

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

BILL B

LLS NO. 23-0123.02 Pierce Lively x2059

HOUSE BILL

HOUSE SPONSORSHIP

Bird and Woog,

SENATE SPONSORSHIP

Liston, Hansen

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE TAXATION OF TOBACCO PRODUCTS.**

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/>.)

Legislative Oversight Committee Concerning Tax Policy. The bill categorizes the remote sales of certain kinds of tobacco products for purposes of establishing the regulation and taxation of the sales. The bill exempts transactions involving tobacco products other than smokeless tobacco products or roll-your-own tobacco products from the definition of "delivery sale" and instead defines the term "remote retail sale" to include these transactions. The bill then establishes a system for the taxation and licensing of these "remote retail sales" that substantively

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.

mirrors the current system of taxation and licensing for "delivery sales".
The bill also resolves an ambiguity about how the "manufacturer's list price" of a tobacco product is determined for both "delivery sales" and "remote retail sales".

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 39-28.5-101
3 as follows:

4 **39-28.5-101. Definitions.** As used in this article 28.5, unless the
5 context otherwise requires:

6 (1) "CONSUMER" MEANS ANY PERSON WHO HAS TITLE TO OR
7 POSSESSION OF TOBACCO PRODUCTS FOR THE PERSON'S OWN USE OR
8 CONSUMPTION IN THIS STATE AND NOT FOR RESALE.

9 ~~(1)~~ (2) (a) "Delivery sale" means the sale of SMOKELESS OR
10 ROLL-YOUR-OWN tobacco products to a consumer in this state when:

11 ~~(a)~~ (I) The consumer submits an order for the SMOKELESS OR
12 ROLL-YOUR-OWN tobacco products to a delivery seller for sale by means
13 other than an over-the-counter sale on the delivery seller's premises,
14 including, but not limited to, telephone or other voice transmission, the
15 mail or other delivery service, or the internet or other online service; and

16 ~~(b)~~ (II) The SMOKELESS OR ROLL-YOUR-OWN tobacco products are
17 delivered when the seller is not in the physical presence of the consumer
18 when the consumer obtains possession of the tobacco products by use of
19 a common carrier, private delivery service, mail, or any other means.

20 (b) "DELIVERY SALE" DOES NOT INCLUDE TRANSACTIONS
21 INVOLVING ANY TOBACCO PRODUCTS OTHER THAN SMOKELESS TOBACCO
22 PRODUCTS OR ROLL-YOUR-OWN TOBACCO PRODUCTS.

23 ~~(1.2)~~ (3) "Delivery seller" means a person located outside of this

1 state who makes delivery sales OF SMOKELESS OR ROLL-YOUR-OWN
2 TOBACCO PRODUCTS.

3 ~~(1.4)~~ (4) "Department" means the department of revenue.

4 ~~(1.5)~~ (5) "Distributing subcontractor" means every person, firm,
5 limited liability company, partnership, or corporation who purchases
6 tobacco products from a distributor for resale to a retailer in this state.

7 ~~(2)~~ (6) "Distributor" means every person who:

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

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

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

13 (d) Is a delivery seller; OR

14 (e) IS A REMOTE RETAIL SELLER.

15 ~~(3)~~ (7) (a) "Manufacturer's list price" means, EXCEPT AS PROVIDED
16 IN SUBSECTIONS (7)(b) AND (7)(c) OF THIS SECTION, the invoice price for
17 which a manufacturer or supplier sells a tobacco product to a distributor
18 OR REMOTE RETAIL SELLER exclusive of any discount or other reduction.

19 (b) FOR A DELIVERY OR REMOTE RETAIL SELLER, IF DETERMINING
20 THE INVOICE PRICE DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION IS
21 IMPRACTICABLE, THEN "MANUFACTURER'S LIST PRICE" MEANS THE
22 AVERAGE OF THE ACTUAL PRICE PAID FOR THE TOBACCO PRODUCT'S STOCK
23 KEEPING UNIT DURING THE PRECEDING CALENDAR YEAR. THE
24 DEPARTMENT MAY, BY WRITTEN NOTICE TO THE DELIVERY OR REMOTE
25 RETAIL SELLER, PROSPECTIVELY REQUIRE A DELIVERY OR REMOTE RETAIL
26 SELLER TO CALCULATE THE TAX ON THE INVOICE PRICE IF THE
27 DEPARTMENT FINDS THAT THE DELIVERY OR REMOTE RETAIL SELLER'S USE

