

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

INTRODUCED

LLS NO. 19-0670.01 Jennifer Berman x3286

HOUSE BILL 19-1033

HOUSE SPONSORSHIP

Tipper and Kennedy,

SENATE SPONSORSHIP

Fields and Priola,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

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

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>.)

Sections 1 through 3 of the bill authorize a county to enact a resolution or ordinance that prohibits a minor from possessing or purchasing cigarettes, tobacco products, or nicotine products. Sections 1 and 2 also authorize a county to impose regulations on cigarettes, tobacco products, or nicotine products that are more stringent than statewide regulations, including prohibiting sales to a person under 21 years of age,

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.

and section 3 expressly authorizes a county to enact a resolution or ordinance regulating the sale of cigarettes, tobacco products, or nicotine products.

From state income tax money, the state currently apportions an amount equal to 27% of state cigarette tax revenues to cities, towns, and counties in proportion to the amount of state sales tax revenues collected within their boundaries. In order to receive their allocation of this money, cities, towns, and counties are prohibited from imposing their own fees, licenses, or taxes on cigarette sales or from attempting to impose a tax on cigarettes. **Section 4** removes this prohibition, thus allowing cities, towns, and counties to impose fees, licenses, or taxes on cigarette sales without losing their apportioned state cigarette tax revenues.

Section 5 authorizes a county, if approved by a vote of the people within the county, to impose a special sales tax on the sale of cigarettes, tobacco products, or nicotine products and provides a mechanism by which a county's special sales tax applies to a municipality within the boundary of the county unless the municipality, if approved by a vote of the people within the municipality, enacts its own such special sales tax; however, the county and municipality may then enter into an intergovernmental agreement authorizing the county to continue to levy, collect, and enforce its special sales tax within the corporate limits of the municipality.

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

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

4 **18-13-121. Furnishing cigarettes, tobacco products, or nicotine**
5 **products to minors.** (3) Nothing in this section prohibits a statutory or
6 home rule municipality, COUNTY, OR CITY AND COUNTY from enacting an
7 ordinance OR RESOLUTION that prohibits a ~~person under eighteen years of~~
8 ~~age~~ MINOR from purchasing any cigarettes, tobacco products, or nicotine
9 products or imposes requirements more stringent than provided in this
10 section.

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

13 **25-14-301. Possession of cigarettes, tobacco products, or**

1 **nicotine products by a minor prohibited - definitions.** (3) As used in
2 this section, unless the context otherwise requires:

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

6 (4) Nothing in this section ~~shall be construed to prohibit any~~
7 PROHIBITS A statutory or home rule municipality, COUNTY, OR CITY AND
8 COUNTY from enacting an ordinance OR RESOLUTION that prohibits the
9 possession of cigarettes, ~~or~~ tobacco products, OR NICOTINE PRODUCTS by
10 a ~~person who is under eighteen years of age~~ MINOR or imposes
11 requirements more stringent than provided in this section.

12 **SECTION 3.** In Colorado Revised Statutes, 30-15-401, **amend**
13 (1.5) as follows:

14 **30-15-401. General regulations - definitions.** (1.5) In addition
15 to any other powers, the board of county commissioners has the power to
16 adopt a resolution or an ordinance ~~prohibiting minors from possessing~~ TO
17 REGULATE THE POSSESSION OR PURCHASING OF cigarettes, ~~or~~ tobacco
18 products, OR NICOTINE PRODUCTS, as defined by section ~~39-28.5-101(5);~~
19 ~~C.R.S.~~ 18-13-121 (5), BY A MINOR OR TO REGULATE THE SALE OF
20 CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO MINORS.

21 **SECTION 4.** In Colorado Revised Statutes, 39-22-623, **amend**
22 (1) introductory portion and (1)(a)(II)(A) as follows:

23 **39-22-623. Disposition of collections - definition.** (1) The
24 proceeds of all ~~moneys~~ MONEY collected under this ~~article~~ ARTICLE 22,
25 less the reserve retained for refunds, shall be credited as follows:

26 (a) (II) (A) Effective July 1, 1987, an amount equal to
27 twenty-seven percent of the gross state cigarette tax shall be apportioned

