

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0828.01 Esther van Mourik

HOUSE BILL 11-1318

HOUSE SPONSORSHIP

Stephens and Schafer S., Priola, Wilson, DelGrosso, Brown, Looper, Waller, Williams
A.

SENATE SPONSORSHIP

Spence and Brophy,

House Committees

Economic and Business Development
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE POLICY OF THE STATE OF COLORADO REGARDING**
102 **NOTIFICATION OF USE TAXES DUE ON SALES MADE BY**
103 **OUT-OF-STATE RETAILERS.**

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://www.leg.state.co.us/billsummaries>.)

The bill repeals House Bill 10-1193 regarding the collection of sales and use taxes on sales made by out-of-state retailers enacted by the general assembly and signed into law on February 24, 2010, and repeals related rules promulgated by the department of revenue.

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.

The bill also requires any retailer with gross annual sales totaling \$500,000 or more that does not collect Colorado sales tax and that sells tangible personal property from a place of business outside this state for use in this state to notify the purchaser of Colorado purchases, either on its web site or by an email directed to the purchaser, that use tax may be imposed on the storage, use, or other consumption in this state of any items of tangible personal property purchased. The bill requires the notification to be readily visible. The bill also prohibits a retailer that does not collect Colorado sales tax and that sells tangible personal property from a place of business outside this state for use in this state from advertising that there is no tax due on purchases made from the retailer for use in this state.

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

2 **SECTION 1. Repeal of regulations of the department of**
3 **revenue.** (1) Regulation 39-21-112.3.5, which rule was adopted June 18,
4 2010, is repealed, effective on the effective date of this section.

5 (2) Regulation 39-26-102.3, which rule was adopted June 18,
6 2010, is repealed, effective on the effective date of this section.

7 (3) The office of legislative legal services shall forward a copy of
8 House Bill 11-1318, enacted in 2011, to the secretary of state for purposes
9 of informing the secretary of state of the general assembly's action
10 repealing the rules specified in subsections (1) and (2) of this section.
11 The secretary of state shall delete Regulation 39-21-112.3.5 and
12 Regulation 39-26-102.3 from the code of Colorado regulations and
13 include appropriate references of such repeal in the code of Colorado
14 regulations consistent with the provisions of section 24-4-103 (11),
15 Colorado Revised Statutes.

16 **SECTION 2. Repeal.** 24-75-113 (4), Colorado Revised Statutes,
17 is repealed as follows:

18 **24-75-113. 2010 bills to increase state revenue - prohibition on**
19 **hiring of new state employees.** (4) ~~No moneys derived from the~~

1 ~~increase in state revenues resulting from the passage of House Bill~~
2 ~~10-1193, enacted in 2010, shall be appropriated for the purpose of~~
3 ~~funding additional full-time equivalent state employees, except for any~~
4 ~~full-time equivalent state employees necessary to enforce the provisions~~
5 ~~of said House Bill 10-1193.~~

6 **SECTION 3. Repeal.** 39-21-112 (3.5), Colorado Revised
7 Statutes, is repealed as follows:

8 **39-21-112. Duties and powers of executive director.**

9 ~~(3.5) (a) If any retailer that does not collect Colorado sales tax refuses~~
10 ~~voluntarily to furnish any of the information specified in subsection (1)~~
11 ~~of this section when requested by the executive director of the department~~
12 ~~of revenue or his or her employee, agent, or representative, the executive~~
13 ~~director, by subpoena issued under the executive director's hand, may~~
14 ~~require the attendance of the retailer and the production by him or her of~~
15 ~~any of the foregoing information in the retailer's possession and may~~
16 ~~administer an oath to him or her and take his or her testimony. If the~~
17 ~~retailer fails or refuses to respond to said subpoena and give testimony,~~
18 ~~the executive director may apply to any judge of the district court of the~~
19 ~~state of Colorado to enforce such subpoena by any appropriate order,~~
20 ~~including, if appropriate, an attachment against the retailer as for~~
21 ~~contempt, and upon hearing, said judge has, for the purpose of enforcing~~
22 ~~obedience to the requirements of said subpoena, power to make such~~
23 ~~order as, in his or her discretion, he or she deems consistent with the law~~
24 ~~for punishment of contempts.~~

25 (b) For purposes of this subsection (3.5), "retailer" shall have the
26 same meaning as set forth in section 39-26-102 (8).