1 OF THE AVERAGE PRICE PAID WAS FOR THE PURPOSE OF AVOIDING TAX.

2 (c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER, A
3 REMOTE RETAIL SELLER, OR A RETAILER, AND WHO SELLS A TOBACCO
4 PRODUCT EXCLUSIVELY TO CONSUMERS AND NOT TO SUPPLIERS OR
5 DISTRIBUTORS, "MANUFACTURER'S LIST PRICE" MEANS THE
6 MANUFACTURER'S COST TO MANUFACTURE THE TOBACCO PRODUCT,
7 WHICH INCLUDES THE MANUFACTURING OVERHEAD AND THE COST OF ALL
8 DIRECT MATERIALS AND DIRECT LABOR USED.

9 ~~(3.3)~~ (8) "Modified risk tobacco product" means any tobacco
10 product for which the secretary of the United States department of health
11 and human services has issued an order authorizing the product to be
12 commercially marketed as a modified risk tobacco product in accordance
13 with 21 U.S.C. sec. 387k, or any successor section.

14 ~~(3.7)~~ (9) "Moist snuff" means any finely cut, ground, or powdered
15 tobacco that is not intended to be smoked but does not include any finely
16 cut, ground, or powdered tobacco that is intended to be placed in the nasal
17 cavity.

18 (10) (a) "REMOTE RETAIL SALE" MEANS ANY SALE OF CIGARS OR
19 PIPE OR OTHER SMOKING TOBACCO TO A CONSUMER IN THIS STATE WHEN:

20 (I) THE CONSUMER SUBMITS THE ORDER FOR THE SALE BY MEANS
21 OF A METHOD OF VOICE TRANSMISSION, THE MAIL, OR AN ONLINE SERVICE,
22 OR THE SELLER IS OTHERWISE NOT IN THE PHYSICAL PRESENCE OF THE
23 BUYER WHEN MAKING THE REQUEST FOR PURCHASE OR ORDER; OR

24 (II) THE CIGARS OR PIPE OR OTHER SMOKING TOBACCO ARE
25 DELIVERED TO THE BUYER BY COMMON CARRIER, PRIVATE DELIVERY
26 SERVICE, OR OTHER METHOD OF REMOTE DELIVERY, OR THE SELLER IS NOT
27 IN THE PHYSICAL PRESENCE OF THE BUYER WHEN THE BUYER OBTAINS

1 POSSESSION OF THE CIGARS OR PIPE OR OTHER SMOKING TOBACCO.

2 (b) "REMOTE RETAIL SALE" DOES NOT INCLUDE TRANSACTIONS
3 INVOLVING CIGARETTES, SMOKELESS TOBACCO PRODUCTS, OR
4 ROLL-YOUR-OWN TOBACCO PRODUCTS.

5 (11) "REMOTE RETAIL SELLER" MEANS A PERSON LOCATED
6 OUTSIDE OF THIS STATE WHO MAKES REMOTE RETAIL SALES OF CIGARS OR
7 PIPE TOBACCO.

8 (12) "ROLL-YOUR-OWN TOBACCO" MEANS ANY TOBACCO THAT,
9 BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING, OR LABELING, IS
10 SUITABLE FOR USE AND LIKELY TO BE OFFERED TO, OR PURCHASED BY,
11 CONSUMERS AS TOBACCO FOR MAKING CIGARETTES OR FOR USE AS
12 WRAPPERS FOR CIGARETTES OR CIGARS.

13 ~~(4)~~ (13) "Sale" means any transfer, exchange, or barter, in any
14 manner or by any means whatsoever, for a consideration, including all
15 sales made by any person. The term includes:

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

19 (b) A delivery sale; AND

20 (c) A REMOTE RETAIL SALE.

21 (14) "SMOKELESS TOBACCO" MEANS ANY FINELY CUT, GROUND,
22 POWDERED, OR LEAF TOBACCO, OR OTHER PRODUCT CONTAINING
23 TOBACCO, THAT IS INTENDED TO BE PLACED IN THE ORAL OR NASAL
24 CAVITY OR OTHERWISE CONSUMED WITHOUT BEING COMBUSTED.

