

CHAPTER 208

TAXATION

HOUSE BILL 05-1221

BY REPRESENTATIVE(S) Decker;
also SENATOR(S) Sandoval, and Williams.

AN ACT**CONCERNING LICENSE REQUIREMENTS FOR TOBACCO SELLERS.**

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

SECTION 1. 39-28-101, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

39-28-101. Definitions. As used in this article, unless the context otherwise requires:

(2.5) "MASTER SETTLEMENT AGREEMENT" SHALL HAVE THE SAME MEANING AS SECTION 39-28-202 (5).

(5) "WHOLESALE SUBCONTRACTOR" MEANS ANY PERSON, FIRM, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR CORPORATION WHO PURCHASES CIGARETTES FROM A WHOLESALER FOR RESALE TO A RETAILER IN THIS STATE.

SECTION 2. 39-28-102 (1), Colorado Revised Statutes, is amended, and the said 39-28-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, 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 renewed only upon timely application and

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

payment of the required fee prior to expiration. Renewal applications for licenses 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 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 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 THE STATE any delinquent taxes ADMINISTERED BY THE DEPARTMENT 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.

(1.3) (a) IN ADDITION TO THE REQUIREMENTS SET FORTH IN SUBSECTION (1) OF THIS SECTION, NO LICENSE SHALL BE ISSUED TO A WHOLESALER UNLESS THE WHOLESALER:

(I) HAS A CURRENT LICENSE ISSUED PURSUANT TO SECTION 39-26-103;

(II) PROVIDES EVIDENCE TO THE SATISFACTION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT DEMONSTRATING THAT THE WHOLESALER WILL BUY CIGARETTES FROM AT LEAST ONE MANUFACTURER THAT IS EITHER PART OF THE MASTER SETTLEMENT AGREEMENT OR THAT PLACES FUNDS INTO A QUALIFIED ESCROW ACCOUNT PURSUANT TO SECTION 39-28-203 (2); AND

(III) HAS FILED WITH THE DEPARTMENT EVIDENCE OF A SURETY BOND ISSUED BY A COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE IN AN AMOUNT EQUAL TO THE WHOLESALER'S ANTICIPATED TOTAL MONTHLY PURCHASE OF STAMPS PURSUANT TO SECTION 39-28-104 FOR THE BENEFIT OF THE DEPARTMENT. THE AMOUNT OF A WHOLESALER'S ANTICIPATED TOTAL MONTHLY PURCHASE SHALL BE DETERMINED SOLELY IN THE DISCRETION OF THE WHOLESALER. A WHOLESALER MAY FILE A REPLACEMENT SURETY BOND IF THE WHOLESALER'S ANTICIPATED TOTAL MONTHLY PURCHASE OF STAMPS CHANGES AFTER THE WHOLESALER HAS BEEN ISSUED A LICENSE PURSUANT TO THIS SECTION.

(b) IN ADDITION TO THE REQUIREMENTS SET FORTH IN SUBSECTION (1) OF THIS SECTION, NO LICENSE SHALL BE RENEWED UNLESS A WHOLESALER:

(I) HAS A CURRENT LICENSE ISSUED PURSUANT TO SECTION 39-26-103;

(II) PROVIDES EVIDENCE TO THE SATISFACTION OF THE EXECUTIVE DIRECTOR OF

THE DEPARTMENT DEMONSTRATING THAT THE WHOLESALER HAS BOUGHT AND WILL CONTINUE TO BUY CIGARETTES FROM AT LEAST ONE MANUFACTURER THAT IS EITHER PART OF THE MASTER SETTLEMENT AGREEMENT OR PLACES FUNDS INTO A QUALIFIED ESCROW ACCOUNT PURSUANT TO SECTION 39-28-203 (2); AND