27 (c) (I) ~~Each retailer that does not collect Colorado sales tax shall~~

1 notify Colorado purchasers that sales or use tax is due on certain
2 purchases made from the retailer and that the state of Colorado requires
3 the purchaser to file a sales or use tax return.

4 (H) Failure to provide the notice required in subparagraph (I) of
5 this paragraph (c) shall subject the retailer to a penalty of five dollars for
6 each such failure, unless the retailer shows reasonable cause for such
7 failure.

8 (d) (I) (A) Each retailer that does not collect Colorado sales tax
9 shall send notification to all Colorado purchasers by January 31 of each
10 year showing such information as the Colorado department of revenue
11 shall require by rule and the total amount paid by the purchaser for
12 Colorado purchases made from the retailer in the previous calendar year.
13 Such notification shall include, if available, the dates of purchases, the
14 amounts of each purchase, and the category of the purchase, including, if
15 known by the retailer, whether the purchase is exempt or not exempt from
16 taxation. The notification shall state that the state of Colorado requires
17 a sales or use tax return to be filed and sales or use tax paid on certain
18 Colorado purchases made by the purchaser from the retailer.

19 (B) The notification specified in sub-subparagraph (A) of this
20 subparagraph (I) shall be sent separately to all Colorado purchasers by
21 first-class mail and shall not be included with any other shipments. The
22 notification shall include the words "Important Tax Document Enclosed"
23 on the exterior of the mailing. The notification shall include the name of
24 the retailer.

25 (H) (A) Each retailer that does not collect Colorado sales tax shall
26 file an annual statement for each purchaser to the department of revenue
27 on such forms as are provided or approved by the department showing the

1 total amount paid for Colorado purchases of such purchasers during the
2 preceding calendar year or any portion thereof, and such annual statement
3 shall be filed on or before March 1 of each year.

4 (B) ~~The executive director of the department of revenue may~~
5 ~~require any retailer that does not collect Colorado sales tax that makes~~
6 ~~total Colorado sales of more than one hundred thousand dollars in a year~~
7 ~~to file the annual statement described in sub-subparagraph (A) of this~~
8 ~~subparagraph (H) by magnetic media or another machine-readable form~~
9 ~~for that year.~~

10 (HH) (A) ~~Failure to send the notification required in subparagraph~~
11 ~~(I) of this paragraph (d) shall subject the retailer to a penalty of ten dollars~~
12 ~~for each such failure, unless the retailer shows reasonable cause for such~~
13 ~~failure.~~

14 (B) ~~Failure to file the annual statement required in~~
15 ~~sub-subparagraph (A) of subparagraph (H) of this paragraph (d) shall~~
16 ~~subject the retailer to a penalty of ten dollars for each purchaser that~~
17 ~~should have been included in such annual statement, unless the retailer~~
18 ~~shows reasonable cause for such failure.~~

19 **SECTION 4. Repeal.** 39-21-122 (5), Colorado Revised Statutes,
20 is repealed as follows:

21 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
22 **by department.** (5) ~~The department of revenue shall account for all~~
23 ~~revenue attributable to the enactment of House Bill 10-1193, enacted in~~
24 ~~2010, and shall, to the extent such information is available, make~~
25 ~~quarterly reports to the general assembly regarding the quarterly and~~
26 ~~cumulative net revenue gain to the state resulting from the enactment of~~
27 ~~said bill.~~

1 **SECTION 5.** 39-26-102 (3) (b) and (8), Colorado Revised
2 Statutes, are amended to read:

3 **39-26-102. Definitions - repeal.** As used in this article, unless
4 the context otherwise requires:

5 (3) "Doing business in this state" means the selling, leasing, or
6 delivering in this state, or any activity in this state in connection with the
7 selling, leasing, or delivering in this state, of tangible personal property
8 by a retail sale as defined in this section, for use, storage, distribution, or
9 consumption within this state. This term includes, but shall not be limited
10 to, the following acts or methods of transacting business:

11 (b) ~~(H)~~ The soliciting, either by direct representatives, indirect
12 representatives, manufacturers' agents, or by distribution of catalogues or
13 other advertising, or by use of any communication media, or by use of the
14 newspaper, radio, or television advertising media, or by any other means
15 whatsoever, of business from persons residing in this state and by reason
16 thereof receiving orders from, or selling or leasing tangible personal
17 property to, such persons residing in this state for use, consumption,
18 distribution, and storage for use or consumption in this state.