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

1 ~~(5)~~ (16) "Tobacco products" means cigars, ~~cheroots, stogies,~~
2 ~~periques, granulated, plug cut, crimp cut, ready rubbed, and other~~
3 ~~smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco,~~
4 ~~fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings,~~
5 ~~cuttings and sweepings of tobacco~~ PIPE TOBACCO, SMOKELESS TOBACCO,
6 ROLL-YOUR-OWN TOBACCO, and other kinds and forms of tobacco,
7 prepared in such manner as to be suitable for chewing or for smoking in
8 a pipe or otherwise, or both for chewing and smoking, but does not
9 include cigarettes ~~which~~ THAT are taxed separately pursuant to article 28
10 of this ~~title~~ TITLE 39.

11 **SECTION 2.** In Colorado Revised Statutes, 39-28.5-102, **amend**
12 (4)(c) and (4)(d); and **add** (1.5) and (4)(e) as follows:

13 **39-28.5-102. Tax levied.** (1.5) FOR ALL TOBACCO PRODUCTS
14 SOLD BY REMOTE RETAIL SELLERS, THE TAX RATES DELINEATED IN
15 SUBSECTION (1) OF THIS SECTION APPLY TO:

16 (a) THE ACTUAL PRICE PAID BY A REMOTE RETAIL SELLER FOR A
17 STOCK KEEPING UNIT; OR

18 (b) IF THE ACTUAL PRICE PAID BY A REMOTE RETAIL SELLER IS NOT
19 AVAILABLE, THE AVERAGE OF THE ACTUAL PRICE PAID BY A REMOTE
20 RETAIL SELLER FOR A STOCK KEEPING UNIT DURING THE PRECEDING
21 CALENDAR YEAR. REMOTE RETAIL SELLERS SHALL KEEP ALL RECORDS
22 PRESCRIBED BY THE DEPARTMENT TO ESTABLISH THE VALIDITY OF
23 SUBSECTION (1.5)(a) OF THIS SECTION AND THIS SUBSECTION (1.5)(b) TO
24 THE DEPARTMENT'S SATISFACTION.

25 (4) The tax set forth in this section is collected by the department
26 and is imposed at the time the distributor:

27 (c) Ships or transports tobacco products to retailers in this state to

1 be sold by those retailers; or

2 (d) Makes a delivery sale; OR

3 (e) IS A REMOTE RETAIL SELLER.

4 **SECTION 3.** In Colorado Revised Statutes, **add** 39-28.5-104.7
5 as follows:

6 **39-28.5-104.7. Licensing required of remote retail sellers -**
7 **rules - fines.** IT IS UNLAWFUL FOR ANY PERSON TO ENGAGE IN THE
8 BUSINESS OF MAKING REMOTE RETAIL SALES WITHOUT FIRST OBTAINING
9 A LICENSE GRANTED AND ISSUED BY THE DEPARTMENT, WHICH LICENSE
10 SHALL BE IN EFFECT UNTIL JUNE 30 FOLLOWING THE DATE OF ISSUE,
11 UNLESS SOONER REVOKED. SUCH LICENSE SHALL BE GRANTED ONLY TO A
12 PERSON WHO OWNS OR OPERATES THE PLACE FROM WHICH THE PERSON
13 ENGAGES IN THE BUSINESS OF MAKING REMOTE RETAIL SALES OF CIGARS
14 OR PIPE OR OTHER SMOKING TOBACCO, AND, IF SUCH BUSINESS IS
15 OPERATED UNDER TWO OR MORE SEPARATE FEDERAL EMPLOYER
16 IDENTIFICATION NUMBERS BY ANY SUCH PERSON, A SEPARATE LICENSE FOR
17 EACH FEDERAL EMPLOYER IDENTIFICATION NUMBER SHALL BE REQUIRED.
18 SUCH LICENSE SHALL BE RENEWED ONLY UPON TIMELY APPLICATION AND
19 PAYMENT OF THE REQUIRED FEE PRIOR TO EXPIRATION. SUCH LICENSES
20 MAY BE TRANSFERRED IN THE DISCRETION OF AND PURSUANT TO THE
21 RULES ADOPTED BY THE DEPARTMENT. THE FEE FOR A LICENSE SHALL BE
22 TEN DOLLARS PER YEAR, AND SUCH FEE SHALL BE CREDITED TO THE
23 GENERAL FUND. SUCH FEE SHALL BE REDUCED AT THE RATE OF TWO
24 DOLLARS AND FIFTY CENTS FOR EACH EXPIRED QUARTER OF THE LICENSE
25 YEAR. THE DEPARTMENT SHALL, ON REASONABLE NOTICE AND AFTER A
26 HEARING, SUSPEND OR REVOKE THE LICENSE OF ANY PERSON VIOLATING
27 ANY PROVISION OF THIS ARTICLE 28.5, AND NO LICENSE SHALL BE ISSUED

