

HB23-1015 be amended as follows:

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

30 ~~(2)~~ (6) "Distributor" means every person who:

31 (a) First receives tobacco products in this state;

32 (b) Sells tobacco products in this state and is primarily liable for
33 the tobacco products tax on such products;

34 (c) First sells or offers for sale in this state tobacco products
35 imported into this state from any other state or country; or

36 (d) Is a delivery seller.

37 ~~(3)~~ (7) (a) "Manufacturer's list price" means, EXCEPT AS PROVIDED
38 IN SUBSECTIONS (7)(b) AND (7)(c) OF THIS SECTION, the invoice price for
39 which a manufacturer or supplier sells a tobacco product to a distributor
40 OR REMOTE RETAIL SELLER exclusive of any discount or other reduction.

1 IN THE CASE OF CIGARS AND PIPE TOBACCO, "MANUFACTURER'S LIST
2 PRICE" IS ALSO KNOWN AS THE ACQUISITION COST.

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

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

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

26 ~~(3.7)~~ (9) "Moist snuff" means any finely cut, ground, or powdered
27 tobacco that is not intended to be smoked but does not include any finely
28 cut, ground, or powdered tobacco that is intended to be placed in the nasal
29 cavity.

30 (10) (a) "REMOTE RETAIL SALE" MEANS THE SALE OF CIGARS OR
31 PIPE TOBACCO TO A CONSUMER IN THIS STATE WHEN:

32 (I) THE CONSUMER SUBMITS AN ORDER FOR THE CIGARS OR PIPE
33 TOBACCO TO A REMOTE RETAIL SELLER FOR SALE BY MEANS OTHER THAN
34 AN OVER-THE-COUNTER SALE ON THE REMOTE RETAIL SELLER'S PREMISES,
35 INCLUDING, BUT NOT LIMITED TO, TELEPHONE OR OTHER VOICE
36 TRANSMISSION, THE MAIL OR OTHER DELIVERY SERVICE, OR THE INTERNET
37 OR OTHER ONLINE SERVICE; AND

38 (II) THE CIGARS OR PIPE TOBACCO ARE DELIVERED TO THE
39 CONSUMER BY USE OF A COMMON CARRIER, PRIVATE DELIVERY SERVICE,
40 MAIL, OR ANY OTHER MEANS OF REMOTE DELIVERY, OR WHEN THE REMOTE
41 RETAIL SELLER IS NOT IN THE PHYSICAL PRESENCE OF THE CONSUMER
42 WHEN THE CONSUMER OBTAINS POSSESSION OF THE CIGARS OR PIPE
43 TOBACCO.

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

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

5 ~~(4)~~ (12) "Sale" means any transfer, exchange, or barter, in any
6 manner or by any means whatsoever, for a consideration, including all
7 sales made by any person. The term includes:

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

11 (b) A delivery sale; AND

12 (c) A REMOTE RETAIL SALE.

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

16 ~~(5)~~ (14) "Tobacco products" means cigars, cheroots, stogies,
17 periques, granulated, plug cut, crimp cut, ready rubbed, and other
18 smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco,
19 fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings,
20 cuttings and sweepings of tobacco and other kinds and forms of tobacco,
21 prepared in such manner as to be suitable for chewing or for smoking in
22 a pipe or otherwise, or both for chewing and smoking, but does not
23 include cigarettes ~~which~~ THAT are taxed separately pursuant to article 28
24 of this ~~title~~ TITLE 39.

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

27 **39-28.5-102. Tax levied.** (4) (a) The tax set forth in this section
28 is collected by the department. ~~and is imposed at the time the distributor:~~

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

31 ~~(a)~~ (I) Brings, or causes to be brought, into this state from without
32 the state tobacco products for sale;

33 ~~(b)~~ (II) Makes, manufactures, or fabricates tobacco products in
34 this state for sale in this state;

35 ~~(c)~~ (III) Ships or transports tobacco products to retailers in this
36 state to be sold by those retailers; or

37 ~~(d)~~ (IV) Makes a delivery sale.