1 to incorporated cities and incorporated towns ~~which~~ THAT levy taxes and
2 adopt formal budgets and to counties. For the purposes of this section, a
3 city and county ~~shall be~~ IS considered as a city. The city or town share
4 shall be apportioned according to the percentage of state sales tax
5 revenues collected by the department of revenue in an incorporated city
6 or town as compared to the total state sales tax collections that may be
7 allocated to all political subdivisions in the state; the county share shall
8 be the same as that which the percentage of state sales tax revenues
9 collected in the unincorporated area of the county bears to total state sales
10 tax revenues ~~which~~ THAT may be allocated to all political subdivisions in
11 the state. The department of revenue shall certify to the state treasurer, at
12 least annually, the percentage for allocation to each city, town, and
13 county, and ~~such~~ THE DEPARTMENT SHALL APPLY THE percentage for
14 allocation ~~so~~ certified ~~shall be applied by said department~~ in all
15 distributions to cities, towns, and counties until changed by certification
16 to the state treasurer. ~~In order to qualify for distributions of state income~~
17 ~~tax moneys, units of local government are prohibited from imposing fees,~~
18 ~~licenses, or taxes on any person as a condition for engaging in the~~
19 ~~business of selling cigarettes or from attempting in any manner to impose~~
20 ~~a tax on cigarettes.~~ For purposes of this ~~paragraph (a)~~ SUBSECTION
21 (1)(a)(II), the "gross state cigarette tax" means the total tax before the
22 discount provided for in section 39-28-104 (1).

23 **SECTION 5.** In Colorado Revised Statutes, **amend** 39-28-112 as
24 follows:

25 **39-28-112. Taxation of cigarettes, tobacco products, or**
26 **nicotine products by municipalities, counties, and city and counties**
27 **- definitions.** (1) ~~No provision of This article shall be construed to~~

1 ARTICLE 28 DOES NOT prevent ~~the~~ A CITY, TOWN, COUNTY, OR CITY AND
2 COUNTY IN THIS STATE FROM imposing, levying, and collecting ~~of~~ any
3 SPECIAL SALES tax upon sales of cigarettes, TOBACCO PRODUCTS, OR
4 NICOTINE PRODUCTS, or upon the occupation or privilege of selling
5 cigarettes, ~~by any city or town in this state~~ TOBACCO PRODUCTS, OR
6 NICOTINE PRODUCTS, nor ~~shall the provisions of~~ DOES this article be
7 ~~interpreted to~~ ARTICLE 28 affect any existing authority of local
8 ~~municipalities~~ GOVERNMENTS to impose a SPECIAL SALES tax on
9 cigarettes, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS to be used for
10 local and ~~municipal~~ GOVERNMENTAL purposes.

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

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

19 (II) A COUNTY MAY LEVY, COLLECT, AND ENFORCE A COUNTY
20 SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS,
21 OR NICOTINE PRODUCTS PURSUANT TO THIS SUBSECTION (2) IN THE
22 MUNICIPALITIES WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR
23 IN PART, THAT DO NOT LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE
24 OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. THE
25 COUNTY MAY LEVY A SPECIAL SALES TAX IN A MUNICIPALITY PURSUANT
26 TO THIS SUBSECTION (2)(a)(II) ONLY UNTIL THE MUNICIPALITY OBTAINS
27 VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON

1 CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. IF THE
2 MUNICIPALITY OBTAINS SUCH VOTER APPROVAL, THE COUNTY SPECIAL
3 SALES TAX AUTHORIZED BY THIS SUBSECTION (2)(a)(II) IS INVALID WITHIN
4 THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY
5 ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE
6 MUNICIPALITY PURSUANT TO SUBSECTION (2)(a)(III) OF THIS SECTION
7 THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, AND
8 ENFORCE THE SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS,
9 OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE
10 MUNICIPALITY.