1 TO SUCH PERSON WITHIN A PERIOD OF TWO YEARS THEREAFTER. THE
2 DEPARTMENT SHALL REFUSE TO ISSUE A NEW OR RENEWAL REMOTE RETAIL
3 SELLERS LICENSE, AND SHALL REVOKE A REMOTE RETAIL SELLER'S
4 LICENSE, IF THE REMOTE RETAIL SELLER OWES THE STATE ANY
5 DELINQUENT TAXES ADMINISTERED BY THE DEPARTMENT OR INTEREST
6 THEREON PURSUANT TO THIS TITLE 39 THAT HAVE BEEN DETERMINED BY
7 LAW TO BE DUE AND UNPAID, UNLESS THE REMOTE RETAIL SELLER HAS
8 ENTERED INTO AN AGREEMENT APPROVED BY THE DEPARTMENT TO PAY
9 THE AMOUNT DUE. THE DEPARTMENT SHALL ONLY ISSUE A NEW OR
10 RENEWAL REMOTE RETAIL SELLER LICENSE TO A REMOTE RETAIL SELLER
11 THAT HAS A CURRENT LICENSE ISSUED PURSUANT TO SECTION 39-26-103.

12 **SECTION 4.** In Colorado Revised Statutes, **add 39-28.5-105.5**
13 as follows:

14 **39-28.5-105.5. Books and records to be preserved.** (1) EVERY
15 REMOTE RETAIL SELLER SHALL KEEP AT EACH LICENSEE COMPLETE AND
16 ACCURATE RECORDS FOR THAT LICENSEE PLACE OF BUSINESS, INCLUDING
17 ITEMIZED INVOICES TO VALIDATE THE ACTUAL COST PAID BY THE REMOTE
18 RETAIL SELLER FOR ALL TOBACCO PRODUCTS OFFERED IN REMOTE RETAIL
19 SALES TO THE ULTIMATE CONSUMER WITHIN THIS STATE.

20 (2) THESE RECORDS SHALL SHOW THE NAMES AND ADDRESSES OF
21 PURCHASERS, THE INVENTORY OF ALL TOBACCO PRODUCTS ON HAND, AND
22 OTHER PERTINENT PAPERS AND DOCUMENTS RELATING TO THE AVERAGE
23 OF THE ACTUAL PRICE PAID BY A REMOTE RETAIL SELLER FOR A STOCK
24 KEEPING UNIT OVER THE YEAR PRECEDING ANY SALE.

25 (3) WHEN A LICENSED REMOTE RETAIL SELLER SELLS EXCLUSIVELY
26 TO THE ULTIMATE CONSUMER WITHIN THIS STATE FROM THE FEDERAL
27 EMPLOYER IDENTIFICATION NUMBER GIVEN IN THE LICENSE, NO INVOICE

1 OF THOSE SALES SHALL BE REQUIRED. ALL BOOKS, RECORDS, AND OTHER
2 PAPERS AND DOCUMENTS REQUIRED BY THIS SECTION TO BE KEPT SHALL
3 BE PRESERVED FOR A PERIOD OF AT LEAST THREE YEARS AFTER THE DATE
4 OF THE DOCUMENTS, UNLESS THE DEPARTMENT, IN WRITING, AUTHORIZES
5 THEIR DESTRUCTION OR DISPOSAL AT AN EARLIER DATE.

