

First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 05-0661.01 Esther van Mourik

HOUSE BILL 05-1274

HOUSE SPONSORSHIP

White,

SENATE SPONSORSHIP

Fitz-Gerald,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REDUCTION OF THE AMOUNT THAT STATE VENDORS**
102 **ARE ALLOWED TO RETAIN AS PAYMENT FOR THE COLLECTION**
103 **OF STATE TAXES IN ORDER TO FUND THE STATEWIDE**
104 **MARKETING ACCOUNT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Creates the statewide marketing account (account) in the Colorado travel and tourism promotion fund.

For sales occurring on or after July 1, 2005, reduces the amount that vendors are allowed to retain as payment for the collection and remittance of the state sales tax. Dedicates an amount equal to the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

reduction in the vendor fee to statewide marketing efforts.

For sales occurring on or after July 1, 2005, reduces the amount that vendors are allowed to retain as payment for the collection and remittance of the state statutory excise tax on tobacco products. Reduces the amount of the discount that licensed wholesalers who purchase cigarette tax payment stamps on or after July 1, 2005, are allowed to cover their expenses in collecting and remitting the state cigarette tax.

Requires the state treasurer to transfer said amount to the account. Requires the state treasurer to transfer a specified amount of moneys in the account to the general fund on a quarterly basis to restore any loss in income tax revenues resulting from the vendor fee and cigarette wholesaler discount reductions. Specifies that the moneys in the account are subject to annual appropriation by the general assembly for purposes of funding the account.

Specifies that 10% of the moneys deposited into the account is to be used to promote arts in Colorado.

Makes legislative findings and declarations.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds, determines, and declares that:

4 (a) The state needs to take a more proactive role in promoting and
5 marketing its resources in order to help stimulate the state's economy.

6 (b) Investing in active promotion of the state will help increase
7 sales and purchases of commodities and services available in the state,
8 thereby increasing revenues to private retailers as well as the state.

9 (c) By reducing the amount of sales tax revenues that vendors are
10 allowed to retain as payment for collecting and remitting sales and excise
11 taxes on behalf of the state and dedicating that amount of revenues to
12 active statewide marketing, the state will be taking steps to improve the
13 economy for all Coloradans.

14 **SECTION 2.** 24-49.7-106, Colorado Revised Statutes, is
15 amended BY THE ADDITION OF A NEW SUBSECTION to read:

16 **24-49.7-106. Colorado travel and tourism promotion fund -**

1 **Colorado travel and tourism additional source fund - creation - nature**

2 **of funds.** (1.5) (a) (I) THERE IS HEREBY CREATED, AS AN ACCOUNT
3 WITHIN THE COLORADO TRAVEL AND TOURISM PROMOTION FUND, THE
4 STATEWIDE MARKETING ACCOUNT, WHICH SHALL BE ADMINISTERED BY
5 THE BOARD. THE ACCOUNT SHALL CONSIST OF THE AMOUNTS CREDITED TO
6 THE ACCOUNT PURSUANT TO SECTIONS 39-26-123 (5), 39-28-110 (2), AND
7 39-28.5-108 (2), C.R.S.

8 (II) TEN PERCENT OF THE MONEYS DEPOSITED INTO THE STATEWIDE
9 MARKETING ACCOUNT SHALL BE USED SOLELY FOR THE PURPOSE OF
10 PROMOTING ARTS IN COLORADO.

11 (b) ON NOVEMBER 1, 2005, FEBRUARY 1, 2006, MAY 1, 2006, AND
12 AUGUST 1, 2006, AND ON EACH NOVEMBER 1, FEBRUARY 1, MAY 1, AND
13 AUGUST 1 THEREAFTER, THE STATE TREASURER SHALL TRANSFER FROM
14 THE STATEWIDE MARKETING ACCOUNT TO THE GENERAL FUND AN AMOUNT
15 EQUAL TO THREE AND TWO HUNDRED FORTY-ONE ONE-THOUSANDTHS
16 PERCENT OF THE TOTAL AMOUNT CREDITED TO THE ACCOUNT PURSUANT
17 TO SECTIONS 39-26-123 (5), 39-28-110 (2), AND 39-28.5-108 (2), C.R.S.,
18 DURING THE IMMEDIATELY PRECEDING THREE CALENDAR MONTHS.

