

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. R15-1101.01 Esther van Mourik x4215

HCR15-1004

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HOUSE CONCURRENT RESOLUTION 15-1004

101 **SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF**
102 **COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION**
103 **CONCERNING STATEWIDE UNIFORM SALES AND USE TAX**
104 **DEFINITIONS, AND, IN CONNECTION THEREWITH, CREATING A**
105 **COMMISSION ON UNIFORM SALES AND USE TAX DEFINITIONS**
106 **THAT WILL CERTIFY THE STATEWIDE SALES AND USE TAX**
107 **DEFINITIONS AND WILL PROVIDE OFFICIAL GUIDANCE**
108 **REGARDING THE DEFINITIONS, AND SPECIFYING THAT THE STATE**
109 **AND ANY LOCAL TAXING JURISDICTIONS SHALL USE THE**
110 **CERTIFIED SALES AND USE TAX DEFINITIONS AND OFFICIAL**
111 **GUIDANCE FOR PURPOSES OF ADMINISTERING AND LEVYING ITS**
112 **SALES AND USE TAX.**

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.

Resolution Summary

(Note: This summary applies to this resolution as introduced and does not reflect any amendments that may be subsequently adopted. If this resolution passes third reading in the house of introduction, a resolution summary that applies to the reengrossed version of this resolution will be available at <http://www.leg.state.co.us/billsummaries>.)

The resolution creates the Colorado commission on uniform sales and use tax definitions (commission) in the department of revenue. The commission consists of 7 members who must have professional experience in sales and use tax and who are appointed by the governor through specified nominations with the consent of the senate. The commission's duties are to:

- ! Certify all definitions necessary to establish a comprehensive body of statewide uniform sales and use tax definitions that the state and local taxing jurisdictions must use; and
- ! Provide official guidance regarding the certified sales and use tax definitions.

The certified definitions must be promulgated as rules by the commission pursuant to the "State Administrative Procedure Act".

The resolution specifies the state and any local taxing jurisdiction shall use the certified sales and use tax definitions and any official guidance relating thereto for purposes of administering and levying its sales and use tax.

The resolution allows the state and any applicable local taxing jurisdiction to adopt a tax rate increase without advance voter approval in order to ensure revenue neutrality based on revenue projections as a result of the application of the definitions certified by the commission.

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- 1 WHEREAS, The general assembly hereby finds and declares that:
- 2 (1) The complexity of the existing sales and use tax structure in
- 3 Colorado is burdensome for businesses in the state;
- 4 (2) Colorado has nearly three hundred taxing authorities with
- 5 differing sales and use tax bases, and when overlapping boundaries are
- 6 taken into account there are over seven hundred areas with different rates,
- 7 taxable and nontaxable items, and definitions;
- 8 (3) Through their constitutional authority, home rule jurisdictions

1 have exercised their right to establish their own sales and use tax systems,
2 including their own rates, taxable and nontaxable items, and definitions;

3 (4) The resulting lack of uniformity can be especially cumbersome
4 for businesses operating in multiple jurisdictions in Colorado;

5 (5) Because many of the local and special taxing jurisdictions rely
6 heavily on the revenues produced by sales and use taxes, adopting
7 uniform taxable and nontaxable items is difficult to achieve;

8 (6) Adopting uniform definitions is a major step toward reducing
9 the complexity in the state's sales and use tax structure, but equally
10 important is ensuring that there be a uniform interpretation of the
11 definitions because it is not uncommon for two jurisdictions with the
12 same definition to differ in their interpretation of the definition; and

13 (7) The creation of a commission on uniform sales and use tax
14 definitions where that commission both certifies statewide sales and use
15 tax definitions and provides official guidance regarding those certified
16 definitions will serve the public interest by effectively ensuring statewide
17 uniformity in the interpretation of the sales and use tax definitions and
18 will help the state's sales and use tax structure become more
19 business-friendly; now, therefore,

20 *Be It Resolved by the House of Representatives of the Seventieth*
21 *General Assembly of the State of Colorado, the Senate concurring herein:*

22 **SECTION 1.** At the election held on November 8, 2016, the
23 secretary of state shall submit to the registered electors of the state the
24 ballot title set forth in section 2 for the following amendment to the state
25 constitution:

26 In the constitution of the state of Colorado, **add** article XXX as
27 follows:

1 (6) "STATE ADMINISTRATIVE PROCEDURE ACT" MEANS THE
2 "STATE ADMINISTRATIVE PROCEDURE ACT" LOCATED IN ARTICLE 4 OF
3 TITLE 24, COLORADO REVISED STATUTES, OR SUCH SUCCESSOR ACT.