6 **SECTION 5.** In Colorado Revised Statutes, **add** 39-28.5-106.5
7 as follows:

8 **39-28.5-106.5. Returns and remittance of tax - civil penalty.**

9 (1) A REMOTE RETAIL SELLER SHALL BE RESPONSIBLE FOR PAYMENT OF
10 THE TAX IMPOSED UNDER SECTION 39-28.5-102.5 ONLY IF THE REMOTE
11 RETAIL SELLER IS DOING BUSINESS IN THIS STATE, AS DEFINED IN SECTION
12 39-26-102 (3).

13 (2) ONCE A REMOTE RETAIL SELLER HAS SATISFIED SUBSECTION (1)
14 OF THIS SECTION, THE REMOTE RETAIL SELLER SHALL FILE A RETURN WITH
15 THE DEPARTMENT EACH QUARTER. THE RETURN, WHICH SHALL BE UPON
16 FORMS PRESCRIBED AND FURNISHED BY THE DEPARTMENT, SHALL
17 CONTAIN, AMONG OTHER THINGS, THE TOTAL AMOUNT OF CIGARS AND PIPE
18 TOBACCO PURCHASED BY THE REMOTE RETAIL SELLER AND SOLD IN A
19 REMOTE RETAIL SALE DURING THE PRECEDING QUARTER AND THE TAX DUE
20 THEREON.

21 (3) ONCE A REMOTE RETAIL SELLER HAS SATISFIED SUBSECTION (1)
22 OF THIS SECTION, THE REMOTE RETAIL SELLER SHALL FILE A RETURN WITH
23 THE DEPARTMENT BY THE TWENTIETH DAY OF THE MONTH FOLLOWING THE
24 MONTH REPORTED AND SHALL THEREWITH REMIT THE AMOUNT OF TAX
25 DUE, LESS ONE AND SIX-TENTHS PERCENT OF ANY SUM SO REMITTED THAT
26 CONSISTS OF TAX COLLECTED ON OR AFTER JANUARY 1, 2021, TO COVER
27 THE REMOTE RETAIL SELLER'S EXPENSE IN THE COLLECTION AND

1 REMITTANCE OF SAID TAX; EXCEPT THAT NO PART OF THE TAX IMPOSED
2 PURSUANT TO SECTION 39-28.5-102.5 AND SECTION 21 OF ARTICLE X OF
3 THE STATE CONSTITUTION SHALL BE SUBJECT TO THE DISCOUNT PROVIDED
4 FOR IN THIS SUBSECTION (3). IF ANY REMOTE RETAIL SELLER IS
5 DELINQUENT IN REMITTING SAID TAX, OTHER THAN IN UNUSUAL
6 CIRCUMSTANCES SHOWN TO THE SATISFACTION OF THE EXECUTIVE
7 DIRECTOR OF THE DEPARTMENT, THE DISTRIBUTOR SHALL NOT BE
8 ALLOWED TO RETAIN ANY AMOUNTS TO COVER HIS OR HER EXPENSE IN
9 COLLECTING AND REMITTING SAID TAX, AND, IN ADDITION, THE PENALTY
10 IMPOSED UNDER SECTION 39-28.5-110 (2)(b) SHALL APPLY.

11 (4) (a) ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,
12 PARTNERSHIP, OR CORPORATION, OTHER THAN A REMOTE RETAIL SELLER,
13 IN POSSESSION OF CIGARS AND PIPE TOBACCO FOR WHICH TAXES HAVE NOT
14 OTHERWISE BEEN REMITTED PURSUANT TO THIS SECTION SHALL BE LIABLE
15 AND RESPONSIBLE FOR THE UNCOLLECTED TAX THAT IS LEVIED PURSUANT
16 TO SECTION 39-28.5-102 AND SECTION 21 OF ARTICLE X OF THE STATE
17 CONSTITUTION ON BEHALF OF THE REMOTE RETAIL SELLER WHO FAILED TO
18 PAY THE TAX. THE PERSON OR ENTITY SHALL MAKE THE PAYMENT TO THE
19 DEPARTMENT WITHIN THIRTY DAYS OF FIRST TAKING POSSESSION OF THE
20 PRODUCT. THE DEPARTMENT SHALL ESTABLISH A FORM TO BE USED FOR
21 REMITTANCE OF THE PAYMENT. THE DEPARTMENT SHALL REMIT THE
22 PROCEEDS IT RECEIVES PURSUANT TO THIS SUBSECTION (4)(a) TO THE
23 STATE TREASURER FOR DISTRIBUTION AS FOLLOWS:

