

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0396.01 Esther van Mourik x4215

HOUSE BILL 21-1163

HOUSE SPONSORSHIP

Neville and Snyder,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs & Labor
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORITY OF A RETAILER TO ADVERTISE THAT IT**
102 **WILL ABSORB SALES OR USE TAX ON PURCHASES MADE BY**
103 **CONSUMERS.**

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>.)

The bill allows a retailer to advertise, directly or indirectly, or imply, that the retailer will absorb or pay any or all sales or use tax on purchases of tangible personal property or services sold.

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 39-26-108 as
3 follows:

4 **39-26-108. Tax may be absorbed.** (1) (a) ~~It is unlawful for~~ Any
5 retailer ~~to~~ MAY advertise, ~~or~~ hold out, or state to the public or to any
6 customer, directly or indirectly, that the tax or any part thereof imposed
7 by this part 1 will be assumed or absorbed by the retailer or that ~~it will not~~
8 ~~be added to the selling price of the property sold or if added that it or~~ THE
9 TAX OR any part thereof ADDED TO THE PURCHASE PRICE OF THE TANGIBLE
10 PERSONAL PROPERTY OR SERVICES SOLD will be refunded, ~~Any person~~
11 ~~violating any of the provisions of sections 39-26-105 to 39-26-113 is~~
12 ~~guilty of a misdemeanor~~ SO LONG AS:

13 (I) THE RETAILER SEPARATELY STATES BOTH THE PURCHASE PRICE
14 OF THE TANGIBLE PERSONAL PROPERTY OR SERVICES SOLD AND THE FULL
15 AMOUNT OF TAX IMPOSED BY THIS PART 1; AND

16 (II) FOR EACH SALE FOR WHICH THE RETAILER ASSUMES OR
17 ABSORBS ALL OR ANY PART OF THE TAX IMPOSED BY THIS PART 1, THE
18 RETAILER REMITS TO THE DEPARTMENT OF REVENUE THE FULL AMOUNT OF
19 THE TAX WITH THE RETURN THAT COVERS THE PERIOD IN WHICH THE
20 RETAILER COMPLETED THE SALE OR TRANSACTION.

21 (b) NOTWITHSTANDING ANY SECTION IN THIS PART 1 TO THE
22 CONTRARY, IF A RETAILER AVAILS ITSELF OF THIS SECTION AND ASSUMES
23 OR ABSORBS ALL OR ANY PART OF THE TAX IMPOSED BY THIS PART 1, THE
24 RETAILER IS NOT REQUIRED TO COLLECT THE TAX FROM THE CUSTOMER,
25 BUT IS REQUIRED TO REMIT THE TAX AS SPECIFIED IN SUBSECTION (1)(a)(II)
26 OF THIS SECTION.

27 **SECTION 2.** In Colorado Revised Statutes, 39-26-106, **amend**

1 (2) as follows:

2 **39-26-106. Schedule of sales tax.** (2) (a) Except as provided in
3 ~~paragraph (b) of this subsection (2)~~ SECTION 39-26-108 (1), retailers shall
4 add the tax imposed, or the average equivalent thereof, to the sale price
5 or charge, showing such tax as a separate and distinct item, and when
6 added such tax shall constitute a part of such price or charge and shall be
7 a debt from the consumer or user to the retailer until paid and shall be
8 recoverable at law in the same manner as other debts. The retailer shall
9 be entitled, as collecting agent of the state, to apply and credit the amount
10 of the retailer's collections against the rate to be paid by the retailer under
11 ~~the provisions of section 39-26-105~~, remitting any excess of collections
12 over said rate, less the fee retained by the retailer for the collection and
13 remittance of the tax pursuant to said section, to the executive director of
14 the department of revenue in the retailer's next monthly sales tax return.

15 (b) Any retailer selling malt, vinous, or spirituous liquors by the
16 drink or any vendor selling individual items of personal property through
17 coin-operated vending machines may include in his OR HER sales price the
18 tax levied under this part 1. ~~except that no such retailer shall advertise or~~
19 ~~hold out to the public in any manner, directly or indirectly, that such tax~~
20 ~~is not included as a part of the sales price to the consumer.~~ The schedule
21 set forth in subsection (1) of this section shall be used by such retailer in
22 determining amounts to be included in such sales price. No such retailer
23 shall gain any benefit from the collection or payment of such tax, except
24 as permitted in section 39-26-105 (1), nor shall the use of the schedule set
25 forth in subsection (1) of this section relieve such retailer from liability
26 for payment of the full amount of the tax levied by this part 1.