4 (7) "STREAMLINED SALES AND USE TAX AGREEMENT" MEANS THE
5 WRITTEN AGREEMENT PRODUCED AND ADMINISTERED BY THE
6 STREAMLINED SALES TAX GOVERNING BOARD TO SIMPLIFY AND
7 MODERNIZE SALES AND USE TAX ADMINISTRATION IN PARTICIPATING
8 STATES.

9 (8) "STREAMLINED SALES TAX GOVERNING BOARD" MEANS THE
10 NONPROFIT CORPORATION STREAMLINED SALES TAX GOVERNING BOARD,
11 INC., CREATED FOR THE PURPOSE OF ADMINISTERING AND OPERATING THE
12 STREAMLINED SALES AND USE TAX AGREEMENT, AS AMENDED, TO
13 SIMPLIFY SALES AND USE TAX COLLECTION AND ADMINISTRATION BY
14 RETAILERS AND PARTICIPATING STATES.

15 **Section 2. Colorado commission on uniform sales and use tax**
16 **definitions - creation - appointment - term.** (1) THE COLORADO
17 COMMISSION ON UNIFORM SALES AND USE TAX DEFINITIONS IS HEREBY
18 CREATED IN THE DEPARTMENT OF REVENUE, AND CONSISTS OF SEVEN
19 MEMBERS AS FOLLOWS:

20 (a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
21 OR HIS OR HER DESIGNEE;

22 (b) ONE MEMBER WHO REPRESENTS STATE GOVERNMENT
23 APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE SENATE;

24 (c) TWO MEMBERS WHO REPRESENT COLORADO'S MUNICIPALITIES
25 APPOINTED BY THE GOVERNOR FROM NOMINATIONS PROVIDED BY A
26 STATEWIDE ASSOCIATION OF MUNICIPAL GOVERNMENTS WITH THE
27 CONSENT OF THE SENATE;

1 (d) ONE MEMBER WHO REPRESENTS COLORADO'S COUNTIES
2 APPOINTED BY THE GOVERNOR FROM NOMINATIONS PROVIDED BY A
3 STATEWIDE ASSOCIATION OF COUNTY COMMISSIONERS WITH THE CONSENT
4 OF THE SENATE; AND

5 (e) TWO MEMBERS WHO REPRESENT COLORADO'S BUSINESS
6 INTERESTS APPOINTED BY THE GOVERNOR FROM NOMINATIONS PROVIDED
7 BY STATEWIDE ASSOCIATIONS THAT REPRESENT COLORADO BUSINESSES
8 WITH THE CONSENT OF THE SENATE.

9 (2) THE GOVERNOR SHALL MAKE THE APPOINTMENTS SPECIFIED IN
10 SUBSECTION (1) OF THIS SECTION NO LATER THAN FEBRUARY 16, 2017.
11 THE GOVERNOR SHALL INITIALLY APPOINT THREE MEMBERS FOR
12 TWO-YEAR TERMS AND FOUR MEMBERS FOR FOUR-YEAR TERMS.
13 THEREAFTER, EACH MEMBER MUST BE APPOINTED FOR FOUR-YEAR TERMS.

14 (3) MEMBERS MUST HAVE PROFESSIONAL EXPERIENCE IN SALES
15 AND USE TAX.

16 (4) MEMBERS SERVE AT THE PLEASURE OF THE GOVERNOR WHO
17 MAY APPOINT A REPLACEMENT OR FILL ANY VACANCY TO SERVE FOR THE
18 UNEXPIRED TERM OF ANY MEMBER SUBJECT TO, WHERE APPLICABLE, THE
19 NOMINATION PROCESS SPECIFIED IN SUBSECTION (1) OF THIS SECTION AND
20 SUBJECT TO THE CONSENT OF THE SENATE.

21 (5) THE COMMISSION SHALL MEET AS NECESSARY AND THE
22 DEPARTMENT OF REVENUE SHALL PROVIDE STAFF SUPPORT TO THE
23 COMMISSION.

24 (6) THE COMMISSION SHALL MAKE ITS DECISIONS BY MAJORITY
25 VOTE EXCEPT WHERE SPECIFICALLY INDICATED OTHERWISE.