24 (I) FOR ALL MONEY RECEIVED AND COLLECTED IN PAYMENT OF
25 THE TAX IMPOSED PURSUANT TO SECTION 39-28.5-102, FIFTEEN PERCENT
26 SHALL BE CREDITED TO THE TOBACCO TAX ENFORCEMENT CASH FUND
27 CREATED IN SECTION 39-28-107 (1)(b), AND EIGHTY-FIVE PERCENT SHALL

1 BE CREDITED TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF
2 ARTICLE XXIV OF THE STATE CONSTITUTION; AND

3 (II) ALL MONEY RECEIVED AND COLLECTED IN PAYMENT OF THE
4 TAX IMPOSED PURSUANT TO SECTION 39-28.5-102.5 SHALL BE CREDITED
5 TO THE TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117.

6 (b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY IMPOSE
7 A CIVIL PENALTY ON ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,
8 PARTNERSHIP, OR CORPORATION IN POSSESSION OF CIGARS AND PIPE
9 TOBACCO THAT FAILS TO MAKE A PAYMENT REQUIRED PURSUANT TO
10 SUBSECTION (4)(a) OF THIS SECTION OR WHO IS A DISTRIBUTOR BY VIRTUE
11 OF BEING THE FIRST PERSON WHO RECEIVES THE CIGARS AND PIPE
12 TOBACCO IN THIS STATE AND WHO FAILS TO MAKE A PAYMENT REQUIRED
13 PURSUANT TO THIS SECTION IN AN AMOUNT THAT DOES NOT EXCEED FIVE
14 HUNDRED PERCENT OF SUCH PAYMENT. ANY MONEY RECEIVED PURSUANT
15 TO THIS SUBSECTION (4)(b) SHALL BE REMITTED TO THE STATE TREASURER
16 FOR DEPOSIT IN THE TOBACCO TAX ENFORCEMENT CASH FUND CREATED IN
17 SECTION 39-28-107 (1)(b).

18 **SECTION 6.** In Colorado Revised Statutes, 39-28.5-107, **amend**
19 (2)(a) and (2)(d) as follows:

20 **39-28.5-107. When credit may be obtained for tax paid.**

21 (2) (a) Credit shall be given by the department to a distributor for all
22 taxes levied pursuant to this ~~article~~ ARTICLE 28.5 and section 21 of article
23 X of the state constitution and paid pursuant to the provisions of this
24 ~~article~~ ARTICLE 28.5 that are bad debts. Such credit shall offset taxes
25 levied pursuant to this ~~article~~ ARTICLE 28.5 and section 21 of article X of
26 the state constitution and paid pursuant to the provisions of this ~~article~~
27 ARTICLE 28.5 only. No credit shall be given unless the bad debt has been

1 charged off as uncollectible on the books of the distributor. Subsequent
2 to receiving the credit, if the distributor receives a payment for the bad
3 debt, the distributor shall be liable to the department for the amount
4 received and shall remit this amount in the next payment to the
5 department under ~~section 39-28.5-106~~ SECTIONS 39-28.5-106 AND
6 39-28.5-106.5.

7 (d) As used in this subsection (2), "bad debt" means the taxes
8 attributable to any portion of a debt that is related to a sale of tobacco
9 products subject to tax under this ~~article~~ ARTICLE 28.5, that is not
10 otherwise deductible or excludable, that has become worthless or
11 uncollectible in the time after the tax has been paid pursuant to ~~section~~
12 ~~39-28.5-106~~ SECTIONS 39-28.5-106 AND 39-28.5-106.5, and that is
13 eligible to be claimed as a deduction pursuant to section 166 of the
14 federal "Internal Revenue Code of 1986", as amended. A bad debt shall
15 not include any interest on the wholesale price of tobacco products,
16 uncollectible amounts on property that remain in the possession of the
17 distributor until the full purchase price is paid, expenses incurred in
18 attempting to collect any account receivable or any portion of the debt
19 recovered, an account receivable that has been sold to a third party for
20 collection, or repossessed property.

