

CHAPTER 372

TAXATION

HOUSE BILL 09-1173

BY REPRESENTATIVE(S) Riesberg, Todd, Labuda, Vigil;
also SENATOR(S) Hodge, Groff, Hudak, Schwartz, Williams.

AN ACT

CONCERNING EFFORTS TO REDUCE THE AMOUNT OF CONTRABAND TOBACCO PRODUCTS IN THE STATE, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 24-22-115 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-22-115. Tobacco litigation settlement cash fund - health care supplemental appropriations and overexpenditures account - creation - repeal.

(2) (g) (I) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (2) TO THE CONTRARY, FOR THE STATE FISCAL YEAR 2009-10, THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEYS FROM THE TOBACCO SETTLEMENT DEFENSE ACCOUNT IN THE TOBACCO LITIGATION SETTLEMENT CASH FUND FOR THE PURPOSES SET FORTH IN SECTION 39-28.5-105 (4) (b), C.R.S.

(II) THIS PARAGRAPH (g) IS REPEALED, EFFECTIVE JULY 1, 2011.

SECTION 2. 39-21-113, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-21-113. Reports and returns - repeal. (19) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL PUBLISH THE LISTS OF WHOLESALERS AS SPECIFIED IN SECTION 39-28-115 AND DISTRIBUTORS AS SPECIFIED IN SECTION 39-28.5-112.

SECTION 3. 39-28-107 (1), Colorado Revised Statutes, is amended to read:

39-28-107. Unstamped packages - tax collected - fines - subject to

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

confiscation - tobacco tax enforcement cash fund - creation. (1) (a) Any package of cigarettes found at any place in this state without a stamp or imprint affixed thereto as provided in this article, unless such cigarettes are in the possession of a licensed wholesaler in the original unopened shipping package or in transit to such wholesaler, are declared to be contraband goods and may be seized without a warrant by the department, its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate unstamped packages of cigarettes when it has reason to believe that the owner thereof is not willfully or intentionally evading the taxes imposed by the provisions of this article and section 21 of article X of the state constitution. THE EXECUTIVE DIRECTOR MAY IMPOSE A CIVIL PENALTY ON ANY PERSON, FIRM, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR CORPORATION FROM WHOM CIGARETTES HAVE BEEN CONFISCATED IN AN AMOUNT THAT DOES NOT EXCEED TWENTY-FIVE CENTS PER CIGARETTE SEIZED. ANY CIVIL PENALTIES RECEIVED PURSUANT TO THIS PARAGRAPH (a) SHALL BE REMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE TOBACCO TAX ENFORCEMENT CASH FUND CREATED IN PARAGRAPH (b) OF THIS SUBSECTION (1).

(b) THERE IS HEREBY CREATED IN THE STATE TREASURY THE TOBACCO TAX ENFORCEMENT CASH FUND. THE FUND SHALL CONSIST OF MONEYS DEPOSITED THEREIN PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) AND SECTION 39-28.5-106 (4). THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THIS ARTICLE AND ARTICLE 28.5 OF THIS TITLE. ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY SHALL REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR.

SECTION 4. Part 1 of article 28 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-28-115. List of licensed wholesalers - published on web site. ON OR BEFORE DECEMBER 31, 2009, THE DEPARTMENT SHALL PUBLISH ON ITS WEB SITE A LIST OF THE NAMES AND ADDRESSES OF ALL LICENSED WHOLESALERS. THE LIST SHALL BE UPDATED WITHIN SEVEN DAYS OF ANY CHANGES TO THE LIST.

SECTION 5. 39-28.5-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-28.5-105. Books and records to be preserved. (4) (a) EVERY RETAILER THAT IS NOT ALSO A LICENSED DISTRIBUTOR SHALL KEEP AT ITS PLACE OF BUSINESS COMPLETE AND ACCURATE RECORDS TO SHOW THAT ALL TOBACCO PRODUCTS RECEIVED BY THE RETAILER WERE PURCHASED FROM A LICENSED DISTRIBUTOR. THE RETAILER SHALL PROVIDE A COPY OF SUCH RECORDS TO THE DEPARTMENT IF SO REQUESTED. THE DEPARTMENT MAY ESTABLISH THE ACCEPTABLE FORM OF SUCH RECORDS.

