

CHAPTER 53

REVENUE - ACTIVITIES REGULATION

HOUSE BILL 19-1033

BY REPRESENTATIVE(S) Tipper and Kennedy, Arndt, Bird, Caraveo, Duran, Galindo, Gonzales-Gutierrez, Jaquez Lewis, Kipp, Lontine, McCluskie, Mullica, Roberts, Becker, Froelich, Snyder;
also SENATOR(S) Fields and Priola, Court, Gonzales.

AN ACT

CONCERNING A LOCAL GOVERNMENT'S AUTHORITY TO REGULATE PRODUCTS CONTAINING NICOTINE.

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

SECTION 1. In Colorado Revised Statutes, 18-13-121, **amend** (3) as follows:

18-13-121. Furnishing cigarettes, tobacco products, or nicotine products to minors. (3) Nothing in this section prohibits a statutory or home rule municipality, COUNTY, OR CITY AND COUNTY from enacting an ordinance OR RESOLUTION that prohibits a ~~person under eighteen years of age~~ MINOR from purchasing any cigarettes, tobacco products, or nicotine products or imposes requirements more stringent than provided in this section.

SECTION 2. In Colorado Revised Statutes, 25-14-301, **amend** (3)(c) and (4) as follows:

25-14-301. Possession of cigarettes, tobacco products, or nicotine products by a minor prohibited - definitions. (3) As used in this section, unless the context otherwise requires:

(c) "Tobacco product" ~~shall have~~ HAS the same meaning as ~~set forth in~~ "CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT", AS DEFINED IN SECTION 18-13-121 (5). ~~C.R.S.~~

(4) Nothing in this section ~~shall be construed to prohibit any~~ PROHIBITS A statutory or home rule municipality, COUNTY, OR CITY AND COUNTY from enacting an ordinance OR RESOLUTION that prohibits the possession of cigarettes, ~~or~~ tobacco

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

products, OR NICOTINE PRODUCTS by a ~~person who is under eighteen years of age~~ MINOR or imposes requirements more stringent than provided in this section.

SECTION 3. In Colorado Revised Statutes, **add** article 30 to title 29 as follows:

ARTICLE 30
Regulation of Cigarettes, Tobacco Products, and
Nicotine Products

29-30-101. Regulation of cigarettes, tobacco products, and nicotine products.

THE CITY COUNCIL OF A STATUTORY OR HOME RULE CITY OR THE TOWN COUNCIL OF A STATUTORY TOWN MAY ADOPT AN ORDINANCE TO REGULATE THE POSSESSION OR PURCHASING OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, AS DEFINED IN SECTION 18-13-121 (5), BY A MINOR OR TO REGULATE THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO MINORS.

SECTION 4. In Colorado Revised Statutes, 30-15-401, **amend** (1.5) as follows:

30-15-401. General regulations - definitions. (1.5) In addition to any other powers, the board of county commissioners has the power to adopt a resolution or an ordinance ~~prohibiting minors from possessing~~ TO REGULATE THE POSSESSION OR PURCHASING OF cigarettes, ~~or~~ tobacco products, OR NICOTINE PRODUCTS, as defined by section ~~39-28.5-101(5), C.R.S.~~ 18-13-121 (5), BY A MINOR OR TO REGULATE THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO MINORS.

SECTION 5. In Colorado Revised Statutes, 39-22-623, **amend** (1) introductory portion and (1)(a)(II)(A) as follows:

39-22-623. Disposition of collections - definition. (1) The proceeds of all ~~moneys~~ MONEY collected under this ~~article~~ ARTICLE 22, less the reserve retained for refunds, shall be credited as follows:

