

**First Extraordinary Session
Seventy-second General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 20B-0055.01 Esther van Mourik x4215

HOUSE BILL 20B-1004

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A BILL FOR AN ACT

101 **CONCERNING A TEMPORARY DEDUCTION FROM STATE NET TAXABLE**
102 **SALES FOR CERTAIN RETAILERS IN THE STATE IN ORDER TO**
103 **ALLOW SUCH RETAILERS TO RETAIN THE RESULTING SALES TAX**
104 **COLLECTED AS ASSISTANCE FOR LOST REVENUE AS A RESULT OF**
105 **THE ECONOMIC DISRUPTIONS DUE TO THE PRESENCE OF**
106 **CORONAVIRUS DISEASE 2019 (COVID-19) IN COLORADO.**

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://leg.colorado.gov>.)

The bill allows a temporary deduction from state net taxable sales

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

SENATE
3rd Reading Unamended
December 2, 2020

SENATE
Amended 2nd Reading
December 1, 2020

HOUSE
3rd Reading Unamended
December 1, 2020

HOUSE
2nd Reading Unamended
November 30, 2020

for qualifying retailers in the alcoholic beverages drinking places industry, the restaurant and other eating places industry, and the mobile food services industry in the state in order to allow such qualified retailers to retain the resulting sales tax collected as assistance for lost revenue as a result of the economic disruptions due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

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 and declares that:

4 (a) Due to the coronavirus disease 2019 (COVID-19) pandemic
5 and the ongoing public health emergency that Colorado has been battling
6 since March 2020, many retailers in the state, particularly those that are
7 subject to mandatory capacity restrictions, have suffered severe revenue
8 declines;

9 (b) Many retailers have been forced to choose between closing
10 their doors and laying off employees;

11 (c) Not all retailers were able to make such a choice for
12 themselves and were instead forced to close, further straining the state's
13 unemployment insurance program, resulting in significant impacts to the
14 state's budget;

15 (d) As retailers continue to close due to economic strain, local
16 communities and governments are doing their best to deal with the fallout
17 of lost jobs and revenue; and

18 (e) By providing relief to certain retailers, local businesses can
19 continue to provide valuable services to their community and continue to
20 employ Coloradans who would otherwise lose their jobs.

21 (2) The general assembly further finds and declares that the
22 alcoholic beverages drinking places industry, the restaurant and other

1 eating places industry, and the mobile food services industry are severely
2 impacted by the COVID-19 pandemic due to mandatory capacity
3 restrictions and by public health orders that required or recommended
4 potential patrons to stay home. These specific industries are in particular
5 need of relief in order to stabilize the economy throughout the state and
6 to better position Colorado's economy to recover from the COVID-19
7 pandemic.

8 **SECTION 2.** In Colorado Revised Statutes, 39-26-105, **amend**
9 (1)(a)(I)(A); and **add** (1.3) as follows:

10 **39-26-105. Vendor liable for tax - definitions - repeal.**

11 (1) (a) (I) (A) Except as provided in subsections (1)(a)(I)(B), **(1.3)**, and
12 (1.5) of this section, every retailer shall, irrespective of the provisions of
13 section 39-26-106, be liable and responsible for the payment of an
14 amount equivalent to two and ninety one-hundredths percent of all sales
15 made on or after January 1, 2001, by the retailer of commodities or
16 services as specified in section 39-26-104.

17 (1.3) (a) AS USED IN THIS SUBSECTION (1.3), UNLESS THE CONTEXT
18 OTHERWISE REQUIRES:

19 (I) "ALCOHOLIC BEVERAGES DRINKING PLACES INDUSTRY" MEANS
20 ESTABLISHMENTS THAT MAY MAKE SANDWICHES OR LIGHT SNACKS
21 AVAILABLE FOR CONSUMPTION, THAT ARE OPEN TO THE PUBLIC, AND ARE
22 KNOWN AS BARS, TAVERNS, SALES ROOMS, VINTNER'S RESTAURANTS,
23 BREW PUBS, DISTILLERY PUBS, NIGHTCLUBS, OR DRINKING PLACES
24 PRIMARILY ENGAGED IN PREPARING AND SERVING ALCOHOLIC BEVERAGES
25 FOR IMMEDIATE, ON-PREMISE CONSUMPTION. "ALCOHOLIC BEVERAGES
26 DRINKING PLACES INDUSTRY" DOES NOT MEAN BREWERIES, DISTILLERIES,
27 WINERIES, AND RETAIL LIQUOR, OR DRUG STORES THAT OFFER TASTINGS.

