

CHAPTER 71

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 04-1248

BY REPRESENTATIVE(S) Coleman, Rhodes, Vigil, Williams T., Fran gas, Marshall, Mc Gihon, and Roman off;
also SENATOR(S) Takis, Anderson, Taylor, Tupa, and Grossman.

AN ACT**CONCERNING THE DISTRIBUTION OF TOBACCO PRODUCTS.**

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

SECTION 1. 39-28-102, Colorado Revised Statutes, is amended to read:

39-28-102. Licensing of wholesalers - rules - fines - repeal. (1) It is unlawful for any wholesaler to sell or offer for sale in this state cigarettes without first obtaining a license therefor, granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such licenses shall be granted only to such wholesalers who own or operate the places from which such sales are to be made, and, in case sales are made from two or more separate places by any such wholesaler, a separate license for each place of business shall be required. Such licenses shall be ~~renewable~~ RENEWED ONLY upon timely application and payment of the required fee prior to expiration. Renewal applications of such FOR licenses shall include a list of the names, addresses, and Colorado sales tax license numbers issued pursuant to section 39-26-103, C.R.S., of all persons who purchased for resale to others cigarettes from the wholesaler during the twelve-month period immediately preceding the filing of the application ISSUED PURSUANT TO THIS SECTION SHALL INCLUDE IDENTIFYING INFORMATION OF PERSONS WHO PURCHASED CIGARETTES FOR RESALE FROM THE LICENSEE DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE APPLICATION. THE DEPARTMENT SHALL PRESCRIBE BY RULE THE FORM IN WHICH THE INFORMATION SHALL BE SUBMITTED. COLORADO CIGARETTE RETAILERS SHALL SUPPLY THE REQUIRED INFORMATION TO LICENSED WHOLESALERS ON AN ANNUAL BASIS. WHOLESALERS SHALL IMMEDIATELY DISCONTINUE THE SALE OF CIGARETTES TO RETAILERS WHO DO NOT COMPLY WITH THE REQUIREMENTS. Such licenses may be transferred in the discretion of and pursuant to the rules and regulations of ADOPTED BY the department. The license fee shall be ten dollars per year, and such license fees shall be credited to the general fund. Such

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

license fees shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, SUSPEND OR revoke the license of any wholesaler violating any provision of this article, and no license shall be issued to such wholesaler within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased cigarettes for resale with the department of public health and environment and county and district health departments. THE DEPARTMENT SHALL REFUSE TO ISSUE A NEW OR RENEWAL WHOLESALER LICENSE, AND SHALL REVOKE A WHOLESALER'S LICENSE, IF THE WHOLESALER OWES ANY DELINQUENT TAXES OR INTEREST THEREON PURSUANT TO ARTICLES 26, 28, AND 28.5 OF THIS TITLE THAT HAVE BEEN DETERMINED BY LAW TO BE DUE AND UNPAID, UNLESS THE WHOLESALER HAS ENTERED INTO AN AGREEMENT APPROVED BY THE DEPARTMENT TO PAY THE AMOUNT DUE.

(1.5) (a) A WHOLESALER WHO FAILS TO PROVIDE THE INFORMATION REQUIRED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL PAY THE FOLLOWING FINES, WHICH SHALL BE CREDITED TO THE GENERAL FUND:

(I) ONE THOUSAND DOLLARS FOR INFORMATION SUBMITTED WITHIN TWENTY-NINE DAYS AFTER THE DATE IT IS DUE;

(II) FIVE THOUSAND DOLLARS FOR INFORMATION SUBMITTED AFTER TWENTY-NINE DAYS, BUT WITHIN FIFTY-NINE DAYS AFTER THE DATE IT IS DUE;

(III) TEN THOUSAND DOLLARS FOR INFORMATION SUBMITTED AFTER FIFTY-NINE DAYS, BUT WITHIN EIGHTY-NINE DAYS AFTER IT IS DUE; AND

(IV) FIFTEEN THOUSAND DOLLARS FOR INFORMATION SUBMITTED NINETY OR MORE DAYS AFTER THE DATE IT IS DUE, AND AN ADDITIONAL FIFTEEN THOUSAND DOLLARS FOR EACH THIRTY DAYS THEREAFTER UNTIL THE INFORMATION IS SUBMITTED.

(b) THE LIQUOR ENFORCEMENT DIVISION SHALL HAVE THE AUTHORITY TO REVIEW RECORDS TO VERIFY THE INFORMATION SUBMITTED BY WHOLESALERS PURSUANT TO SECTION 39-28-109.

