

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 22-0152.01 Jason Gelender x4330

SENATE BILL 22-032

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Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

Business Affairs & Labor
Appropriations

HOUSE
3rd Reading Unamended
April 4, 2022

A BILL FOR AN ACT

101 **CONCERNING SIMPLIFICATION OF LOCAL SALES AND USE TAX**
102 **COMPLIANCE AND ADMINISTRATION FOR RETAILERS THAT MAKE**
103 **RETAIL SALES IN LOCAL TAXING JURISDICTIONS WHERE THEY**
104 **HAVE LIMITED PHYSICAL PRESENCE, AND, IN CONNECTION**
105 **THEREWITH, MAKING AN APPROPRIATION.**

HOUSE
2nd Reading Unamended
April 1, 2022

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/>.)

SENATE
3rd Reading Unamended
March 7, 2022

Sales and Use Tax Simplification Task Force. In order to enable the streamlining of the imposition, collection, and administration of sales

SENATE
Amended 2nd Reading
March 4, 2022

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.

and use taxes imposed by local taxing jurisdictions on retail sales made by retailers that have a state standard retail license and either do not have physical presence in a local taxing jurisdiction or have only incidental physical presence in a local taxing jurisdiction through the streamlining of application requirements for and elimination of fees for local general business licenses, the bill requires the department of revenue (department) to require sufficient information to be collected from such a retailer, when the retailer applies for or renews a state standard retail business license through the state's electronic sales and use tax simplification system (SUTS) or by other means or at any other time to the extent necessary, and made available to local taxing jurisdictions to ensure that concerns of local taxing jurisdictions, including but not limited to concerns relating to administrative efficiency, retailer compliance, and collection of sales and use tax revenue are addressed. The department is required to consult with local taxing jurisdictions when determining what information to collect and how to make the information collected available to local taxing jurisdictions and making and testing modifications. The department is also required to consult with retailers and to address any reasonable concerns they may have. The department is required to accomplish these tasks expeditiously so that no later than July 1, 2023, and sooner if feasible, a retailer that has a state standard retail license and either does not have physical presence within a local taxing jurisdiction or has only incidental physical presence can make retail sales within the local taxing jurisdiction without having to obtain a general business license from the local taxing jurisdiction.

On and after July 1, 2022, a local taxing jurisdiction is prohibited from charging a fee for a local general business license to a retailer that has a state standard retail license, makes retail sales within the local taxing jurisdiction, and either does not have physical presence within the local taxing jurisdiction or has only incidental physical presence within the local taxing jurisdiction. On and after July 1, 2023, a local taxing jurisdiction is prohibited from requiring such a retailer to apply separately to the local taxing jurisdiction for a general business license. A local taxing jurisdiction must automatically issue a general business license to such a retailer unless the local taxing jurisdiction has previously revoked a general business license held by the retailer for a violation of its local code.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 39-26-802.9 as
3 follows:

4 **39-26-802.9. Retailers without physical presence or with only**

1 **incidental physical presence in local taxing jurisdictions - streamlined**
2 **application process and no fee for local general business license -**
3 **legislative declaration - definitions. (1) THE GENERAL ASSEMBLY**

4 HEREBY FINDS AND DECLARES THAT:

5 (a) LICENSING OF RETAILERS THAT ARE SUBJECT TO PAYMENT OF
6 SALES AND USE TAXES IN ONE OR MORE LOCAL TAXING JURISDICTIONS BUT
7 EITHER DO NOT HAVE PHYSICAL PRESENCE IN OR HAVE ONLY INCIDENTAL
8 PHYSICAL PRESENCE IN THOSE LOCAL TAXING JURISDICTIONS IS A MATTER
9 OF STATEWIDE CONCERN;