1 (II) "MOBILE FOOD SERVICES INDUSTRY" MEANS RETAILERS
2 PRIMARILY ENGAGED IN PREPARING AND SERVING MEALS, SNACKS, OR
3 NONALCOHOLIC BEVERAGES FOR IMMEDIATE CONSUMPTION FROM
4 MOTORIZED VEHICLES OR NONMOTORIZED CARTS. "MOBILE FOOD
5 SERVICES INDUSTRY" DOES NOT MEAN RETAILERS DELIVERING FOOD
6 PREPARED ONLY BY THIRD PARTIES AND DOES NOT MEAN RETAILERS
7 SHIPPING MEAL KITS, HEAT-AT-HOME MEALS, OR OTHER UNPREPARED
8 FOOD TO CONSUMERS FOR HOME CONSUMPTION.

9 (III) "QUALIFYING RETAILER" MEANS A RETAILER DOING BUSINESS
10 IN THE STATE THAT TIMELY FILES SALES TAX RETURNS AS REQUIRED
11 UNDER SUBSECTION (1)(b) OF THIS SECTION AND SECTION 39-26-109, AND
12 THAT OPERATES IN THE ALCOHOLIC BEVERAGES DRINKING PLACES
13 INDUSTRY, THE RESTAURANT AND OTHER EATING PLACES INDUSTRY, OR
14 THE MOBILE FOOD SERVICES INDUSTRY.

15 (IV) "RESTAURANT AND OTHER EATING PLACES INDUSTRY" MEANS
16 ESTABLISHMENTS, NOT INCLUDING ESTABLISHMENTS SELLING FOOD FROM
17 MOBILE VEHICLES, ESTABLISHMENTS PRESENTING LIVE THEATRICAL
18 PRODUCTIONS AND OTHER ENTERTAINMENT FACILITIES, HOTELS OR BED
19 AND BREAKFAST ESTABLISHMENTS, SPECIALTY FOOD STORES, VENDING
20 MACHINES, CATERERS OR OTHER FOOD SERVICE CONTRACTORS, OR
21 PRIVATE CAFETERIAS AT WORKPLACES, UNIVERSITIES, OR HOSPITALS, THAT
22 ARE OPEN TO THE PUBLIC, ARE KNOWN AS RESTAURANTS, CAFES, LUNCH
23 COUNTERS, AND CARRYOUT SHOPS, AND ARE PRIMARILY ENGAGED IN ONE
24 OF THE FOLLOWING:

25 (A) PROVIDING PREPARED FOOD SERVICES AT A FIXED, PHYSICAL
26 PREMISES TO PATRONS WHO ORDER AND ARE SERVED WHILE SEATED, AND
27 WHO PAY AFTER EATING;

1 (B) PROVIDING PREPARED FOOD SERVICES AT A FIXED, PHYSICAL
2 PREMISES TO PATRONS WHO GENERALLY ORDER OR SELECT ITEMS AND
3 WHO PAY BEFORE EATING; OR

4 (C) PREPARING OR SERVING SPECIALTY SNACKS OR NONALCOHOLIC
5 BEVERAGES AT A FIXED, PHYSICAL PREMISES TO PATRONS WHO PAY
6 BEFORE EATING FOR CONSUMPTION ON OR NEAR THE PREMISES.

7 (V) "SPECIFIED SALES TAX PERIOD" MEANS SALES MADE IN
8 NOVEMBER 2020, DECEMBER 2020, JANUARY 2021, AND FEBRUARY 2021,
9 FOR WHICH MONTHLY RETURNS MUST BE FILED PURSUANT TO SUBSECTION
10 (1)(b) OF THIS SECTION, ON DECEMBER 21, 2020, JANUARY 20, 2021,
11 FEBRUARY 22, 2021, AND MARCH 22, 2021, RESPECTIVELY.

12 (VI) "STATE NET TAXABLE SALES" MEANS ALL SALES MADE BY THE
13 QUALIFYING RETAILER DURING THE SPECIFIED SALES TAX PERIOD OF
14 TANGIBLE PERSONAL PROPERTY, COMMODITIES, AND SERVICES AS
15 SPECIFIED IN SECTION 39-26-104, LESS ANY DEDUCTIONS AND EXEMPTIONS
16 AUTHORIZED IN THIS ARTICLE 26, WITHOUT REGARD TO THE DEDUCTION
17 AUTHORIZED IN THIS SUBSECTION (1.3).

18 (b) (I) A QUALIFYING RETAILER IN THE ALCOHOLIC BEVERAGES
19 DRINKING PLACES INDUSTRY OR IN THE RESTAURANT AND OTHER EATING
20 PLACES INDUSTRY MAY DEDUCT FROM STATE NET TAXABLE SALES THE
21 LESSER OF STATE NET TAXABLE SALES OR SEVENTY THOUSAND DOLLARS
22 AND RETAIN THE RESULTING SALES TAX COLLECTED FOR EACH MONTH IN
23 THE SPECIFIED SALES TAX PERIOD.