38 ~~(bc)~~ IN THE CASE OF A REMOTE RETAIL SELLER, THE TAX SET FORTH
39 IN THIS SECTION IS IMPOSTED AT THE TIME THE REMOTE RETAIL SELLER
40 MAKES A REMOTE RETAIL SALE.

41 **SECTION 3.** In Colorado Revised Statutes, **amend**
42 39-28.5-102.5 as follows:

43 **39-28.5-102.5. Tax levied - state constitution.** Pursuant to

1 section 21 of article X of the state constitution, there is levied, in addition
2 to the tax levied pursuant to section 39-28.5-102, a tax on the sale, use,
3 consumption, handling, or distribution of tobacco products by distributors
4 AND REMOTE RETAIL SELLERS, at a rate of twenty percent of the
5 manufacturer's list price. The tax shall be paid to and collected by the
6 department. The tax shall be imposed in the same manner as the tax
7 described in section 39-28.5-102.

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

10 **39-28.5-104. Licensing required - rules - fines.** (1) It is
11 unlawful for any person to engage in the business of a distributor of
12 tobacco products at any place of business OR TO MAKE DELIVERY OR
13 REMOTE RETAIL SALES without first obtaining a license granted and issued
14 by the department, which license shall be in effect until June 30 following
15 the date of issue, unless sooner revoked. IN THE CASE OF A DISTRIBUTOR
16 LOCATED IN THIS STATE, such license shall be granted only to a person
17 who owns or operates the place from which the person engages in the
18 business of a distributor of tobacco products, and, if such business is
19 operated in two or more separate places IN THIS STATE by any such
20 person, a separate license for each place of business shall be required.
21 Such license shall be renewed only upon timely application and payment
22 of the required fee prior to expiration. Such licenses may be transferred
23 in the discretion of and pursuant to the rules adopted by the department.
24 The fee for a license shall be ten dollars per year, and such fee shall be
25 credited to the general fund. Such fee shall be reduced at the rate of two
26 dollars and fifty cents for each expired quarter of the license year. The
27 department shall, on reasonable notice and after a hearing, suspend or
28 revoke the license of any person violating any provision of this ~~article~~
29 ARTICLE 28.5, and no license shall be issued to such person within a
30 period of two years thereafter. The department may share information on
31 the names and addresses of persons who purchased tobacco products for
32 resale with the department of public health and environment and county
33 and district public health agencies. The department shall refuse to issue
34 a new or renewal distributor OR REMOTE RETAIL SELLER license, and shall
35 revoke a distributor's OR REMOTE RETAIL SELLER'S license, if the
36 distributor OR REMOTE RETAIL SELLER owes the state any delinquent taxes
37 administered by the department or interest thereon pursuant to this ~~title~~
38 TITLE 39 that have been determined by law to be due and unpaid, unless
39 the distributor OR REMOTE RETAIL SELLER has entered into an agreement
40 approved by the department to pay the amount due. The department shall
41 only issue a new or renewal distributor OR REMOTE RETAIL SELLER license
42 to a distributor OR REMOTE RETAIL SELLER that has a current license issued
43 pursuant to section 39-26-103.

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

3 **39-28.5-105. Books and records to be preserved.** (5) EVERY
4 REMOTE RETAIL SELLER SHALL KEEP COMPLETE AND ACCURATE RECORDS
5 NECESSARY FOR THE DETERMINATION OF THE CORRECT TAX LIABILITY,
6 INCLUDING ITEMIZED INVOICES TO VALIDATE THE ACTUAL COSTS PAID BY
7 THE REMOTE RETAIL SELLER FOR ALL CIGARS AND PIPE TOBACCO OFFERED
8 IN REMOTE RETAIL SALES TO THE CONSUMER WITHIN THIS STATE.

9 **SECTION 6.** In Colorado Revised Statutes, 39-28.5-106, **amend**
10 (1), (2), and (4)(a) as follows:

11 **39-28.5-106. Returns and remittance of tax - civil penalty.**

12 (1) Every distributor AND REMOTE RETAIL SELLER shall file a return with
13 the department each quarter. The return, which shall be upon forms
14 prescribed and furnished by the department, shall contain, among other
15 things, the total amount of tobacco products purchased by the distributor
16 OR REMOTE RETAIL SELLER during the preceding quarter and the tax due
17 thereon.