19 (c) THE MONEYS IN THE STATEWIDE MARKETING ACCOUNT SHALL
20 BE ANNUALLY APPROPRIATED BY THE GENERAL ASSEMBLY TO FUND
21 STATEWIDE MARKETING EFFORTS. ANY MONEYS IN THE ACCOUNT NOT
22 APPROPRIATED, INCLUDING INTEREST EARNED ON THE INVESTMENT OR
23 DEPOSIT OF MONEYS IN THE ACCOUNT, SHALL REMAIN IN THE ACCOUNT
24 AND SHALL NOT REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL
25 YEAR.

26 **SECTION 3.** 39-26-105 (1) (a) and (1) (e), Colorado Revised
27 Statutes, are amended to read:

1 **39-26-105. Vendor liable for tax.** (1) (a) Except as provided in
2 paragraphs (d) and (e) of this subsection (1), every retailer, also in this
3 part 1 called "vendor", shall, irrespective of the provisions of section
4 39-26-106, be liable and responsible for the payment of an amount
5 equivalent to three percent of all sales made prior to January 1, 2001, and
6 two and ninety one-hundredths percent of all sales made on or after
7 January 1, 2001, by the vendor of commodities or services as specified
8 in section 39-26-104 and shall, before the twentieth day of each month,
9 make a return to the executive director of the department of revenue for
10 the preceding calendar month and remit an amount equivalent to said
11 percentage on such sales to said executive director, less three and
12 one-third percent of the sum so remitted for sales occurring prior to July
13 1, 2003, ~~or on or after July 1, 2005,~~ and less two and one-third percent of
14 the sum so remitted for sales occurring on or after July 1, 2003, but
15 before July 1, 2005, AND LESS TWO PERCENT OF THE SUM SO REMITTED
16 FOR SALES OCCURRING ON OR AFTER JULY 1, 2005, to cover the vendor's
17 expense in the collection and remittance of said tax; but, if any vendor is
18 delinquent in remitting said tax, other than in unusual circumstances
19 shown to the satisfaction of the executive director, the vendor shall not
20 be allowed to retain any amounts to cover such vendor's expense in
21 collecting and remitting said tax, and an amount equivalent to the said
22 percentage, plus the amount of any local vendor expense that may be
23 allowed by the local government to the vendor, shall be remitted to the
24 executive director by any such delinquent vendor. Such returns of the
25 taxpayer or the taxpayer's duly authorized agent shall contain such
26 information and be made in such manner and upon such forms as the
27 executive director shall prescribe. Any local vendor expense remitted to

1 the executive director shall be deposited to the state general fund.

2 (e) For any state fiscal year commencing on or after July 1, 2000,
3 every retailer or vendor who sells items upon which a sales tax is
4 imposed at a rate of one one-hundredth of one percent pursuant to section
5 39-26-106 (3) (a) shall be liable and responsible for the payment of an
6 amount equivalent to the amount of sales tax imposed on such items less
7 three and one-third percent for sales occurring prior to July 1, 2003, ~~or on~~
8 ~~or after July 1, 2005, and~~ less two and one-third percent for sales
9 occurring on or after July 1, 2003, but before July 1, 2005, AND LESS TWO
10 PERCENT FOR SALES OCCURRING ON OR AFTER JULY 1, 2005.

11 **SECTION 4.** 39-26-106 (2) (a), Colorado Revised Statutes, is
12 amended to read:

13 **39-26-106. Schedule of sales tax.** (2) (a) Except as provided in
14 paragraph (b) of this subsection (2), retailers shall add the tax imposed,
15 or the average equivalent thereof, to the sale price or charge, showing
16 such tax as a separate and distinct item, and when added such tax shall
17 constitute a part of such price or charge and shall be a debt from the
18 consumer or user to the retailer until paid and shall be recoverable at law
19 in the same manner as other debts. The retailer shall be entitled, as
20 collecting agent of the state, to apply and credit the amount of the
21 retailer's collections against the rate to be paid by the retailer under the
22 provisions of section 39-26-105, remitting any excess of collections over
23 said rate less the three and one-third percent collection expense allowance
24 for sales occurring prior to July 1, 2003, ~~or on or after July 1, 2005, and~~
25 less the two and one-third percent collection expense allowance for sales
26 occurring on or after July 1, 2003, but before July 1, 2005, AND LESS TWO
27 PERCENT COLLECTION EXPENSE ALLOWANCE FOR SALES OCCURRING ON OR

1 AFTER JULY 1, 2005, to the executive director of the department of
2 revenue in the retailer's next monthly sales tax return.