11 (III) A COUNTY MAY LEVY, COLLECT, AND ENFORCE A COUNTY
12 SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS,
13 OR NICOTINE PRODUCTS PURSUANT TO THIS SUBSECTION (2) IN EACH
14 MUNICIPALITY WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR IN
15 PART, THAT LEVIES A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF
16 CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, IF THE
17 GOVERNING BODY OF THE COUNTY AND THE GOVERNING BODY OF THE
18 MUNICIPALITY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
19 PERTAINING TO THE COUNTY'S LEVY, COLLECTION, AND ENFORCEMENT OF
20 A COUNTY SPECIAL SALES TAX UPON ALL SALES OF ALL CIGARETTES,
21 TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE
22 LIMITS OF THE MUNICIPALITY. AN INTERGOVERNMENTAL AGREEMENT
23 PURSUANT TO THIS SUBSECTION (2)(a)(III) MAY INCLUDE A PROVISION FOR
24 THE APPORTIONMENT OF A SPECIFIED PERCENTAGE OF THE GROSS COUNTY
25 CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS SPECIAL SALES
26 TAX REVENUE COLLECTED BY THE COUNTY TO THE MUNICIPALITY.

27 (b) NOTWITHSTANDING SECTION 29-2-103 (2), A COUNTY MAY

1 LEVY, COLLECT, AND ENFORCE A SPECIAL SALES TAX PURSUANT TO THIS
2 SUBSECTION (2) IN LESS THAN THE ENTIRE COUNTY WHEN THE COUNTY
3 SATISFIES ONE OR MORE OF THE CONDITIONS OF THIS SUBSECTION (2).

4 (c) NO SPECIAL SALES TAX SHALL BE LEVIED PURSUANT TO THIS
5 SUBSECTION (2) UNTIL THE PROPOSAL HAS BEEN REFERRED TO AND
6 APPROVED BY THE ELIGIBLE ELECTORS OF THE COUNTY IN ACCORDANCE
7 WITH ARTICLE 2 OF TITLE 29. ANY PROPOSAL FOR THE LEVY OF A SPECIAL
8 SALES TAX IN ACCORDANCE WITH THIS SUBSECTION (2) SHALL BE
9 SUBMITTED TO THE ELIGIBLE ELECTORS OF THE COUNTY ONLY ON THE
10 DATE OF THE STATE GENERAL ELECTION OR ON THE FIRST TUESDAY IN
11 NOVEMBER OF AN ODD-NUMBERED YEAR. ANY ELECTION ON THE
12 PROPOSAL MUST BE CONDUCTED BY THE COUNTY CLERK AND RECORDER
13 IN ACCORDANCE WITH THE "UNIFORM ELECTION CODE OF 1992", ARTICLES
14 1 TO 13 OF TITLE 1.

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

26 (4) (a) NOTWITHSTANDING ARTICLE 2 OF TITLE 29, A SPECIAL
27 SALES TAX IMPOSED BY A COUNTY OR MUNICIPALITY PURSUANT TO THIS

1 SECTION SHALL NOT BE COLLECTED, ADMINISTERED, OR ENFORCED BY THE
2 DEPARTMENT OF REVENUE, BUT SHALL INSTEAD BE COLLECTED,
3 ADMINISTERED, AND ENFORCED BY THE COUNTY OR MUNICIPALITY
4 IMPOSING THE SPECIAL SALES TAX.

5 (b) A COUNTY OR MUNICIPALITY IN WHICH A SPECIAL SALES TAX
6 IS IMPOSED PURSUANT TO THIS SECTION MAY AUTHORIZE A RETAILER
7 SELLING CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO
8 RETAIN A PERCENTAGE OF THE SPECIAL SALES TAX COLLECTED PURSUANT
9 TO THIS SECTION TO COVER THE EXPENSES OF COLLECTING AND REMITTING
10 THE SPECIAL SALES TAX TO THE COUNTY OR MUNICIPALITY. THE COUNTY
11 OR MUNICIPALITY SHALL DETERMINE THE PERCENTAGE THAT A RETAILER
12 MAY RETAIN PURSUANT TO THIS SUBSECTION (4)(b).

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

21 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
22 REQUIRES:

23 (a) "CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS"
24 HAS THE SAME MEANING AS SET FORTH IN SECTION 18-13-121 (5).

25 (b) "SPECIAL SALES TAX" MEANS A SALES TAX IMPOSED BY A
26 LOCAL GOVERNMENT THAT IS SEPARATE FROM A GENERAL SALES TAX
27 IMPOSED PURSUANT TO SECTION 29-2-102 OR 29-2-103, AS APPLICABLE,

1 AND MAY BE IMPOSED IN ADDITION TO THE TAXES IMPOSED PURSUANT TO
2 THIS PART 1.

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