19 ~~(H) Commencing March 1, 2010, if a retailer that does not collect~~
20 ~~Colorado sales tax is part of a controlled group of corporations, and that~~
21 ~~controlled group has a component member that is a retailer with physical~~
22 ~~presence in this state, the retailer that does not collect Colorado sales tax~~
23 ~~is presumed to be doing business in this state. For purposes of this~~
24 ~~subparagraph (H), "controlled group of corporations" has the same~~
25 ~~meaning as set forth in section 1563 (a) of the federal "Internal Revenue~~
26 ~~Code of 1986", as amended, and "component member" has the same~~
27 ~~meaning as set forth in section 1563 (b) of the federal "Internal Revenue~~

1 Code of 1986", as amended. This presumption may be rebutted by proof
2 that during the calendar year in question, the component member that is
3 a retailer with physical presence in this state did not engage in any
4 constitutionally sufficient solicitation in this state on behalf of the retailer
5 that does not collect Colorado sales tax.

6 (8) "Retailer" or "vendor" means a person doing A RETAIL
7 business, in this state, known to the trade and public as such, and selling
8 to the user or consumer, and not for resale.

9 **SECTION 6.** 39-26-202 (1), Colorado Revised Statutes, is
10 amended BY THE ADDITION OF THE FOLLOWING NEW
11 PARAGRAPHS to read:

12 **39-26-202. Authorization of tax - notification.**

13 (1) (d) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
14 PARAGRAPH (d), COMMENCING JULY 1, 2011, ANY RETAILER THAT DOES
15 NOT COLLECT COLORADO SALES TAX AND THAT SELLS TANGIBLE
16 PERSONAL PROPERTY FROM A PLACE OF BUSINESS OUTSIDE THIS STATE FOR
17 USE IN THIS STATE SHALL NOTIFY THE PURCHASER OF COLORADO
18 PURCHASES, ON AT LEAST ONE POST-PURCHASE COMMUNICATION
19 DIRECTED TO THE PURCHASER, THAT USE TAX MAY BE IMPOSED ON THE
20 STORAGE, USE, OR OTHER CONSUMPTION IN THIS STATE OF ANY ITEMS OF
21 TANGIBLE PERSONAL PROPERTY PURCHASED. THE NOTIFICATION SHALL BE
22 READILY VISIBLE AND SHALL PROVIDE ACCESS TO A LINK TO THE OFFICIAL
23 WEB SITE OF THE DEPARTMENT OF REVENUE WHERE THE PURCHASER CAN
24 OBTAIN INFORMATION ON HOW TO REMIT ANY USE TAX DUE. FOR
25 PURPOSES OF THIS SUBPARAGRAPH (I), A POST-PURCHASE COMMUNICATION
26 SHALL INCLUDE BUT SHALL NOT BE LIMITED TO AN EMAIL CONFIRMATION
27 OR INVOICE RELATED TO THE PURCHASE. THE NOTIFICATION PROVISIONS

1 IN THIS SECTION SHALL NOT REQUIRE A RETAILER AS DESCRIBED IN THIS
2 SUBPARAGRAPH (I) TO SEND ANY ADDITIONAL FORMS OF COMMUNICATION
3 THAT SUCH RETAILER IS NOT ALREADY SENDING TO A PURCHASER.

4 (II) THE PROVISIONS OF THIS PARAGRAPH (d) SHALL NOT APPLY TO
5 A RETAILER DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d)
6 THAT HAS GROSS ANNUAL SALES TOTALING LESS THAN FIVE HUNDRED
7 THOUSAND DOLLARS.

8 (e) A RETAILER THAT DOES NOT COLLECT COLORADO SALES TAX
9 AND THAT SELLS TANGIBLE PERSONAL PROPERTY FROM A PLACE OF
10 BUSINESS OUTSIDE THIS STATE FOR USE IN THIS STATE SHALL NOT
11 ADVERTISE THAT THERE IS NO TAX DUE ON PURCHASES MADE FROM THE
12 RETAILER FOR USE IN THIS STATE.

13 **SECTION 7. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.