(a) (II) (A) Effective July 1, 1987, an amount equal to twenty-seven percent of the gross state cigarette tax shall be apportioned to incorporated cities and incorporated towns ~~which~~ THAT levy taxes and adopt formal budgets and to counties. For the purposes of this section, a city and county ~~shall be~~ IS considered as a city. The city or town share shall be apportioned according to the percentage of state sales tax revenues collected by the department of revenue in an incorporated city or town as compared to the total state sales tax collections that may be allocated to all political subdivisions in the state; the county share shall be the same as that which the percentage of state sales tax revenues collected in the unincorporated area of the county bears to total state sales tax revenues ~~which~~ THAT may be allocated to all political subdivisions in the state. The department of revenue shall certify to the state treasurer, at least annually, the percentage for allocation to each city, town, and county, and ~~such~~ THE DEPARTMENT SHALL APPLY THE percentage for allocation ~~so~~ certified ~~shall be applied by said department~~ in all distributions to cities, towns, and counties until changed by certification to the state treasurer. In order to qualify for distributions of state income tax ~~moneys~~ MONEY, units of local government are prohibited from imposing ~~fees, licenses, or taxes~~ on any person as a condition for engaging in the business of selling cigarettes. ~~or from attempting in any manner to impose a tax on cigarettes.~~ For purposes of this ~~paragraph (a)~~ SUBSECTION (1)(a)(II),

the "gross state cigarette tax" means the total tax before the discount provided for in section 39-28-104 (1) FOR ANY CITY, TOWN, OR COUNTY THAT WAS PREVIOUSLY DISQUALIFIED FROM THE APPORTIONMENT SET FORTH IN THIS SUBSECTION (1)(a)(II)(A) BY REASON OF IMPOSING A FEE OR LICENSE RELATED TO THE SALE OF CIGARETTES, THE CITY, TOWN, OR COUNTY IS ELIGIBLE FOR ANY ALLOCATION OF MONEY THAT IS BASED ON AN APPORTIONMENT MADE ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1)(a)(II)(A), AS AMENDED, BUT NOT FOR AN ALLOCATION OF MONEY THAT IS BASED ON AN APPORTIONMENT MADE BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (1)(a)(II)(A), AS AMENDED.

SECTION 6. In Colorado Revised Statutes, **amend** 39-28-112 as follows:

39-28-112. Taxation of cigarettes, tobacco products, or nicotine products by municipalities, counties, and city and counties - definitions. (1) ~~No provision of This article shall be construed to~~ ARTICLE 28 DOES NOT prevent the A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY IN THIS STATE FROM imposing, levying, and collecting of any SPECIAL SALES tax upon sales of cigarettes, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, or upon the occupation or privilege of selling cigarettes, ~~by any city or town in this state~~ TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, nor shall the provisions of ~~DOES this article be interpreted to~~ ARTICLE 28 affect any existing authority of local municipalities GOVERNMENTS to impose a SPECIAL SALES tax on cigarettes, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS to be used for local and ~~municipal~~ municipal GOVERNMENTAL purposes.

(2)(a) EACH COUNTY IN THE STATE IS AUTHORIZED TO LEVY, COLLECT, ENFORCE, AND ADMINISTER A COUNTY SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS UNDER THE FOLLOWING CIRCUMSTANCES:

(I) A COUNTY MAY LEVY, COLLECT, ENFORCE, AND ADMINISTER A COUNTY SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS PURSUANT TO THIS SUBSECTION (2) IN THE UNINCORPORATED AREAS OF THE COUNTY;

(II) A COUNTY MAY LEVY, COLLECT, ENFORCE, AND ADMINISTER A COUNTY SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS PURSUANT TO THIS SUBSECTION (2) IN THE MUNICIPALITIES WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR IN PART, THAT DO NOT LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. THE COUNTY MAY LEVY A SPECIAL SALES TAX IN A MUNICIPALITY PURSUANT TO THIS SUBSECTION (2)(a)(II) ONLY UNTIL THE MUNICIPALITY OBTAINS VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. IF THE MUNICIPALITY OBTAINS SUCH VOTER APPROVAL, THE COUNTY SPECIAL SALES TAX AUTHORIZED BY THIS SUBSECTION (2)(a)(II) IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (2)(a)(III) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

(III) A COUNTY MAY LEVY, COLLECT, ENFORCE, AND ADMINISTER A COUNTY SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS PURSUANT TO THIS SUBSECTION (2) IN EACH MUNICIPALITY WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR IN PART, THAT LEVIES A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, IF THE GOVERNING BODY OF THE COUNTY AND THE GOVERNING BODY OF THE MUNICIPALITY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT PERTAINING TO THE COUNTY'S LEVY, COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF A COUNTY SPECIAL SALES TAX UPON ALL SALES OF ALL CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY. AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO THIS SUBSECTION (2)(a)(III) MAY INCLUDE A PROVISION FOR THE APPORTIONMENT OF A SPECIFIED PERCENTAGE OF THE GROSS COUNTY CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS SPECIAL SALES TAX REVENUE COLLECTED BY THE COUNTY TO THE MUNICIPALITY.