21 **SECTION 7.** In Colorado Revised Statutes, 39-28.5-110, **amend**
22 (2)(b) as follows:

23 **39-28.5-110. Prohibited acts - penalties.** (2) (b) If a person fails
24 to pay the tax in the time allowed in ~~section 39-28.5-106 (2)~~ SECTIONS
25 39-28.5-106 (2) AND 39-28.5-106.5 (3), a penalty equal to ten percent of
26 such tax plus one-half of one percent per month from the date when due,
27 not to exceed eighteen percent in the aggregate, together with interest on

1 such delinquent taxes at the rate computed under section 39-21-110.5,
2 shall apply.

3 **SECTION 8.** In Colorado Revised Statutes, 39-28.6-102, **amend**
4 (5), (7) introductory portion, and (7)(b); and **add** (9) as follows:

5 **39-28.6-102. Definitions.** As used in this article 28.6, unless the
6 context otherwise requires:

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

11 (b) FOR A DELIVERY SELLER, IF DETERMINING THE INVOICE PRICE
12 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION IS IMPRACTICABLE,
13 THEN "MANUFACTURER'S LIST PRICE" MEANS THE AVERAGE OF THE
14 ACTUAL PRICE PAID FOR THE NICOTINE PRODUCT'S STOCK KEEPING UNIT
15 DURING THE PRECEDING CALENDAR YEAR. THE DEPARTMENT MAY, BY
16 WRITTEN NOTICE TO THE DELIVERY SELLER, PROSPECTIVELY REQUIRE A
17 DELIVERY SELLER TO CALCULATE THE TAX ON THE INVOICE PRICE IF THE
18 DEPARTMENT FINDS THAT THE DELIVERY SELLER'S USE OF THE AVERAGE
19 PRICE PAID WAS FOR THE PURPOSE OF AVOIDING TAX.

20 (c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER OR A
21 RETAILER, AND WHO SELLS A NICOTINE PRODUCT EXCLUSIVELY TO
22 CONSUMERS AND NOT TO SUPPLIERS OR DISTRIBUTORS, "MANUFACTURER'S
23 LIST PRICE" MEANS THE MANUFACTURER'S COST TO MANUFACTURE THE
24 NICOTINE PRODUCT, WHICH INCLUDES THE MANUFACTURING OVERHEAD
25 AND THE COST OF ALL DIRECT MATERIALS AND DIRECT LABOR USED.

26 (7) "Nicotine product" means a product IN SOLUTION OR LIQUID
27 FORM that contains nicotine derived from tobacco or created synthetically

1 that is intended for human consumption, whether by vaporizing, chewing,
2 smoking, absorbing, dissolving, inhaling, snorting, sniffing, aerosolizing,
3 or by any other means OF INHALING, and that is not:

4 (b) Tobacco products, as defined in section 39-28.5-101 ~~(5)~~ (16);
5 or

6 (9) "STOCK KEEPING UNIT" MEANS THE UNIQUE IDENTIFIER
7 ASSIGNED BY THE DISTRIBUTOR TO VARIOUS ITEMS IN ORDER TO TRACK
8 INVENTORY.

9 **SECTION 9.** In Colorado Revised Statutes, 18-8-204, **amend**
10 (2)(m) as follows:

11 **18-8-204. Introducing contraband in the second degree -**
12 **definition.** (2) As used in this section, "contraband" means any of the
13 following, but does not include any article or thing referred to in section
14 18-8-203:

15 (m) For purposes of a facility of the department of corrections or
16 any private contract prison, any cigarettes or tobacco products, as defined
17 in section 39-28.5-101 ~~(5)~~ (16);

18 **SECTION 10. Act subject to petition - effective date.** This act
19 takes effect January 1, 2024; except that, if a referendum petition is filed
20 pursuant to section 1 (3) of article V of the state constitution against this
21 act or an item, section, or part of this act within the ninety-day period
22 after final adjournment of the general assembly, then the act, item,
23 section, or part will not take effect unless approved by the people at the
24 general election to be held in November 2024 and, in such case, will take
25 effect January 1, 2024, or on the date of the official declaration of the
26 vote thereon by the governor, whichever is later.