

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 10-0739.01 Esther van Mourik

HOUSE BILL 10-1193

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE COLLECTION OF SALES AND USE TAXES ON SALES**
102 **MADE BY OUT-OF-STATE RETAILERS, AND MAKING AN**
103 **APPROPRIATION THEREFOR.**

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>.)

Section 1 of the bill relates to current law requiring a retailer to collect sales tax from a person residing in this state only if the retailer has sufficient connections with this state. Commencing March 1, 2010, section 1 articulates a presumption that any out-of-state retailer that has

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.*

HOUSE
3rd Reading Unamended
February 1, 2010

HOUSE
Amended 2nd Reading
January 29, 2010

a referral relationship with an affiliate has an obligation to collect sales tax. The bill specifies that the presumption may be rebutted by the out-of-state retailer if the retailer can show that the affiliate with whom the retailer has such a relationship did not engage in active solicitation. The bill defines an affiliate as a person residing in this state that solicits business by means of a public forum in this state.

Section 2 specifies that, for purposes of any efforts to collect use tax, the executive director of the department of revenue may issue a subpoena to any out-of-state retailer if the out-of-state retailer refuses to voluntarily furnish specific information when requested and may take the out-of-state retailer's testimony under oath. If the out-of-state retailer fails or refuses to respond to the subpoena and give testimony, the executive director may apply to any judge of the district court of the state of Colorado for an attachment against the out-of-state retailer for contempt.

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

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

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

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

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

1 property to, such persons residing in this state for use, consumption,
2 distribution, and storage for use or consumption in this state.

3 (II) (A) COMMENCING MARCH 1, 2010, IF A RETAILER ENTERS INTO
4 AN AGREEMENT WITH AN AFFILIATE UNDER WHICH THE AFFILIATE, FOR A
5 COMMISSION OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY REFERS
6 POTENTIAL CUSTOMERS, WHETHER BY A LINK ON AN INTERNET WEB SITE
7 OR OTHERWISE, TO THE RETAILER, THEN THE AFFILIATE SHALL BE
8 PRESUMED TO HAVE SOLICITED BUSINESS ON BEHALF OF SUCH RETAILER
9 AND SUCH RETAILER IS DEEMED TO BE DOING BUSINESS IN THIS STATE.
10 THIS PRESUMPTION SHALL NOT APPLY UNLESS THE CUMULATIVE GROSS
11 RECEIPTS FROM SALES BY THE RETAILER TO CUSTOMERS IN THE STATE WHO
12 ARE REFERRED TO THE RETAILER BY ALL AFFILIATES WITH THIS TYPE OF AN
13 AGREEMENT WITH THE RETAILER ARE IN EXCESS OF TEN THOUSAND
14 DOLLARS DURING THE PRECEDING CALENDAR YEAR. THIS PRESUMPTION
15 MAY BE REBUTTED BY PROOF THAT THE AFFILIATE WITH WHOM THE
16 RETAILER HAS AN AGREEMENT DID NOT ENGAGE IN ANY SOLICITATION IN
17 THIS STATE ON BEHALF OF THE RETAILER THAT WOULD SATISFY THE NEXUS
18 REQUIREMENT OF THE UNITED STATES CONSTITUTION DURING THE
19 CALENDAR YEAR IN QUESTION. NOTHING IN THIS SUBPARAGRAPH (II)
20 SHALL BE CONSTRUED TO NARROW THE SCOPE OF ANY TERM FOR PURPOSES
21 OF THIS ARTICLE.

22 (B) FOR PURPOSES OF THIS SUBPARAGRAPH (II), "AFFILIATE"
23 MEANS A PERSON RESIDING IN THIS STATE THAT PUBLICLY, NOT INCLUDING
24 ELECTRONICALLY, SOLICIT BUSINESS BY MEANS OF THEIR PHYSICAL
25 PRESENCE IN THIS STATE.

26 (8) "Retailer" or "vendor" means a person doing a retail business
27 IN THIS STATE, known to the trade and public as such, and selling to the

1 user or consumer, and not for resale.

2 **SECTION 2.** 39-21-112, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **39-21-112. Duties and powers of executive director.**

5 (3.5) (a) IF ANY OUT-OF-STATE RETAILER REFUSES VOLUNTARILY TO
6 FURNISH ANY OF THE INFORMATION SPECIFIED IN SUBSECTION (1) OF THIS
7 SECTION WHEN REQUESTED BY THE EXECUTIVE DIRECTOR OF THE
8 DEPARTMENT OF REVENUE OR HIS OR HER EMPLOYEE, AGENT, OR
9 REPRESENTATIVE, THE EXECUTIVE DIRECTOR, BY SUBPOENA ISSUED UNDER
10 THE EXECUTIVE DIRECTOR'S HAND, MAY REQUIRE THE ATTENDANCE OF
11 THE OUT-OF-STATE RETAILER AND THE PRODUCTION BY HIM OR HER OF
12 ANY OF THE FOREGOING INFORMATION IN THE OUT-OF-STATE RETAILER'S
13 POSSESSION AND MAY ADMINISTER AN OATH TO HIM OR HER AND TAKE HIS
14 OR HER TESTIMONY. IF THE OUT-OF-STATE RETAILER FAILS OR REFUSES TO
15 RESPOND TO SAID SUBPOENA AND GIVE TESTIMONY, THE EXECUTIVE
16 DIRECTOR MAY APPLY TO ANY JUDGE OF THE DISTRICT COURT OF THE
17 STATE OF COLORADO TO ENFORCE SUCH SUBPOENA BY ANY APPROPRIATE
18 ORDER, INCLUDING, IF APPROPRIATE, AN ATTACHMENT AGAINST THE
19 OUT-OF-STATE RETAILER AS FOR CONTEMPT, AND UPON HEARING, SAID
20 JUDGE HAS, FOR THE PURPOSE OF ENFORCING OBEDIENCE TO THE
21 REQUIREMENTS OF SAID SUBPOENA, POWER TO MAKE SUCH ORDER AS, IN
22 HIS OR HER DISCRETION, HE OR SHE DEEMS CONSISTENT WITH THE LAW FOR
23 PUNISHMENT OF CONTEMPTS.

24 (b) FOR PURPOSES OF THIS SUBSECTION (3.5), "RETAILER" SHALL
25 HAVE THE SAME MEANING AS SET FORTH IN SECTION 39-26-102 (8).

26 **SECTION 3.** Part 1 of article 21 of title 39, Colorado Revised
27 Statutes, is amended BY THE ADDITION OF A NEW SECTION to

1 read:

2 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
3 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
4 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1193,
5 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS
6 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
7 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
8 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

9 **SECTION 4.** Part 1 of article 75 of title 24, Colorado Revised
10 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
11 read:

12 **24-75-113. 2010 bills to increase state revenue - prohibition on**
13 **hiring of new state employees.** NO MONEYS DERIVED FROM THE
14 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE
15 BILL 10-1193, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE
16 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE
17 EMPLOYEES.

18 **SECTION 5. Appropriation.** In addition to any other
19 appropriation, there is hereby appropriated, out of any moneys in the
20 general fund not otherwise appropriated, to the department of revenue, for
21 allocation to the taxation business group, taxation and compliance
22 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four
23 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so
24 much thereof as may be necessary, for the implementation of this act.

25 **SECTION 6. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.