3 **SECTION 5.** 39-26-123 (2) (a) (I) (B), Colorado Revised
4 Statutes, is amended, and the said 39-26-123 is further amended BY THE
5 ADDITION OF A NEW SUBSECTION, to read:

6 **39-26-123. Receipts - disposition.** (2) (a) (I) (B) For purposes
7 of this section, "net revenue" means the gross amount of sales and use tax
8 receipts collected under the provisions of this article, less three and
9 one-third percent of such amount retained by vendors for the collection
10 and remittance of such tax pursuant to section 39-26-105 (1) (a) for sales
11 occurring prior to July 1, 2003, ~~or on or after July 1, 2005,~~ and less two
12 and one-third percent of such amount retained by vendors for the
13 collection and remittance of such tax pursuant to section 39-26-105 (1)
14 (a) for sales occurring on or after July 1, 2003, but before July 1, 2005,
15 AND LESS TWO PERCENT OF SUCH AMOUNT RETAINED BY VENDORS FOR THE
16 COLLECTION AND REMITTANCE OF SUCH TAX PURSUANT TO SECTION
17 39-26-105 (1) (a) FOR SALES OCCURRING ON OR AFTER JULY 1, 2005.

18 (5) ON AND AFTER JULY 1, 2005, THE ALLOCATION OF RECEIPTS
19 UNDER SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF PARAGRAPH (a)
20 OF SUBSECTION (2) AND SUBSECTION (4) OF THIS SECTION TO THE GENERAL
21 FUND SHALL BE DECREASED BY AN AMOUNT EQUAL TO THE INCREASE IN
22 SALES TAX RECEIPTS COLLECTED UNDER THE PROVISIONS OF THIS ARTICLE
23 AS A RESULT OF THE DECREASE IN THE AMOUNT ALLOWED TO BE RETAINED
24 BY VENDORS FOR THE COLLECTION AND REMITTANCE OF THE SALES TAX
25 PURSUANT TO SECTION 39-26-105 (1) (a). THE AMOUNT SHALL BE
26 CREDITED TO THE STATEWIDE MARKETING ACCOUNT WITHIN THE
27 COLORADO TRAVEL AND TOURISM PROMOTION FUND CREATED IN SECTION

1 24-49.7-106 (1.5), C.R.S. THE MODIFICATIONS TO THE ALLOCATION OF
2 RECEIPTS MADE PURSUANT TO THIS SUBSECTION (5) SHALL BE IN ADDITION
3 TO ANY OTHER MODIFICATIONS TO THE ALLOCATION OF SUCH RECEIPTS
4 MADE BY LAW.

5 **SECTION 6.** 39-28-104 (1), Colorado Revised Statutes, is
6 amended to read:

7 **39-28-104. Evidence of payment of tax - credits - redemptions.**

8 (1) Payment of the tax imposed by the provisions of this article shall be
9 evidenced by the affixing of stamps to, or by an imprint or impression by
10 suitable metering machines approved by the department on, packages
11 containing cigarettes. The department shall procure stamps of such
12 design and legend as it deems necessary and suitable for the purpose.
13 The department shall sell such stamps for cash to licensed wholesalers at
14 a discount of four percent of their face value for sales occurring prior to
15 July 1, 2003, ~~or on or after July 1, 2005,~~ and three percent of their face
16 value for sales occurring on or after July 1, 2003, but before July 1, 2005,
17 AND TWO AND TWO-THIRDS PERCENT OF THEIR FACE VALUE FOR SALES
18 OCCURRING ON OR AFTER JULY 1, 2005, if payment is made on or before
19 the tenth day of the month following the month in which the purchase is
20 made to cover the licensed wholesaler's expense in the collection and
21 remittance of such tax; but, if any licensed wholesaler is delinquent in
22 remitting such payment, other than in unusual circumstances shown to the
23 satisfaction of the executive director of the department, the licensed
24 wholesaler shall not be allowed to retain any amounts to cover his OR HER
25 expense in collecting and remitting said tax, and, in addition, the penalty
26 imposed under section 39-28-108 (2) shall apply. The department shall
27 keep accurate records of all stamps sold to each wholesaler. No

1 wholesaler shall sell or transfer any stamps purchased pursuant to the
2 provisions of this article.