26 **Section 3. Duties of the commission.** (1) THE COMMISSION
27 SHALL:

1 (a) CERTIFY AS SPECIFIED IN SUBSECTIONS (2) AND (3) OF THIS
2 SECTION ALL DEFINITIONS NECESSARY TO ESTABLISH A COMPREHENSIVE
3 BODY OF STATEWIDE UNIFORM SALES AND USE TAX DEFINITIONS THAT THE
4 STATE AND LOCAL TAXING JURISDICTIONS SHALL USE; AND

5 (b) SERVE AS THE SOLE NONJUDICIAL SOURCE OF OFFICIAL
6 GUIDANCE REGARDING THE CERTIFIED SALES AND USE TAX DEFINITIONS AS
7 SPECIFIED IN SUBSECTION (5) OF THIS SECTION.

8 (2) (a) THE COMMISSION SHALL, NO LATER THAN JANUARY 1, 2018,
9 REVIEW AND CERTIFY THE RECOMMENDED SALES AND USE TAX
10 DEFINITIONS IN THE STREAMLINED SALES AND USE TAX AGREEMENT
11 AMENDED THROUGH OCTOBER 8, 2014, AS SPECIFIED IN SUBSECTION (3)
12 OF THIS SECTION. IF A SALES AND USE TAX DEFINITION IN THE
13 STREAMLINED SALES AND USE TAX AGREEMENT AMENDED THROUGH
14 OCTOBER 8, 2014, INCLUDES OPTIONS THAT A LEGISLATIVE BODY MAY
15 SELECT, THE COMMISSION SHALL MAKE SUCH SELECTIONS AS ARE
16 NECESSARY TO MEET THE REQUIREMENTS OF SUBSECTION (3) OF THIS
17 SECTION. IF THE COMMISSION FINDS SUFFICIENT UNIFORMITY AMONG THE
18 STATE AND LOCAL TAXING JURISDICTIONS FOR AN EXISTING DEFINITION,
19 THEN THE COMMISSION SHALL REVIEW, MAKE ANY NECESSARY CHANGES
20 SUBJECT TO SUBSECTION (3) OF THIS SECTION, AND CERTIFY THE EXISTING
21 SUFFICIENTLY UNIFORM SALES AND USE TAX DEFINITION INSTEAD OF THE
22 STREAMLINED SALES AND USE TAX AGREEMENT DEFINITION. SUCH
23 CERTIFIED SALES AND USE TAX DEFINITIONS SHALL BE PROMULGATED AS
24 RULES PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT";
25 EXCEPT THAT SUCH RULES SHALL BE PERMANENT UNLESS MODIFIED
26 PURSUANT TO THIS ARTICLE, AND SHALL NOT BE SUBJECT TO THE RULE
27 REVIEW PROCESS SET FORTH IN LAW.

1 (b) IF A SALES AND USE TAX DEFINITION IS MISSING FROM THE
2 STREAMLINED SALES AND USE TAX AGREEMENT AMENDED THROUGH
3 OCTOBER 8, 2014, THAT THE STATE OR ANY LOCAL TAXING JURISDICTION
4 NEEDS FOR ITS SALES AND USE TAX BASE, THE COMMISSION MAY REVIEW,
5 MAKE ANY NECESSARY CHANGES SUBJECT TO SUBSECTION (3) OF THIS
6 SECTION, AND CERTIFY THE SALES AND USE TAX DEFINITION USED BY THE
7 STATE OR THE LOCAL TAXING JURISDICTION PURSUANT TO SUBSECTION (6)
8 OF THIS SECTION.

9 (c) IF THE STREAMLINED SALES TAX GOVERNING BOARD ADOPTS A
10 NEW SALES AND USE TAX DEFINITION OR ADOPTS CHANGES TO EXISTING
11 SALES AND USE TAX DEFINITIONS CERTIFIED AS SPECIFIED IN PARAGRAPH
12 (a) OF THIS SUBSECTION (2), THE COMMISSION SHALL REVIEW THE NEW
13 SALES AND USE TAX DEFINITION OR THE CHANGED SALES AND USE TAX
14 DEFINITION AND SHALL DETERMINE WHETHER OR NOT TO CERTIFY SUCH
15 NEW OR CHANGED DEFINITION. IF THE COMMISSION DECIDES TO CERTIFY
16 SUCH NEW OR CHANGED DEFINITION, THE CERTIFICATION MUST BE
17 ACCOMPLISHED AS SPECIFIED IN SUBSECTIONS (3) AND (6) OF THIS
18 SECTION.