24 (II) ONE DEDUCTION DESCRIBED IN SUBSECTION (1.3)(b)(I) OF THIS
25 SECTION IS ALLOWED PER MONTH FOR EACH OF UP TO FIVE FIXED PHYSICAL
26 PREMISES THAT ARE PROPERLY LICENSED UNDER SECTION 39-26-103
27 (2)(a), TO A QUALIFYING RETAILER IN THE ALCOHOLIC BEVERAGES

1 DRINKING PLACES INDUSTRY OR IN THE RESTAURANT AND OTHER EATING
2 PLACES INDUSTRY. NO DEDUCTION IS ALLOWED FOR:

3 (A) NONPHYSICAL SITES THAT ARE ESTABLISHED FOR PURPOSES OF
4 REPORTING SALES DELIVERED INTO A TAXING AREA; OR

5 (B) ANY TEMPORARY PLACE OF BUSINESS OR SPECIAL EVENT.

6 (c) A QUALIFYING RETAILER IN THE MOBILE FOOD SERVICES
7 INDUSTRY MAY DEDUCT FROM STATE NET TAXABLE SALES THE LESSER OF
8 AGGREGATE STATE NET TAXABLE SALES FOR ALL SITES OR SEVENTY
9 THOUSAND DOLLARS PER MOTORIZED VEHICLE OR NONMOTORIZED CART,
10 NOT TO EXCEED FIVE MOTORIZED VEHICLES OR NONMOTORIZED CARTS,
11 AND RETAIN THE RESULTING STATE SALES TAX COLLECTED FOR EACH
12 MONTH IN THE SPECIFIED SALES TAX PERIOD.

13 (d) IF A QUALIFYING RETAILER IS IN BOTH THE RESTAURANT AND
14 OTHER EATING PLACES INDUSTRY AND THE MOBILE FOOD SERVICES
15 INDUSTRY, THE QUALIFYING RETAILER MAY CLAIM THE DEDUCTION FOR NO
16 MORE THAN FIVE PHYSICAL SITES AND FOR NO MORE THAN FIVE
17 MOTORIZED VEHICLES AND NONMOTORIZED CARTS.

18 (e) THE QUALIFYING RETAILER MUST CONTINUE TO HOLD STATE
19 SALES TAXES IN EXCESS OF THE AMOUNT RETAINED IN TRUST UNTIL PAID
20 TO THE DEPARTMENT OF REVENUE AS SPECIFIED IN SECTION 39-26-118.

21 (f) THE DEDUCTION AND SALES TAX RETENTION ALLOWED IN THIS
22 SUBSECTION (1.3) APPLIES TO STATE NET TAXABLE SALES ONLY.
23 QUALIFYING RETAILERS MAY NOT RETAIN PAYMENT OF CITY, COUNTY, OR
24 SPECIAL DISTRICT SALES TAXES COLLECTED BY THE DEPARTMENT OF
25 REVENUE. NOTHING IN THIS SUBSECTION (1.3) PREVENTS ANY LOCAL
26 GOVERNMENT FROM REBATING SALES TAXES COLLECTED BY QUALIFYING
27 RETAILERS PURSUANT TO A LOCAL ORDINANCE.

1 (g) THIS SUBSECTION (1.3) IS REPEALED, EFFECTIVE DECEMBER 31,
2 2026.

3 **SECTION 3.** In Colorado Revised Statutes, **amend** 39-26-112 as
4 follows:

5 **39-26-112. Excess tax - remittance - repeal.** (1) If any vendor,
6 during any reporting period, collects as a tax an amount in excess of three
7 percent of all taxable sales made prior to January 1, 2001, and two and
8 ninety one-hundredths percent of all taxable sales made on or after
9 January 1, 2001, such vendor shall remit to the executive director of the
10 department of revenue the full net amount of the tax imposed in this part
11 1 and also such excess. The retention by the retailer or vendor of any
12 excess of tax collections over the said percentage of the total taxable sales
13 of such retailer or vendor, or the intentional failure to remit punctually to
14 the executive director the full amount required to be remitted by the
15 provisions of this part 1 is declared to be unlawful and constitutes a
16 misdemeanor.

17 (2) (a) THE REQUIREMENTS AND PENALTY IN THIS SECTION DO NOT
18 APPLY TO A QUALIFYING RETAILER RETAINING STATE SALES TAX AS
19 ALLOWED IN SECTION 39-26-105 (1.3).

20 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31,
21 2026.