(2) (a) The state auditor shall conduct an audit of the procedure whereby the wholesalers' renewal applications pursuant to this section and the distributors of tobacco products pursuant to section 39-28.5-104 include information on persons who purchase cigarettes or tobacco products for resale to determine the accuracy and completeness of such information. THE AUDIT SHALL ALSO DETERMINE THE DEPARTMENT'S COMPLIANCE WITH FEDERAL REQUIREMENTS REGARDING A STATE ENFORCEMENT PROGRAM DESIGNED TO REDUCE THE AMOUNT OF TOBACCO PRODUCTS SOLD TO MINORS. The audit shall be completed by July 1, ~~2004~~ 2007.

(b) This subsection (2) is repealed, effective July 1, ~~2005~~ 2008.

SECTION 2. 39-28.5-104, Colorado Revised Statutes, is amended to read:

39-28.5-104. Licensing required - rules - fines. (1) It is unlawful for any person to engage in the business of a distributor of tobacco products at any place of business without first obtaining a license granted and issued by the department, which

license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such license shall be granted only to a person who owns or operates the place from which the person engages in the business of a distributor of tobacco products, and, if such business is operated in two or more separate places by any such person, a separate license for each place of business shall be required. Such license shall be ~~renewable~~ RENEWED ONLY upon timely application and payment of the required fee prior to expiration. Renewal applications ~~of such~~ FOR licenses shall include a list of the names, addresses, and Colorado sales tax license numbers issued pursuant to section 39-26-103, of all persons who purchased for resale to others tobacco products from the distributor during the twelve-month period immediately preceding the filing of the application ISSUED PURSUANT TO THIS SECTION SHALL INCLUDE IDENTIFYING INFORMATION OF PERSONS WHO PURCHASED TOBACCO PRODUCTS FOR RESALE FROM THE LICENSEE DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE APPLICATION. THE DEPARTMENT SHALL PRESCRIBE BY RULE THE FORM IN WHICH THE INFORMATION SHALL BE SUBMITTED. COLORADO TOBACCO RETAILERS SHALL SUPPLY THE REQUIRED INFORMATION TO LICENSED DISTRIBUTORS ON AN ANNUAL BASIS. DISTRIBUTORS SHALL IMMEDIATELY DISCONTINUE THE SALE OF TOBACCO PRODUCTS TO RETAILERS WHO DO NOT COMPLY WITH THE REQUIREMENTS. Such licenses may be transferred in the discretion of and pursuant to the rules and regulations of ADOPTED BY the department. The fee for a license shall be ten dollars per year, and such fee shall be credited to the general fund. Such fee shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, SUSPEND OR revoke the license of any person violating any provision of this article, and no license shall be issued to such person within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased tobacco products for resale with the department of public health and environment and county and district health departments. THE DEPARTMENT SHALL REFUSE TO ISSUE A NEW OR RENEWAL DISTRIBUTOR LICENSE, AND SHALL REVOKE A DISTRIBUTOR'S LICENSE, IF THE DISTRIBUTOR OWES ANY DELINQUENT TAXES OR INTEREST THEREON PURSUANT TO ARTICLES 26, 28, AND 28.5 OF THIS TITLE THAT HAVE BEEN DETERMINED BY LAW TO BE DUE AND UNPAID, UNLESS THE DISTRIBUTOR HAS ENTERED INTO AN AGREEMENT APPROVED BY THE DEPARTMENT TO PAY THE AMOUNT DUE.

(2) (a) A DISTRIBUTOR OF TOBACCO PRODUCTS WHO FAILS TO PROVIDE THE INFORMATION REQUIRED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL PAY THE FOLLOWING FINES, WHICH SHALL BE CREDITED TO THE GENERAL FUND:

(I) ONE THOUSAND DOLLARS FOR INFORMATION SUBMITTED WITHIN TWENTY-NINE DAYS AFTER THE DATE IT IS DUE;

(II) FIVE THOUSAND DOLLARS FOR INFORMATION SUBMITTED AFTER TWENTY-NINE DAYS, BUT WITHIN FIFTY-NINE DAYS AFTER THE DATE IT IS DUE;

(III) TEN THOUSAND DOLLARS FOR INFORMATION SUBMITTED AFTER FIFTY-NINE DAYS, BUT WITHIN EIGHTY-NINE DAYS AFTER IT IS DUE; AND

(IV) FIFTEEN THOUSAND DOLLARS FOR INFORMATION SUBMITTED NINETY OR MORE DAYS AFTER THE DATE IT IS DUE, AND AN ADDITIONAL FIFTEEN THOUSAND DOLLARS FOR EACH THIRTY DAYS THEREAFTER UNTIL THE INFORMATION IS SUBMITTED.

(b) THE LIQUOR ENFORCEMENT DIVISION SHALL HAVE THE AUTHORITY TO REVIEW RECORDS TO VERIFY THE INFORMATION SUBMITTED BY DISTRIBUTORS PURSUANT TO SECTION 39-28.5-105.

SECTION 3. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 5, 2004