19 (d) THE STATE OR ANY LOCAL TAXING JURISDICTION MAY MAKE
20 REQUESTS TO THE COMMISSION FOR ADDITIONAL CERTIFIED SALES AND
21 USE TAX DEFINITIONS OR MAY SEEK PREAPPROVAL OF A NEW SALES AND
22 USE TAX DEFINITION FROM THE COMMISSION. ANY MEMBER OF THE
23 GENERAL ASSEMBLY OR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT
24 OF REVENUE MAY MAKE REQUESTS PURSUANT TO THIS PARAGRAPH (d) ON
25 BEHALF OF THE STATE. A LOCAL TAXING JURISDICTION MAY MAKE
26 REQUESTS PURSUANT TO THIS PARAGRAPH (d) BY RESOLUTION. REQUESTS
27 MUST BE SUBMITTED IN WRITING AS DETERMINED BY THE COMMISSION. IF

1 THE COMMISSION DETERMINES THAT SUCH DEFINITION IS NECESSARY,
2 THEN SUCH DEFINITION MUST BE CERTIFIED AS SPECIFIED IN SUBSECTION
3 (3) OF THIS SECTION AND PROMULGATED AS SPECIFIED IN SUBSECTION (6)
4 OF THIS SECTION.

5 (3) THE COMMISSION SHALL CERTIFY A SALES AND USE TAX
6 DEFINITION WITH SUFFICIENT CLARITY, PRECISION, AND ADAPTABILITY
7 NECESSARY TO PERMIT THE USE OF SUCH DEFINITION BY THE STATE OR
8 LOCAL TAXING JURISDICTIONS.

9 (4) IF THE COMMISSION DETERMINES THAT A PREVIOUSLY
10 CERTIFIED SALES AND USE TAX DEFINITION NEEDS MODIFICATION, SUCH
11 CERTIFIED SALES AND USE TAX DEFINITION MAY BE MODIFIED AND
12 RECERTIFIED BY THE COMMISSION PURSUANT TO SUBSECTIONS (3) AND (6)
13 OF THIS SECTION, BUT ONLY UPON AN AFFIRMATIVE VOTE OF AT LEAST SIX
14 MEMBERS OF THE COMMISSION.

15 (5) THE COMMISSION MAY ISSUE OFFICIAL GUIDANCE REGARDING
16 THE CERTIFIED SALES AND USE TAX DEFINITIONS IN THE FORM OF EITHER
17 AN INTERPRETIVE OPINION OR AN INTERPRETIVE RULE. AN INTERPRETIVE
18 OPINION IS ISSUED WHEN A REQUESTOR SUBMITS SPECIFIC FACTS AND ASKS
19 HOW CERTAIN CERTIFIED DEFINITIONS WOULD APPLY TO THOSE FACTS,
20 SIMILAR TO A PRIVATE LETTER RULING ISSUED BY THE COLORADO
21 DEPARTMENT OF REVENUE UPON WRITTEN REQUEST OF A TAXPAYER;
22 EXCEPT THAT SUCH INTERPRETIVE OPINION IS NOT CONFIDENTIAL. AN
23 INTERPRETIVE RULE IS ISSUED WHEN A REQUESTOR SEEKS CLARIFICATION
24 OF A CERTIFIED DEFINITION. AN INTERPRETIVE RULE APPLIES MORE
25 GENERALLY, SIMILAR TO RULES ISSUED BY THE DEPARTMENT OF REVENUE
26 TO CLARIFY STATUTORY LANGUAGE. OFFICIAL GUIDANCE MUST BE
27 PROMULGATED AS SPECIFIED IN SUBSECTION (6) OF THIS SECTION. THE

1 COMMISSION SHALL ACT ON REQUESTS FOR OFFICIAL GUIDANCE WITHIN A
2 REASONABLE PERIOD OF TIME AND UNDER GUIDELINES AND PROCEDURES
3 AS SET FORTH BY THE COMMISSION. THE COMMISSION MAY DETERMINE
4 THAT IT WILL NOT ISSUE OFFICIAL GUIDANCE.

5 (6) CERTIFIED DEFINITIONS, EXCEPT THE INITIAL BODY OF
6 CERTIFIED DEFINITIONS DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (2)
7 OF THIS SECTION, AND OFFICIAL GUIDANCE MUST BE PROMULGATED AS
8 RULES BY THE COMMISSION PURSUANT TO THE "STATE ADMINISTRATIVE
9 PROCEDURE ACT".