10 (b) THE STATE'S ELECTRONIC TAX ADMINISTRATION
11 INFRASTRUCTURE, INCLUDING THE ELECTRONIC SALES AND USE TAX
12 SIMPLIFICATION SYSTEM CREATED AND BROUGHT ONLINE PURSUANT TO
13 SECTION 39-26-802.7 AND COMMONLY KNOWN AS SUTS, CAN BE USED TO
14 MAKE THE IMPOSITION, COLLECTION, AND ADMINISTRATION OF LOCAL
15 SALES AND USE TAXES COLLECTED BY RETAILERS THAT EITHER DO NOT
16 HAVE PHYSICAL PRESENCE OR HAVE ONLY INCIDENTAL PHYSICAL
17 PRESENCE IN THE LOCAL TAXING JURISDICTIONS IMPOSING THE TAXES
18 SIMPLER AND MORE EFFICIENT SO LONG AS:

19 (I) EACH LOCAL TAXING JURISDICTION IS REQUIRED TO GRANT A
20 GENERAL BUSINESS LICENSE, FREE OF CHARGE, TO ANY RETAILER THAT
21 HAS A STATE STANDARD RETAIL LICENSE AND EITHER DOES NOT HAVE
22 PHYSICAL PRESENCE OR HAS ONLY INCIDENTAL PHYSICAL PRESENCE
23 WITHIN THE LOCAL TAXING JURISDICTION SO LONG AS THE LOCAL TAXING
24 JURISDICTION HAS NOT PREVIOUSLY REVOKED THE RETAILER'S GENERAL
25 BUSINESS LICENSE DUE TO THE RETAILER'S FAILURE TO COMPLY WITH THE
26 LOCAL TAXING JURISDICTION'S REQUIREMENTS FOR HOLDING A GENERAL
27 BUSINESS LICENSE; AND

1 (II) SUFFICIENT INFORMATION ABOUT ANY SUCH RETAILER IS
2 COLLECTED WHEN THE RETAILER APPLIES FOR A STATE STANDARD RETAIL
3 LICENSE TO ADDRESS ANY LOCAL TAXING JURISDICTION CONCERNS,
4 INCLUDING BUT NOT LIMITED TO CONCERNS RELATING TO ADMINISTRATIVE
5 EFFICIENCY, RETAILER COMPLIANCE, AND COLLECTION OF SALES AND USE
6 TAX REVENUE;

7 (c) BECAUSE IT IS IMPORTANT TO ENSURE THAT THE CONCERNS OF
8 LOCAL TAXING JURISDICTIONS ARE ADDRESSED, IT IS NECESSARY AND
9 APPROPRIATE TO REQUIRE THE DEPARTMENT OF REVENUE TO CONSULT
10 WITH LOCAL TAXING JURISDICTIONS WHEN MODIFYING APPLICATION
11 REQUIREMENTS FOR THE STATE STANDARD RETAIL LICENSE AS REQUIRED
12 BY THIS SECTION; AND

13 (d) IT IS APPROPRIATE TO ELIMINATE THE COST OF A GENERAL
14 BUSINESS LICENSE TO A RETAILER THAT HAS A STATE STANDARD RETAIL
15 LICENSE AND EITHER DOES NOT HAVE PHYSICAL PRESENCE IN A LOCAL
16 TAXING JURISDICTION OR HAS ONLY INCIDENTAL PHYSICAL PRESENCE
17 WITHIN THE LOCAL TAXING JURISDICTION BY PROHIBITING A LOCAL
18 TAXING JURISDICTION FROM CHARGING A FEE FOR A GENERAL BUSINESS
19 LICENSE TO SUCH A RETAILER UNTIL SUCH TIME AS THE LOCAL TAXING
20 JURISDICTION IS REQUIRED TO ALLOW ANY SUCH RETAILER TO MAKE
21 RETAIL SALES WITHIN THE LOCAL TAXING JURISDICTION WITHOUT
22 APPLYING SEPARATELY TO THE LOCAL TAXING JURISDICTION FOR A
23 GENERAL BUSINESS LICENSE.

24 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
25 REQUIRES:

26 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

27 (b) "GENERAL BUSINESS LICENSE" MEANS A LICENSE ISSUED BY A

1 LOCAL TAXING JURISDICTION THAT A RETAILER MUST OBTAIN TO LEGALLY
2 MAKE RETAIL SALES IN THE LOCAL TAXING JURISDICTION REGARDLESS OF
3 WHETHER THE LICENSE IS CALLED A BUSINESS LICENSE, A SALES AND USE
4 TAX LICENSE, OR BY ANOTHER NAME. AN OCCUPATIONAL LICENSE OR ANY
5 OTHER LICENSE REQUIRED TO ENGAGE IN A BUSINESS ACTIVITY OTHER
6 THAN MAKING RETAIL SALES OF GOODS IS NOT A GENERAL BUSINESS
7 LICENSE.