(b) NOTWITHSTANDING SECTION 29-2-103 (2), A COUNTY MAY LEVY, COLLECT, ENFORCE, AND ADMINISTER A SPECIAL SALES TAX PURSUANT TO THIS SUBSECTION (2) IN LESS THAN THE ENTIRE COUNTY WHEN THE COUNTY SATISFIES ONE OR MORE OF THE CONDITIONS OF THIS SUBSECTION (2).

(c) NO SPECIAL SALES TAX SHALL BE LEVIED PURSUANT TO THIS SUBSECTION (2) UNTIL THE PROPOSAL HAS BEEN REFERRED TO AND APPROVED BY THE ELIGIBLE ELECTORS OF THE COUNTY IN ACCORDANCE WITH ARTICLE 2 OF TITLE 29. ANY PROPOSAL FOR THE LEVY OF A SPECIAL SALES TAX IN ACCORDANCE WITH THIS SUBSECTION (2) SHALL BE SUBMITTED TO THE ELIGIBLE ELECTORS OF THE COUNTY ONLY ON THE DATE OF THE STATE GENERAL ELECTION OR ON THE FIRST TUESDAY IN NOVEMBER OF AN ODD-NUMBERED YEAR. ANY ELECTION ON THE PROPOSAL MUST BE CONDUCTED BY THE COUNTY CLERK AND RECORDER IN ACCORDANCE WITH THE "UNIFORM ELECTION CODE OF 1992", ARTICLES 1 TO 13 OF TITLE 1.

(3) IF A COUNTY LEVIES, COLLECTS, ENFORCES, AND ADMINISTERS A SPECIAL SALES TAX IN A MUNICIPALITY THAT HAS ALREADY OBTAINED VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, THE COUNTY SPECIAL SALES TAX IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (2)(a)(III) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

(4) (a) EACH MUNICIPALITY IN THE STATE IS AUTHORIZED TO LEVY, COLLECT, ENFORCE, AND ADMINISTER A MUNICIPAL SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS.

(b) A SPECIAL SALES TAX SHALL NOT BE LEVIED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION UNTIL THE PROPOSAL HAS BEEN REFERRED TO AND APPROVED BY THE ELIGIBLE ELECTORS OF THE MUNICIPALITY IN ACCORDANCE WITH ARTICLE 10 OF TITLE 31. ANY PROPOSAL FOR THE LEVY OF A SPECIAL SALES TAX IN ACCORDANCE WITH SUBSECTION (4)(a) OF THIS SECTION MUST BE SUBMITTED TO THE ELIGIBLE

ELECTORS OF THE MUNICIPALITY ON THE DATE OF THE STATE GENERAL ELECTION, ON THE FIRST TUESDAY IN NOVEMBER OF AN ODD-NUMBERED YEAR, OR ON THE DATE OF A MUNICIPAL BIENNIAL ELECTION. ANY ELECTION ON THE PROPOSAL MUST BE CONDUCTED BY THE CLERK OF THE MUNICIPALITY IN ACCORDANCE WITH THE "COLORADO MUNICIPAL ELECTION CODE OF 1965", ARTICLE 10 OF TITLE 31.