22 **SECTION 4.** In Colorado Revised Statutes, 39-26-118, **amend**
23 (1) as follows:

24 **39-26-118. Recovery of taxes, penalty, and interest - repeal.**
25 (1) (a) All sums of money paid by the purchaser to the retailer as taxes
26 imposed by this ~~article~~ ARTICLE 26 shall be and remain public money, the
27 property of the state of Colorado, in the hands of such retailer, and ~~he~~ THE

1 RETAILER shall hold the same in trust for the sole use and benefit of the
2 state of Colorado until paid to the executive director of the department of
3 revenue, and, for failure to so pay to the executive director, ~~such~~ THE
4 retailer shall be punished as provided by law.

5 (b) (I) THIS SUBSECTION (1) DOES NOT APPLY TO A QUALIFYING
6 RETAILER RETAINING STATE SALES TAX AS ALLOWED IN SECTION
7 39-26-105 (1.3).

8 (II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE DECEMBER
9 31, 2026.

10 **SECTION 5**. In Colorado Revised Statutes, 39-21-113, **add** (27)
11 as follows:

12 **39-21-113. Reports and returns - rule.** (27) NOTWITHSTANDING
13 THE CONFIDENTIALITY REQUIREMENTS IN THIS SECTION, THE EXECUTIVE
14 DIRECTOR SHALL SHARE WITH THE DEPARTMENT OF PUBLIC HEALTH AND
15 ENVIRONMENT PERTINENT INFORMATION NECESSARY TO DETERMINE THE
16 AMOUNT OF STATE SALES TAX RETAINED BY A QUALIFYING RETAILER AS
17 ALLOWED IN SECTION 39-26-105 (1.3). ANY INFORMATION PROVIDED TO
18 THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO
19 THIS SUBSECTION (27) REMAINS CONFIDENTIAL, AND ALL AGENTS, CLERKS,
20 AND EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH AND
21 ENVIRONMENT ARE SUBJECT TO THE LIMITATIONS SET FORTH IN
22 SUBSECTION (4) OF THIS SECTION AND THE PENALTIES IN SUBSECTION (6)
23 OF THIS SECTION.

24 **SECTION 6**. In Colorado Revised Statutes, **amend** 39-21-116.5
25 as follows:

26 **39-21-116.5. Penalties - repeal.** (1) In addition to the personal
27 liability provided in section 39-21-116, all officers of a corporation and

1 all members of a partnership or a limited liability company required to
2 collect, account for, and pay over any tax administered by this ~~article~~
3 ARTICLE 21 who willfully fail to collect, account for, or pay over such tax
4 or who willfully attempt in any manner to evade or defeat any such tax,
5 or the payment thereof, are subject to, in addition to other penalties
6 provided by law, a penalty equal to one hundred fifty percent of the total
7 amount of the tax not collected, accounted for, paid over, or otherwise
8 evaded. An officer of a corporation or a member of a partnership or a
9 limited liability company shall be deemed to be subject to this section if
10 the corporation, partnership, or limited liability company is subject to
11 filing returns or paying taxes administered by this ~~article~~ ARTICLE 21 and
12 if such officers of corporations or members of partnerships or limited
13 liability companies voluntarily or at the direction of their superiors
14 assume the duties or responsibilities of complying with the provisions of
15 any tax administered by this ~~article~~ ARTICLE 21 on behalf of the
16 corporation, partnership, or limited liability company.

17 (2) (a) THIS SECTION DOES NOT APPLY TO THE TEMPORARY SALES
18 TAX DEDUCTION AND RETENTION ALLOWED IN SECTION 39-26-105 (1.3).

19 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31,
20 2026.

21 **SECTION 7.** In Colorado Revised Statutes, 39-21-118, **amend**
22 (2) as follows:

23 **39-21-118. Criminal penalties - repeal.** (2) (a) Any person
24 required, or any person who purports to be required, under any title
25 administered by the department to collect, account for, or pay over any
26 tax, who willfully fails to collect or truthfully account for or pay over
27 such tax, including, but not limited to, willfully making a materially false

1 statement in connection with an application for a refund of any tax for the
2 purpose of falsely obtaining a refund of such tax, in addition to other
3 penalties provided by law, is guilty of a class 5 felony and, upon
4 conviction thereof, shall be punished as provided in section 18-1.3-401,
5 ~~C.R.S.~~, or shall be punished by a fine of not more than one hundred
6 thousand dollars, or five hundred thousand dollars in the case of a
7 corporation, or by both such fine and imprisonment, together with the
8 costs of prosecution.

9 (b) (I) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY TO
10 THE TEMPORARY SALES TAX DEDUCTION AND RETENTION ALLOWED IN
11 SECTION 39-26-105 (1.3).

12 (II) THIS SUBSECTION (2)(b) IS REPEALED, EFFECTIVE DECEMBER
13 31, 2026.

14 **SECTION 8. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, or safety.