8 (c) "INCIDENTAL PHYSICAL PRESENCE" MEANS, WITH RESPECT TO
9 A LOCAL TAXING JURISDICTION, PHYSICAL PRESENCE AS DESCRIBED IN
10 SUBSECTION (2)(e)(I)(B), (2)(e)(I)(C), OR (2)(e)(I)(E) OF THIS SECTION, OR
11 ANY COMBINATION OF SAID SUBSECTIONS, WITHIN THE LOCAL TAXING
12 JURISDICTION THAT OCCURS INFREQUENTLY AND IS NOT REGULARLY
13 SCHEDULED WITHIN THE ORDINARY COURSE OF AN INDIVIDUAL OR
14 ENTITY'S BUSINESS ACTIVITIES.

15 (d) "LOCAL TAXING JURISDICTION" HAS THE MEANING SET FORTH
16 IN SECTION 39-26-802.7 (1)(b).

17 (e) (I) "PHYSICAL PRESENCE" MEANS, WITH RESPECT TO A LOCAL
18 TAXING JURISDICTION, PERFORMING OR PROVIDING SERVICES OR SELLING,
19 LEASING, RENTING, DELIVERING, OR INSTALLING TANGIBLE PERSONAL
20 PROPERTY FOR STORAGE, USE, OR CONSUMPTION WITHIN THE LOCAL
21 TAXING JURISDICTION. PHYSICAL PRESENCE INCLUDES ANY OF THE
22 FOLLOWING ACTIVITIES:

23 (A) DIRECTLY OR INDIRECTLY BY A SUBSIDIARY MAINTAINING A
24 BUILDING, STORE, OFFICE, SALESROOM, WAREHOUSE, OR OTHER PLACE OF
25 BUSINESS WITHIN THE LOCAL JURISDICTION;

26 (B) SENDING ONE OR MORE EMPLOYEES, AGENTS, OR
27 COMMISSIONED SALESPERSONS INTO THE LOCAL JURISDICTION TO SOLICIT

1 BUSINESS, TO INSTALL, ASSEMBLE, REPAIR, SERVICE, OR ASSIST IN THE USE
2 OF ITS PRODUCTS, OR FOR DEMONSTRATION OR OTHER REASONS;

3 (C) MAINTAINING ONE OR MORE EMPLOYEES, AGENTS, OR
4 COMMISSIONED SALESPERSONS ON DUTY AT A LOCATION WITHIN THE
5 LOCAL TAXING JURISDICTION;

6 (D) OWNING, LEASING, RENTING, OR OTHERWISE EXERTING
7 CONTROL OVER REAL OR PERSONAL PROPERTY SALES WITHIN THE LOCAL
8 TAXING JURISDICTION;

9 ==
10 (E) ENGAGING IN ACTIVITIES WITHIN THE TAXING JURISDICTION
11 THAT ARE SUBJECT TO OTHER BUSINESS, FIRE, ZONING, OR OTHER
12 REGULATIONS OF THE LOCAL JURISDICTION; OR

13 (F) BEING SUBJECT TO TAXABLE PRIVILEGES OTHER THAN THE
14 REQUIREMENT TO COLLECT SALES TAX IMPOSED BY THE LOCAL TAXING
15 JURISDICTION.

16 (II) INCIDENTAL PRESENCE BY EMPLOYEES, AGENTS, OR
17 COMMISSIONED SALESPERSONS WITHIN A LOCAL TAXING JURISDICTION
18 WHEN NOT OTHERWISE ENGAGED IN THE ACTIVITIES SET FORTH IN
19 SUBSECTION (2)(e)(I) OF THIS SECTION DOES NOT CONSTITUTE PHYSICAL
20 PRESENCE.