(III) HAS FILED WITH THE DEPARTMENT EVIDENCE OF A SURETY BOND ISSUED BY A COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE IN AN AMOUNT EQUAL TO THE WHOLESALER'S ANTICIPATED TOTAL MONTHLY PURCHASE OF STAMPS PURSUANT TO SECTION 39-28-104 FOR THE BENEFIT OF THE DEPARTMENT. THE AMOUNT OF A WHOLESALER'S ANTICIPATED TOTAL MONTHLY PURCHASE SHALL BE SOLELY IN THE DISCRETION OF THE WHOLESALER. FOR EACH CONSECUTIVE PRECEDING YEAR THAT A WHOLESALER HAS NOT BEEN DELINQUENT IN THE PAYMENT OF TAXES IMPOSED UNDER THIS PART 1, AS DETERMINED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, THE AMOUNT OF THE BOND REQUIRED SHALL BE REDUCED BY TWENTY PERCENTAGE POINTS OF THE WHOLESALER'S ANTICIPATED TOTAL MONTHLY PURCHASE OF STAMPS. A WHOLESALER MAY FILE A REPLACEMENT SURETY BOND IF THE WHOLESALER'S ANTICIPATED TOTAL MONTHLY PURCHASE OF STAMPS CHANGES AFTER THE WHOLESALER'S LICENSE HAS BEEN RENEWED PURSUANT TO THIS SECTION. A WHOLESALER THAT HAS NOT BEEN DELINQUENT IN THE PAYMENT OF SUCH TAXES FOR FIVE CONSECUTIVE YEARS SHALL BE EXEMPT FROM THE REQUIREMENT TO FILE A SURETY BOND WITH THE DEPARTMENT.

SECTION 3. Part 1 of article 28 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-28-102.5. Licensing of wholesale subcontractors - rules - fines. (1) IT IS UNLAWFUL FOR ANY WHOLESALER SUBCONTRACTOR TO SELL OR OFFER FOR SALE CIGARETTES TO A RETAILER IN THIS STATE 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 WHOLESALER SUBCONTRACTORS 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 SUBCONTRACTOR, A SEPARATE LICENSE FOR EACH PLACE OF BUSINESS SHALL BE REQUIRED. NO LICENSE SHALL BE ISSUED TO A WHOLESALER SUBCONTRACTOR UNLESS THE WHOLESALER SUBCONTRACTOR HAS A CURRENT LICENSE ISSUED PURSUANT TO SECTION 39-26-103. SUCH LICENSES SHALL BE RENEWED ONLY UPON TIMELY APPLICATION AND PAYMENT OF THE REQUIRED FEE PRIOR TO EXPIRATION. RENEWAL APPLICATIONS FOR LICENSES 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 WHOLESALER SUBCONTRACTORS ON AN ANNUAL BASIS. WHOLESALER SUBCONTRACTORS 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 RULES ADOPTED BY THE DEPARTMENT. THE LICENSE FEE SHALL BE TEN DOLLARS PER YEAR, AND SUCH LICENSE FEES SHALL BE CREDITED TO THE WHOLESALER AND DISTRIBUTING SUBCONTRACTOR LICENSE FUND, WHICH IS HEREBY CREATED IN THE STATE TREASURY.

ALL MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT FOR COSTS INCURRED IN ADMINISTERING THIS SECTION AND SECTION 39-28.5-104.5. SUCH 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 WHOLESALE SUBCONTRACTOR VIOLATING ANY PROVISION OF THIS ARTICLE, AND NO LICENSE SHALL BE ISSUED TO SUCH WHOLESALE SUBCONTRACTOR WITHIN A PERIOD OF TWO YEARS THEREAFTER. THE DEPARTMENT MAY SHARE INFORMATION ON THE NAMES AND ADDRESSES OF PERSONS WHO PURCHASED CIGARETTES FROM A WHOLESALE SUBCONTRACTOR 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 WHOLESALE SUBCONTRACTOR LICENSE AND SHALL REVOKE A WHOLESALE SUBCONTRACTOR'S LICENSE, IF THE WHOLESALER OWES THE STATE ANY DELINQUENT TAXES ADMINISTERED BY THE DEPARTMENT OR INTEREST THEREON PURSUANT TO 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.

(2) (a) A WHOLESALE SUBCONTRACTOR 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 A WHOLESALE SUBCONTRACTOR PURSUANT TO SECTION 39-28-109.