(5) IF A COUNTY OR MUNICIPALITY OBTAINED APPROVAL FROM THE ELIGIBLE ELECTORS OF THE COUNTY OR MUNICIPALITY PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (5), TO LEVY, COLLECT, ENFORCE, AND ADMINISTER A SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, THE SPECIAL SALES TAX IS VALID AND THE COUNTY OR MUNICIPALITY IS AUTHORIZED TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX; EXCEPT THAT, IN THE CASE OF A COUNTY, THE COUNTY IS AUTHORIZED TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX SO LONG AS THE COUNTY COMPLIES WITH SUBSECTION (2) OF THIS SECTION. IF A COUNTY LEVIES, COLLECTS, ENFORCES, AND ADMINISTERS A SPECIAL SALES TAX IN A MUNICIPALITY THAT HAS ALREADY OBTAINED VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, THE COUNTY SPECIAL SALES TAX IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (3) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

(6)(a) NOTWITHSTANDING ARTICLE 2 OF TITLE 29, A SPECIAL SALES TAX IMPOSED BY A COUNTY OR MUNICIPALITY PURSUANT TO THIS SECTION SHALL NOT BE COLLECTED, ADMINISTERED, OR ENFORCED BY THE DEPARTMENT OF REVENUE, BUT SHALL INSTEAD BE COLLECTED, ADMINISTERED, AND ENFORCED BY THE COUNTY OR MUNICIPALITY IMPOSING THE SPECIAL SALES TAX.

(b) A COUNTY OR MUNICIPALITY IN WHICH A SPECIAL SALES TAX IS IMPOSED PURSUANT TO THIS SECTION MAY AUTHORIZE A RETAILER SELLING CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO RETAIN A PERCENTAGE OF THE SPECIAL SALES TAX COLLECTED PURSUANT TO THIS SECTION TO COVER THE EXPENSES OF COLLECTING AND REMITTING THE SPECIAL SALES TAX TO THE COUNTY OR MUNICIPALITY. THE COUNTY OR MUNICIPALITY SHALL DETERMINE THE PERCENTAGE THAT A RETAILER MAY RETAIN PURSUANT TO THIS SUBSECTION (6)(b).

(7) A COUNTY OR MUNICIPALITY IN WHICH THE ELIGIBLE ELECTORS HAVE APPROVED A SPECIAL SALES TAX PURSUANT TO THIS SECTION MAY CREDIT THE REVENUES COLLECTED FROM THE SPECIAL SALES TAX TO THE GENERAL FUND OF THE COUNTY OR MUNICIPALITY OR TO ANY SPECIAL FUND CREATED IN THE COUNTY'S OR MUNICIPALITY'S TREASURY. THE GOVERNING BODY OF A COUNTY OR MUNICIPALITY MAY USE REVENUES COLLECTED FROM THE SPECIAL SALES TAX IMPOSED PURSUANT TO THIS SECTION FOR ANY PURPOSE AS DETERMINED BY THE GOVERNING BODY.

(8) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS" HAS THE SAME

MEANING AS SET FORTH IN SECTION 18-13-121 (5).

(b) "SPECIAL SALES TAX" MEANS A SALES TAX IMPOSED BY A LOCAL GOVERNMENT THAT IS SEPARATE FROM A GENERAL SALES TAX IMPOSED PURSUANT TO SECTION 29-2-102 OR 29-2-103, AS APPLICABLE, AND MAY BE IMPOSED IN ADDITION TO THE TAXES IMPOSED PURSUANT TO THIS PART 1.

SECTION 7. In Colorado Revised Statutes, **amend** 39-28.5-109 as follows:

39-28.5-109. Taxation by cities and towns. ~~No provision of This article shall be construed to~~ ARTICLE 28.5 DOES NOT prevent ~~the~~ A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY FROM imposing, levying, and collecting ~~of any SPECIAL SALES tax upon sales of CIGARETTES, tobacco products, OR NICOTINE PRODUCTS, AS THAT TERM IS DEFINED IN SECTION 18-13-121 (5), or upon the occupation or privilege of selling such CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE products. by any city or town in this state, nor shall the provisions of~~ This article be interpreted to ARTICLE 28.5 DOES NOT affect any existing authority of local ~~municipalities~~ GOVERNMENTS to impose a SPECIAL SALES tax on CIGARETTES, tobacco products, OR NICOTINE PRODUCTS, IN ACCORDANCE WITH SECTION 39-28-112, to be used for local and ~~municipal~~ MUNICIPAL GOVERNMENTAL purposes.

SECTION 8. Effective date. This act takes effect July 1, 2019.

SECTION 9. 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: March 28, 2019