18 (2) Every distributor AND REMOTE RETAIL SELLER shall file a
19 return with the department by the twentieth day of the month following
20 the month reported and shall therewith remit the amount of tax due, less
21 three and one-third percent of any sum so remitted that consists of tax
22 collected after July 1, 2005, but before January 1, 2021, and less one and
23 six-tenths percent of any sum so remitted that consists of tax collected on
24 or after January 1, 2021, to cover the distributor's OR REMOTE RETAIL
25 SELLER'S expense in the collection and remittance of said tax; except that
26 no part of the tax imposed pursuant to section 39-28.5-102.5 and section
27 21 of article X of the state constitution shall be subject to the discount
28 provided for in this subsection (2). If any distributor OR REMOTE RETAIL
29 SELLER is delinquent in remitting said tax, other than in unusual
30 circumstances shown to the satisfaction of the executive director of the
31 department, the distributor OR REMOTE RETAIL SELLER shall not be
32 allowed to retain any amounts to cover his or her expense in collecting
33 and remitting said tax, and in addition the penalty imposed under section
34 39-28.5-110 (2)(b) shall apply.

35 (4) (a) Any person, firm, limited liability company, partnership,
36 or corporation, other than a distributor OR REMOTE RETAIL SELLER, in
37 possession of tobacco products for which taxes have not otherwise been
38 remitted pursuant to this section shall be liable and responsible for the
39 uncollected tax that is levied pursuant to section 39-28.5-102 and section
40 21 of article X of the state constitution on behalf of the distributor OR
41 REMOTE RETAIL SELLER who failed to pay the tax. The person or entity
42 shall make the payment to the department within thirty days of first taking
43 possession of the tobacco product. The department shall establish a form

1 to be used for remittance of the payment. The department shall remit the
2 proceeds it receives pursuant to this ~~paragraph (a)~~ SUBSECTION (4)(a) to
3 the state treasurer for distribution as follows:

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

6 **39-28.5-107. When credit may be obtained for tax paid.**

7 (2) (a) Credit shall be given by the department to a distributor OR
8 REMOTE RETAIL SELLER for all taxes levied pursuant to this ~~article~~
9 ARTICLE 28.5 and section 21 of article X of the state constitution and paid
10 pursuant to the provisions of this ~~article~~ ARTICLE 28.5 that are bad debts.
11 Such credit shall offset taxes levied pursuant to this ~~article~~ ARTICLE 28.5
12 and section 21 of article X of the state constitution and paid pursuant to
13 the provisions of this ~~article~~ ARTICLE 28.5 only. No credit shall be given
14 unless the bad debt has been charged off as uncollectible on the books of
15 the distributor OR REMOTE RETAIL SELLER. Subsequent to receiving the
16 credit, if the distributor OR REMOTE RETAIL SELLER receives a payment for
17 the bad debt, the distributor OR REMOTE RETAIL SELLER shall be liable to
18 the department for the amount received and shall remit this amount in the
19 next payment to the department under section 39-28.5-106.

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

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

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

28 (c) If credit is given to a distributor OR REMOTE RETAIL SELLER for
29 a bad debt, the person who ordered and received the tobacco products but
30 did not pay the distributor OR REMOTE RETAIL SELLER for them shall be
31 liable in an amount equal to the credit for the tax imposed in this ~~article~~
32 ARTICLE 28.5 on the tobacco products. Subsequent to receiving the credit,
33 if the distributor OR REMOTE RETAIL SELLER receives a payment for the
34 bad debt and the distributor OR REMOTE RETAIL SELLER makes a payment
35 to the department, the amount of taxes owed by such person shall be
36 reduced by the amount paid to the department.

37 (d) As used in this subsection (2), "bad debt" means the taxes
38 attributable to any portion of a debt that is related to a sale of tobacco
39 products subject to tax under this ~~article~~ ARTICLE 28.5, that is not
40 otherwise deductible or excludable, that has become worthless or
41 uncollectible in the time after the tax has been paid pursuant to section
42 39-28.5-106, and that is eligible to be claimed as a deduction pursuant to
43 section 166 of the federal "Internal Revenue Code of 1986", as amended.