SECTION 4. 39-28-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-28-104. Evidence of payment of tax - credits - redemptions. (1.5) IN ANY MONTH THAT A WHOLESALER PURCHASES AN AMOUNT OF STAMPS THAT IS GREATER THAN THE WHOLESALER'S ANTICIPATED TOTAL MONTHLY PURCHASE OF STAMPS, WHICH SHALL BE DETERMINED FROM THE SURETY BOND FILED PURSUANT TO SECTION 39-28-102 (1.3) (a) (III) AND (1.3) (b) (III), THE WHOLESALER SHALL BE REQUIRED TO PAY CASH OR CERTIFIED FUNDS OR USE ONE OF THE ELECTRONIC PAYMENT OPTIONS OFFERED BY THE DEPARTMENT FOR THE STAMPS THAT EXCEED THE ANTICIPATED TOTAL MONTHLY PURCHASE OF STAMPS UPON THE DELIVERY OF THE STAMPS. THIS

SUBSECTION (1.5) SHALL NOT APPLY IF THE WHOLESALER IS EXEMPT FROM THE SURETY BOND REQUIREMENT PURSUANT TO SECTION 39-28-102 (1.3) (b) (III).

SECTION 5. 39-28.5-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

(1.5) "DISTRIBUTING SUBCONTRACTOR" MEANS EVERY PERSON, FIRM, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR CORPORATION WHO PURCHASES TOBACCO PRODUCTS FROM A DISTRIBUTOR FOR RESALE TO A RETAILER IN THIS STATE.

SECTION 6. 39-28.5-104 (1), 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 renewed only upon timely application and payment of the required fee prior to expiration. Renewal applications for licenses 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 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 THE STATE any delinquent taxes ADMINISTERED BY THE DEPARTMENT 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. THE DEPARTMENT SHALL ONLY ISSUE A NEW OR RENEWAL DISTRIBUTOR LICENSE TO A DISTRIBUTOR THAT HAS A CURRENT LICENSE ISSUED PURSUANT TO SECTION 39-26-103.

SECTION 7. Article 28.5 of title 39, Colorado Revised Statutes, is amended BY

THE ADDITION OF A NEW SECTION to read:

39-28.5-104.5. Licensing of distributing subcontractors - rules - fines. (1) IT IS UNLAWFUL FOR ANY PERSON TO ENGAGE IN THE BUSINESS OF A DISTRIBUTING SUBCONTRACTOR 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 DISTRIBUTING SUBCONTRACTOR 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 RENEWED ONLY UPON TIMELY APPLICATION AND PAYMENT OF THE REQUIRED FEE PRIOR TO EXPIRATION. RENEWAL APPLICATIONS FOR LICENSES ISSUED PURSUANT TO THIS SECTION SHALL INCLUDE IDENTIFYING INFORMATION OF PERSONS WHO PURCHASED TOBACCO PRODUCTS FOR RESALE FROM THE DISTRIBUTING SUBCONTRACTOR 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 DISTRIBUTING SUBCONTRACTORS ON AN ANNUAL BASIS. DISTRIBUTING SUBCONTRACTORS 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 ADOPTED BY THE DEPARTMENT. THE FEE FOR A LICENSE SHALL BE TEN DOLLARS PER YEAR, AND SUCH FEE SHALL BE CREDITED TO THE WHOLESALE AND DISTRIBUTING SUBCONTRACTOR LICENSE FUND CREATED IN SECTION 39-28-102.5. 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 THE STATE ANY DELINQUENT TAXES ADMINISTERED BY THE DEPARTMENT OR INTEREST THEREON PURSUANT TO 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. THE DEPARTMENT SHALL ONLY ISSUE A NEW OR RENEWAL DISTRIBUTING SUBCONTRACTOR LICENSE TO A DISTRIBUTING SUBCONTRACTOR THAT HAS A CURRENT LICENSE ISSUED PURSUANT TO SECTION 39-26-103.

(2) (a) A DISTRIBUTING SUBCONTRACTOR 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:

(1) 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 DISTRIBUTING SUBCONTRACTORS PURSUANT TO SECTION 39-28.5-105.

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

Approved: June 1, 2005