CREATED IN
7 SECTION 24-35-507 TO THE DIVISION FOR ITS COSTS IN ADMINISTERING
8 THIS SECTION. THE AMOUNT APPROPRIATED FROM THE CIGARETTE,
9 TOBACCO PRODUCT, AND NICOTINE PRODUCT USE BY MINORS PREVENTION
10 FUND IS LIMITED TO THE AMOUNT DEPOSITED INTO THE CASH FUND IN
11 ACCORDANCE WITH SUBSECTION (5)(a) OF THIS SECTION.

12 **SECTION 5.** In Colorado Revised Statutes, 25-3.5-802, **add** (4)
13 as follows:

14 **25-3.5-802. Legislative declaration.** (4) THE GENERAL
15 ASSEMBLY ALSO FINDS THAT MONEY THAT IS EXPRESSLY ALLOCATED IN
16 THE CONSTITUTION FOR TOBACCO EDUCATION, PREVENTION, AND
17 CESSATION PROGRAMS SHOULD NOT BE USED FOR POLITICAL ADVOCACY,
18 INCLUDING THE SUPPORT OF A BALLOT INITIATIVE, AND THE GENERAL
19 ASSEMBLY DOES NOT INTEND FOR ANY MONEY FROM THE PROGRAMS BE
20 USED FOR SUCH PURPOSES.

21 **SECTION 6.** In Colorado Revised Statutes, 24-3.5-805, **add** (7)
22 as follows:

23 **25-3.5-805. Tobacco education, prevention, and cessation**
24 **programs - requirements - definitions.** (7) (a) AN ENTITY IS INELIGIBLE
25 FOR A GRANT PURSUANT TO THIS PART 8 IF ANY MONEY FROM THE GRANT
26 WOULD BE USED TO:

27 (I) ADVOCATE FOR A LOCAL GOVERNMENT TO IMPOSE A LICENSE

1 REQUIREMENT, FEE, OR TAX ON A RETAILER OR IMPOSE A TAX ON
2 CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS IN ANY
3 MANNER; OR

4 (II) SUPPORT A STATEWIDE BALLOT MEASURE THAT WOULD IMPOSE
5 A LOCAL LICENSE REQUIREMENT, FEE, OR TAX ON A RETAILER OR IMPOSE
6 ANY TYPE OF TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE
7 PRODUCTS.

8 (b) A GRANTEE SHALL NOT USE ANY MONEY AWARDED PURSUANT
9 TO THIS PART 8 TO SUPPLANT OTHER FUNDS THAT ARE IN TURN USED FOR
10 A PURPOSE PROHIBITED BY SUBSECTION (7)(a) OF THIS SECTION.

11 (c) IF, PRIOR TO THE ENACTMENT OF THIS SUBSECTION (7), A
12 GRANTEE WAS PERMITTED OR REQUIRED TO USE A GRANT FOR A PURPOSE
13 PROHIBITED BY SUBSECTION (7)(a) OF THIS SECTION, THEN THE GRANTEE
14 SHALL INSTEAD USE THE GRANT FOR A TOBACCO EDUCATION, PREVENTION,
15 OR CESSATION PROGRAM THAT PROVIDES A SERVICE DESCRIBED IN
16 SUBSECTION (1) OF THIS SECTION.

17 (d) AS USED IN THIS SECTION, "RETAILER" MEANS A BUSINESS OF
18 ANY KIND AT A SPECIFIC LOCATION THAT SELLS CIGARETTES, TOBACCO
19 PRODUCTS, OR NICOTINE PRODUCTS.

20 **SECTION 7.** In Colorado Revised Statutes, 25-3.5-806, **add**
21 (1)(d) as follows:

22 **25-3.5-806. Tobacco education, prevention, and cessation**
23 **programs - reporting requirements.** (1) In adopting rules specifying
24 the reporting requirements for entities that receive grants pursuant to this
25 part 8, the state board shall ensure that such reports, at a minimum,
26 include:

27 (d) A STATEMENT ATTESTING THAT THE ENTITY DID NOT USE

1 MONEY IN VIOLATION OF SECTION 25-3.5-805 (7).

2 **SECTION 8.** In Colorado Revised Statutes, 39-22-623, **amend**
3 (1) introductory portion and (1)(a)(II)(A) as follows:

4 **39-22-623. Disposition of collections - definition.** (1) The
5 proceeds of all ~~moneys~~ MONEY collected under this ~~article~~ ARTICLE 22,
6 less the reserve retained for refunds, ~~shall be~~ IS credited as follows:

7 (a) (II) (A) Effective July 1, 1987, an amount equal to
8 twenty-seven percent of the gross state cigarette tax ~~shall be~~ IS
9 apportioned to incorporated cities and incorporated towns which levy
10 taxes and adopt formal budgets and to counties. For the purposes of this
11 section, a city and county shall be considered as a city. The city or town
12 share ~~shall be~~ IS apportioned according to the percentage of state sales tax
13 revenues collected by the department of revenue in an incorporated city
14 or town as compared to the total state sales tax collections that may be
15 allocated to all political subdivisions in the state; the county share ~~shall~~
16 ~~be~~ IS the same as that which the percentage of state sales tax revenues
17 collected in the unincorporated area of the county bears to total state sales
18 tax revenues which may be allocated to all political subdivisions in the
19 state. The department of revenue shall certify to the state treasurer, at
20 least annually, the percentage for allocation to each city, town, and
21 county, and ~~such~~ THE DEPARTMENT SHALL APPLY THE percentage for
22 allocation so certified ~~shall be applied by said department~~ in all
23 distributions to cities, towns, and counties until changed by certification
24 to the state treasurer. In order to qualify for distributions of state income
25 tax ~~moneys~~ MONEY, units of local government are prohibited from
26 imposing fees, licenses, or taxes on any person as a condition for
27 engaging in the business of selling cigarettes, OTHER TOBACCO PRODUCTS,

1 OR NICOTINE PRODUCTS; BANNING ANY PERSON FROM SELLING
2 CIGARETTES, OTHER TOBACCO PRODUCTS, OR NICOTINE PRODUCTS FOR
3 ANY PERIOD OF TIME; or from attempting in any manner to impose a tax
4 on cigarettes, OTHER TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. For
5 purposes of this ~~paragraph (a)~~ SUBSECTION (1)(a), the "gross state
6 cigarette tax" means the total tax before the discount provided for in
7 section 39-28-104 (1).

8 **SECTION 9. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2018 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.