1 A bad debt shall not include any interest on the wholesale price of
2 tobacco products, uncollectible amounts on property that remain in the
3 possession of the distributor OR REMOTE RETAIL SELLER until the full
4 purchase price is paid, expenses incurred in attempting to collect any
5 account receivable or any portion of the debt recovered, an account
6 receivable that has been sold to a third party for collection, or repossessed
7 property.

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

10 **39-28.5-110. Prohibited acts - penalties.** (1) It is unlawful for
11 any ~~distributor~~ PERSON to sell and distribute any tobacco products in this
12 state without a license as required in section 39-28.5-104, or to willfully
13 make any false or fraudulent return or false statement on any return, or to
14 willfully evade the payment of the tax, or any part thereof, as imposed by
15 this ~~article~~ ARTICLE 28.5. Any distributor, REMOTE RETAIL SELLER, or
16 agent thereof who willfully violates any provision of this ~~article~~ ARTICLE
17 28.5 shall be punished as provided by section 39-21-118.

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

20 **39-28.5-112. List of licensed distributors and remote retail**
21 **sellers - published on website.** ~~On or before December 31, 2009,~~ The
22 department shall publish on its website a list of the names and addresses
23 of all licensed distributors AND REMOTE RETAIL SELLERS. The list shall be
24 updated within seven days of any changes to the list.

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

27 **39-28.6-102. Definitions.** As used in this article 28.6, unless the
28 context otherwise requires:

29 (5) (a) "Manufacturer's list price" means, EXCEPT AS PROVIDED IN
30 SUBSECTIONS (5)(b) AND (5)(c) OF THIS SECTION, the invoice price for
31 which a manufacturer or supplier sells a nicotine product to a distributor
32 exclusive of any discount or other reduction.

33 (b) FOR A DELIVERY SELLER, IF DETERMINING THE INVOICE PRICE
34 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION IS IMPRACTICABLE,
35 THEN "MANUFACTURER'S LIST PRICE" MEANS THE AVERAGE OF THE
36 ACTUAL PRICE PAID, EXCLUSIVE OF ANY REBATES OR DISCOUNTS APPLIED,
37 FOR THE NICOTINE PRODUCT'S STOCK KEEPING UNIT DURING THE
38 PRECEDING CALENDAR YEAR. THE DEPARTMENT MAY, BY WRITTEN NOTICE
39 TO THE DELIVERY SELLER, PROSPECTIVELY REQUIRE A DELIVERY SELLER
40 TO CALCULATE THE TAX ON THE INVOICE PRICE IF THE DEPARTMENT FINDS
41 THAT THE DELIVERY SELLER'S USE OF THE AVERAGE PRICE PAID WAS FOR
42 THE PURPOSE OF AVOIDING TAX.

43 (c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER OR A

1 RETAILER, AND WHO SELLS NICOTINE PRODUCTS EXCLUSIVELY TO
2 CONSUMERS AND NOT TO SUPPLIERS OR DISTRIBUTORS, "MANUFACTURER'S
3 LIST PRICE" MEANS THE MANUFACTURER'S COST TO MANUFACTURE THE
4 NICOTINE PRODUCT, WHICH INCLUDES THE MANUFACTURING OVERHEAD
5 AND THE COST OF ALL DIRECT MATERIALS AND DIRECT LABOR USED.

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

11 (b) Tobacco products, as defined in section ~~39-28.5-101 (5)~~
12 39-28.5-101 (14); or

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

15 **18-8-204. Introducing contraband in the second degree -**
16 **definition.** (2) As used in this section, "contraband" means any of the
17 following, but does not include any article or thing referred to in section
18 18-8-203:

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

22 **SECTION 12. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly; except
25 that, if a referendum petition is filed pursuant to section 1 (3) of article V
26 of the state constitution against this act or an item, section, or part of this
27 act within such period, then the act, item, section, or part will not take
28 effect unless approved by the people at the general election to be held in
29 November 2024 and, in such case, will take effect on the date of the
30 official declaration of the vote thereon by the governor."

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