(b) ANY EXPENSES INCURRED BY THE DEPARTMENT RELATED TO ENFORCING PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL BE PAID FROM THE TOBACCO SETTLEMENT DEFENSE ACCOUNT, CREATED IN SECTION 24-22-115 (2)(a), C.R.S., FOR THE STATE FISCAL YEAR 2009-10, AND FROM THE TOBACCO TAX ENFORCEMENT CASH

FUND CREATED IN SECTION 39-28-107 (1) (b), FOR EACH STATE FISCAL YEAR THEREAFTER.

SECTION 6. 39-28.5-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-28.5-106. Returns and remittance of tax - civil penalty. (4) (a) ANY PERSON, FIRM, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR CORPORATION, OTHER THAN A DISTRIBUTOR, IN POSSESSION OF TOBACCO PRODUCTS FOR WHICH TAXES HAVE NOT OTHERWISE BEEN REMITTED PURSUANT TO THIS SECTION SHALL BE LIABLE AND RESPONSIBLE FOR THE UNCOLLECTED TAX THAT IS LEVIED PURSUANT TO SECTION 39-28.5-102 AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION ON BEHALF OF THE DISTRIBUTOR WHO FAILED TO PAY THE TAX. THE PERSON OR ENTITY SHALL MAKE THE PAYMENT TO THE DEPARTMENT WITHIN THIRTY DAYS OF FIRST TAKING POSSESSION OF THE TOBACCO PRODUCT. THE DEPARTMENT SHALL ESTABLISH A FORM TO BE USED FOR REMITTANCE OF THE PAYMENT. THE DEPARTMENT SHALL REMIT THE PROCEEDS IT RECEIVES PURSUANT TO THIS PARAGRAPH (a) TO THE STATE TREASURER FOR DISTRIBUTION AS FOLLOWS:

(I) FOR ALL MONEYS RECEIVED AND COLLECTED IN PAYMENT OF THE TAX IMPOSED PURSUANT TO SECTION 39-28.5-102, FIFTEEN PERCENT SHALL BE CREDITED TO THE TOBACCO TAX ENFORCEMENT CASH FUND CREATED IN SECTION 39-28-107 (1) (b), AND EIGHTY-FIVE PERCENT SHALL BE CREDITED TO THE OLD AGE PENSION FUND; AND

(II) ALL MONEYS RECEIVED AND COLLECTED IN PAYMENT OF THE TAX IMPOSED PURSUANT TO SECTION 39-28.5-102.5 SHALL BE CREDITED TO THE TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117, C.R.S.

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

SECTION 7. Article 28.5 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-28.5-112. List of licensed distributors - published on web site. ON OR BEFORE DECEMBER 31, 2009, THE DEPARTMENT SHALL PUBLISH ON ITS WEB SITE A LIST OF THE NAMES AND ADDRESSES OF ALL LICENSED DISTRIBUTORS. THE LIST SHALL BE UPDATED WITHIN SEVEN DAYS OF ANY CHANGES TO THE LIST.

SECTION 8. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, to the department of revenue, for the fiscal year beginning July 1, 2009, out of any moneys in the tobacco settlement defense account of the

tobacco litigation settlement cash fund created in section 24-22-115 (2) (a), Colorado Revised Statutes, not otherwise appropriated, the sum of seventy-five thousand forty-three dollars (\$75,043) cash funds and 0.8 FTE, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2009, the sum of seven thousand five hundred ten dollars (\$7,510) and 0.1 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of revenue related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of revenue out of the appropriation made in subsection (1) of this section.

SECTION 9. Act subject to petition - 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 5, 2009, if adjournment sine die is on May 6, 2009); 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: June 1, 2009