3 **SECTION 7.** 39-28-110, Colorado Revised Statutes, is amended
4 to read:

5 **39-28-110. Distribution of tax collected.** (1) All sums of money
6 received and collected in payment of the tax imposed by the provisions
7 of this article, except license fees received under section 39-28-102, shall
8 be transmitted to the state treasurer who shall distribute such money as
9 follows: Fifteen percent to the general fund and eighty-five percent to the
10 old age pension fund.

11 (2) ON AND AFTER JULY 1, 2005, THE DISTRIBUTION OF MONEYS TO
12 THE GENERAL FUND PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL
13 BE DECREASED BY AN AMOUNT EQUAL TO ONE AND ONE-THIRD PERCENT OF
14 THE CIGARETTE TAX MONEYS RECEIVED AND COLLECTED UNDER THE
15 PROVISIONS OF THIS ARTICLE. THE AMOUNT SHALL BE CREDITED TO THE
16 STATEWIDE MARKETING ACCOUNT WITHIN THE COLORADO TRAVEL AND
17 TOURISM PROMOTION FUND CREATED IN SECTION 24-49.7-106(1.5), C.R.S.

18 **SECTION 8.** 39-28.5-106 (2), Colorado Revised Statutes, is
19 amended to read:

20 **39-28.5-106. Returns and remittance of tax.** (2) Every
21 distributor shall file a return with the department by the twentieth day of
22 the month following the month reported and shall therewith remit the
23 amount of tax due, less three and one-third percent of any sum so
24 remitted that consists of tax collected before July 1, 2003, ~~or on or after~~
25 ~~July 1, 2005, and~~ less two and one-third percent of any sum so remitted
26 that consists of tax collected on or after July 1, 2003, but before July 1,
27 2005, AND LESS TWO PERCENT OF THE SUM SO REMITTED THAT CONSISTS

1 OF TAX COLLECTED ON OR AFTER JULY 1, 2005, to cover the distributor's
2 expense in the collection and remittance of said tax. If any distributor is
3 delinquent in remitting said tax, other than in unusual circumstances
4 shown to the satisfaction of the executive director of the department, the
5 distributor shall not be allowed to retain any amounts to cover his or her
6 expense in collecting and remitting said tax, and in addition the penalty
7 imposed under section 39-28.5-110 (2) (b) shall apply.

8 **SECTION 9.** 39-28.5-108, Colorado Revised Statutes, is
9 amended to read:

10 **39-28.5-108. Distribution of tax collected.** (1) All sums of
11 money received and collected in payment of the tax imposed by the
12 provisions of this article, except license fees received under section
13 39-28.5-104, shall be transmitted to the state treasurer, who shall
14 distribute such money as follows: Fifteen percent to the general fund and
15 eighty-five percent to the old age pension fund.

16 (2) ON AND AFTER JULY 1, 2005, THE DISTRIBUTION OF MONEYS TO
17 THE GENERAL FUND PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL
18 BE DECREASED BY AN AMOUNT EQUAL TO ONE AND ONE-THIRD PERCENT OF
19 THE TOBACCO PRODUCTS TAX MONEYS RECEIVED AND COLLECTED UNDER
20 THE PROVISIONS OF THIS ARTICLE. THE AMOUNT SHALL BE CREDITED TO
21 THE STATEWIDE MARKETING ACCOUNT WITHIN THE COLORADO TRAVEL
22 AND TOURISM PROMOTION FUND CREATED IN SECTION 24-49.7-106 (1.5),
23 C.R.S.

24 **SECTION 10. Effective date - applicability.** This act shall take
25 effect July 1, 2005, and shall apply to all sales of commodities and
26 services on or after said date.

27 **SECTION 11. Safety clause.** The general assembly hereby

- 1 finds, determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.