27 **SECTION 3.** In Colorado Revised Statutes, 39-26-111, **amend**

1 (1) as follows:

2 **39-26-111. Credit sales.** (1) In case of a sale upon credit, or a
3 contract for sale wherein it is provided that the price shall be paid in
4 installments and title does not pass until a future date, or a chattel
5 mortgage or a conditional sale, there shall be paid upon each payment,
6 upon the account of purchase price, that portion of the total tax which the
7 amount paid bears in the total purchase price. Notwithstanding any other
8 provision of this subsection (1), a retailer doing business wholly or partly
9 on a credit basis may, at his OR HER election, make a return, and remit
10 sales tax on credit sales, on the basis of the aggregate amount of cash
11 received during the month from taxable credit sales. The retailer may
12 determine the tax to be remitted on the basis of his OR HER reasonable
13 estimate of the aggregate amount of tax ~~which~~ THAT he OR SHE has
14 collected from his OR HER credit customers during the month, IF NOT
15 ABSORBING OR OTHERWISE PAYING THE TAX ON BEHALF OF A CONSUMER
16 PURSUANT TO SECTION 39-26-108. A retailer's estimate of the taxes
17 collected OR PAID on credit sales made in any month (referred to in this
18 section as "base month") shall be deemed reasonable if the cumulative
19 sum of the monthly amounts of taxes on such credit sales remitted by the
20 retailer on or before the close of the third, sixth, ninth, twelfth, and
21 fifteenth calendar months following the base month is not less than
22 twenty-five percent, forty-three and seventy-five one-hundredths percent,
23 sixty-two and five-tenths percent, eighty-one and twenty-five
24 one-hundredths percent, and one hundred percent, respectively, of the
25 total taxes due on the aggregate credit sales made by the retailer in the
26 base month. In no event, however, shall the amount of taxes remitted by
27 the retailer in any month be less than the amount which the retailer

1 actually estimates to have been collected in that month.

2 **SECTION 4.** In Colorado Revised Statutes, 39-26-204, **amend**
3 (2)(a) and (3) as follows:

4 **39-26-204. Periodic return - collection - repeal.** (2) (a) Every
5 retailer, except those retailers described in subsection (2)(b) of this
6 section, doing business in this state and making sales of tangible personal
7 property for storage, use, or consumption in the state, and not exempted
8 as provided in part 7 of this article 26, at the time of making such sales or
9 taking the orders therefor, or, if the storage, use, or consumption of such
10 tangible personal property is not then taxable under this part 2, then at the
11 time such storage, use, or consumption becomes taxable under this part
12 2, and sourced as provided in section 39-26-104 (3), shall, EXCEPT AS
13 OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, collect the tax
14 imposed by section 39-26-202, from the purchaser and give to the
15 purchaser a receipt therefor, which receipt shall identify the property, the
16 date sold or the date ordered, and the tax collected and paid. The tax
17 required to be collected by such retailer from such purchaser shall be
18 displayed separately from the advertised price listed on the forms or
19 advertising matter on all sales checks, orders, sales slips, or other proof
20 of sales.

21 (3) (a) ~~It is unlawful for such~~ A retailer or agent ~~to~~ MAY advertise
22 or hold out or state to the public or to any customer, directly or indirectly,
23 that the tax or any part thereof will be assumed or absorbed by such
24 retailer or agent, or that ~~it will not be added to the selling price of the~~
25 ~~property sold, or, if added, that it or~~ THE TAX OR any part thereof ADDED
26 TO THE PURCHASE PRICE OF THE TANGIBLE PERSONAL PROPERTY OR
27 SERVICE SOLD will be refunded, SO LONG AS:

1 (I) THE RETAILER SEPARATELY STATES BOTH THE PURCHASE PRICE
2 OF THE TANGIBLE PERSONAL PROPERTY OR SERVICES SOLD AND THE FULL
3 AMOUNT OF TAX IMPOSED ON THE TANGIBLE PERSONAL PROPERTY OR
4 SERVICES; AND

5 (II) FOR EACH SALE FOR WHICH THE RETAILER ASSUMES OR
6 ABSORBS ALL OR ANY PART OF THE TAX, THE RETAILER REMITS TO THE
7 DEPARTMENT OF REVENUE THE FULL AMOUNT OF THE TAX WITH THE
8 RETURN THAT COVERS THE PERIOD IN WHICH THE RETAILER COMPLETED
9 THE SALE OR TRANSACTION.

10 (b) The tax required to be collected OR PAID by such retailer or
11 agent shall be remitted to the state in like manner as otherwise provided
12 in this ~~article~~ ARTICLE 26 for the remittance of sales taxes collected OR
13 PAID by retailers, and all such retailers or agents collecting OR PAYING the
14 tax imposed by section 39-26-202 shall make returns on forms provided
15 by the executive director at such times and in such manner as is provided
16 for the making of returns in the payment of the sales taxes. The procedure
17 for assessing and collecting said taxes from such retailers or agents, or
18 from the user when not paid to OR BY a retailer or agent, shall be the same
19 as provided in this ~~article~~ ARTICLE 26 and article 21 of this ~~title~~ TITLE 39
20 for the collection of sales taxes, including collection by distraint warrant,
21 and said taxes due and owing from any retailer or agent for the storage,
22 use, or consumption of tangible personal property shall bear interest and
23 be subject to the same penalties as is provided in this ~~article~~ ARTICLE 26
24 and article 21 of this ~~title~~ TITLE 39 for nonpayment or delinquencies of
25 sales taxes.

26 **SECTION 5. Act subject to petition - effective date -**
27 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following

1 the expiration of the ninety-day period after final adjournment of the
2 general assembly; except that, if a referendum petition is filed pursuant
3 to section 1 (3) of article V of the state constitution against this act or an
4 item, section, or part of this act within such period, then the act, item,
5 section, or part will not take effect unless approved by the people at the
6 general election to be held in November 2022 and, in such case, will take
7 effect on the date of the official declaration of the vote thereon by the
8 governor.

9 (2) This act applies to filing periods beginning on or after January
10 1, 2022.