21 (f) "STATE STANDARD RETAIL LICENSE" MEANS A LICENSE ISSUED
22 UNDER SECTION 39-26-103 THAT AUTHORIZES A RETAILER TO MAKE
23 RETAIL SALES IN THE STATE.

24 (g) "SUTS" MEANS THE ELECTRONIC SALES AND USE TAX
25 SIMPLIFICATION SYSTEM CREATED AND BROUGHT ONLINE PURSUANT TO
26 SECTION 39-26-802.7.

27 (3) (a) IN ORDER TO ENABLE THE STREAMLINING OF THE

1 IMPOSITION, COLLECTION, AND ADMINISTRATION OF SALES AND USE TAXES
2 IMPOSED BY LOCAL TAXING JURISDICTIONS ON RETAIL SALES MADE BY
3 RETAILERS THAT HAVE A STATE STANDARD RETAIL LICENSE AND EITHER
4 DO NOT HAVE PHYSICAL PRESENCE WITHIN A LOCAL TAXING JURISDICTION
5 OR HAVE ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN A LOCAL TAXING
6 JURISDICTION BY STREAMLINING THE APPLICATION PROCESS FOR AND
7 ELIMINATING THE EXPENSE OF GENERAL BUSINESS LICENSES FOR SUCH
8 RETAILERS, THE DEPARTMENT OF REVENUE SHALL REQUIRE SUFFICIENT
9 INFORMATION TO BE COLLECTED FROM SUCH A RETAILER, WHEN THE
10 RETAILER APPLIES FOR OR RENEWS A STATE STANDARD RETAIL BUSINESS
11 LICENSE THROUGH SUTS OR BY OTHER MEANS OR AT ANY OTHER TIME TO
12 THE EXTENT NECESSARY, AND MADE AVAILABLE TO LOCAL TAXING
13 JURISDICTIONS TO ENSURE THAT CONCERNS OF LOCAL TAXING
14 JURISDICTIONS, INCLUDING BUT NOT LIMITED TO CONCERNS RELATING TO
15 ADMINISTRATIVE EFFICIENCY, RETAILER COMPLIANCE, AND COLLECTION
16 OF SALES AND USE TAX REVENUE, ARE ADDRESSED. IN DETERMINING WHAT
17 INFORMATION TO COLLECT AND HOW TO MAKE THE INFORMATION
18 COLLECTED AVAILABLE TO LOCAL TAXING JURISDICTIONS AS REQUIRED BY
19 THIS SUBSECTION (3)(a), THE DEPARTMENT SHALL CONSULT WITH LOCAL
20 TAXING JURISDICTIONS, INCLUDING BUT NOT LIMITED TO LARGE, MEDIUM,
21 AND SMALL HOME RULE AND NONHOME RULE MUNICIPALITIES AND LARGE,
22 MEDIUM, AND SMALL COUNTIES. THE DEPARTMENT SHALL ALSO CONSULT
23 WITH RETAILERS TO ADDRESS ANY REASONABLE CONCERNS THEY MAY
24 HAVE.

25 (b) THE DEPARTMENT SHALL ACCOMPLISH THE TASKS SET FORTH
26 IN SUBSECTION (3)(a) OF THIS SECTION EXPEDITIOUSLY SO THAT NO LATER
27 THAN JULY 1, 2023, AND SOONER IF FEASIBLE, A RETAILER THAT HAS A

1 STATE STANDARD RETAIL LICENSE AND EITHER DOES NOT HAVE PHYSICAL
2 PRESENCE WITHIN A LOCAL TAXING JURISDICTION OR HAS ONLY
3 INCIDENTAL PHYSICAL PRESENCE WITHIN A LOCAL TAXING JURISDICTION
4 CAN MAKE RETAIL SALES WITHIN THE LOCAL TAXING JURISDICTION
5 WITHOUT HAVING TO APPLY SEPARATELY TO THE LOCAL TAXING
6 JURISDICTION FOR A GENERAL BUSINESS LICENSE.

7 (4) (a) ON AND AFTER JULY 1, 2022, A LOCAL TAXING
8 JURISDICTION SHALL NOT CHARGE A FEE FOR A GENERAL BUSINESS LICENSE
9 TO A RETAILER THAT HAS A STATE STANDARD RETAIL LICENSE, MAKES
10 RETAIL SALES WITHIN THE LOCAL TAXING JURISDICTION, AND EITHER DOES
11 NOT HAVE PHYSICAL PRESENCE IN THE LOCAL TAXING JURISDICTION OR
12 HAS ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN THE LOCAL TAXING
13 JURISDICTION.

14 (b) ON AND AFTER JULY 1, 2023, A LOCAL TAXING JURISDICTION
15 SHALL NOT REQUIRE A RETAILER THAT HAS A STATE STANDARD RETAIL
16 LICENSE, MAKES RETAIL SALES WITHIN THE LOCAL TAXING JURISDICTION,
17 AND EITHER DOES NOT HAVE PHYSICAL PRESENCE IN THE LOCAL TAXING
18 JURISDICTION TO OR HAS ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN
19 THE LOCAL TAXING JURISDICTION TO APPLY SEPARATELY TO THE LOCAL
20 TAXING JURISDICTION FOR A GENERAL BUSINESS LICENSE. IF THE LOCAL
21 TAXING JURISDICTION REQUIRES A GENERAL BUSINESS LICENSE, IT SHALL
22 AUTOMATICALLY ISSUE A GENERAL BUSINESS LICENSE AT NO CHARGE TO
23 SUCH A RETAILER USING THE INFORMATION PROVIDED BY THE
24 DEPARTMENT PURSUANT TO SUBSECTION (3) OF THIS SECTION; EXCEPT
25 THAT A LOCAL TAXING JURISDICTION IS NOT REQUIRED TO ISSUE A
26 GENERAL BUSINESS LICENSE TO A RETAILER IF THE LOCAL TAXING
27 JURISDICTION HAS PREVIOUSLY REVOKED A GENERAL BUSINESS LICENSE

1 HELD BY THE RETAILER FOR A VIOLATION OF ITS LOCAL CODE. IN
2 ADDITION, NOTHING IN THIS SUBSECTION (4)(b) PROHIBITS A LOCAL
3 TAXING JURISDICTION FROM SUSPENDING OR REVOKING A GENERAL
4 BUSINESS LICENSE FOR A VIOLATION OF ITS LOCAL CODE.

5 **SECTION 2.** In Colorado Revised Statutes, 29-2-106, **amend**
6 (4)(c)(I) and (6) as follows:

7 **29-2-106. Collection - administration - enforcement.**

8 (4) (c) (I) Notwithstanding the provisions of section 39-21-113, ~~C.R.S.~~,
9 the executive director of the department of revenue shall report monthly
10 to each municipality and county for which the department of revenue
11 collects a sales tax information identifying licensed vendors within the
12 municipality or county, INCLUDING THE LICENSING INFORMATION
13 REQUIRED BY SECTION 39-26-802.9 (3), and, where the chief
14 administrative officer or his designee has executed a memorandum of
15 understanding with the department of revenue providing for control of
16 confidential data, the status of each vendor's account including the
17 amount of such municipality's or county's sales tax collected and paid by
18 each such vendor. The executive director of the department may, in his
19 discretion, provide additional information to a municipality or county
20 concerning collection and administration of such municipality's or
21 county's sales tax if such a memorandum has been executed.

22 (6) The executive director of the department of revenue may, in
23 ~~his~~ THE EXECUTIVE DIRECTOR'S discretion, exchange information with the
24 proper official of any home rule city ~~which~~ THAT imposes a sales and use
25 tax relative to gross sales reported, changes in gross sales resulting from
26 audits, and other information concerning licensed vendors MAKING
27 RETAIL SALES within the jurisdiction of the home rule city, INCLUDING

1 THE LICENSING INFORMATION REQUIRED BY SECTION 39-26-802.9 (3).

2 **SECTION 3. Appropriation.** For the 2022-23 state fiscal year,
3 \$2,100 is appropriated to the department of revenue for use by the
4 taxation services division. This appropriation is from the general fund. To
5 implement this act, the department may use this appropriation for
6 personal services.

7 **SECTION 4. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, or safety.