10 (7) NO EX PARTE MATERIAL OR REPRESENTATION OF ANY KIND
11 MAY BE RECEIVED OR CONSIDERED BY THE COMMISSION.

12 **Section 4. Application of uniform definitions to state and local**

13 **tax levies.** (1) (a) THE STATE AND ANY LOCAL TAXING JURISDICTION
14 SHALL USE THE CERTIFIED SALES AND USE TAX DEFINITIONS AND ANY
15 OFFICIAL GUIDANCE RELATING THERETO THAT THE COMMISSION
16 PROMULGATES PURSUANT TO SECTION 3 (6) OF THIS ARTICLE FOR
17 PURPOSES OF ADMINISTERING AND LEVYING ITS SALES AND USE TAX.
18 SALES AND USE TAX DEFINITIONS CERTIFIED AND PROMULGATED
19 PURSUANT TO SECTION 3 OF THIS ARTICLE MUST BE ADOPTED AS SPECIFIED
20 IN THIS SUBSECTION (1) BY THE STATE AND LOCAL TAXING JURISDICTIONS
21 WITHOUT MODIFICATION.

22 (b) WHILE ENDEAVORING IN GOOD FAITH TO MAINTAIN OVERALL
23 REVENUE NEUTRALITY, THE STATE AND LOCAL TAXING JURISDICTIONS
24 SHALL ALIGN THEIR SALES AND USE TAX BASE TO THE CERTIFIED SALES
25 AND USE TAX DEFINITIONS AS FOLLOWS:

26 (I) FOR THE DEFINITIONS CERTIFIED AS DESCRIBED IN SECTION 3 (2)
27 (a) AND (2) (b) OF THIS ARTICLE, WITHIN A PERIOD NOT TO EXCEED

1 TWENTY-FOUR MONTHS FROM CERTIFICATION OF SUCH DEFINITIONS; AND

2 (II) FOR THE DEFINITIONS CERTIFIED AS DESCRIBED IN SECTION 3
3 (2) (c) OR (2) (d) OF THIS ARTICLE, WITHIN A PERIOD NOT TO EXCEED
4 TWELVE MONTHS FROM CERTIFICATION OF SUCH DEFINITIONS.

5 (c) WITHIN THE TIME ALLOWED FOR THE STATE AND LOCAL TAXING
6 JURISDICTIONS TO ALIGN THEIR SALES AND USE TAX BASE TO THE
7 CERTIFIED SALES AND USE TAX DEFINITIONS AS SPECIFIED IN PARAGRAPH
8 (b) OF THIS SUBSECTION (1), IF THERE ARE ANY ISSUES RELATED TO ANY
9 CATEGORIES OF LOST REVENUE FOR THE STATE OR ANY LOCAL
10 GOVERNMENT, SUCH GOVERNING BODY SHALL COMMUNICATE WITH THE
11 COMMISSION TO ATTEMPT RESOLUTION OF THE ISSUE.

12 (d) SHOULD THE STATE OR ANY LOCAL TAXING JURISDICTION FAIL
13 TO ALIGN THEIR SALES AND USE TAX BASE TO THE CERTIFIED SALES AND
14 USE TAX DEFINITIONS AS DESCRIBED IN PARAGRAPH (b) OF THIS
15 SUBSECTION (1), ANY PERSON MAY BRING AN ACTION ONLY IN THE
16 DENVER DISTRICT COURT TO COMPEL COMPLIANCE WITH THIS PROVISION
17 AND SHALL, IF SUCCESSFUL, BE ENTITLED TO AN AWARD OF REASONABLE
18 ATTORNEY FEES AND COSTS BY THE COURT.

19 (2) IF THE STATE OR ANY LOCAL TAXING JURISDICTION ADJUSTS ITS
20 SALES AND USE TAX BASE SO THAT A NEW SALES AND USE TAX DEFINITION
21 IS REQUIRED, THE STATE OR LOCAL TAXING JURISDICTION MAY EITHER:

22 (a) ENACT A SALES AND USE TAX DEFINITION, WHICH SHALL TAKE
23 EFFECT ON WHATEVER DATE IS SPECIFIED IN THE LAW AND WHICH THE
24 COMMISSION SHALL SUBSEQUENTLY REVIEW AND DETERMINE IF
25 CERTIFICATION IS NECESSARY AS SPECIFIED IN SECTION 3 (2) (d) OF THIS
26 ARTICLE; OR

27 (b) SEEK PREAPPROVAL AS SPECIFIED IN SECTION 3 (2) (d) OF THIS

1 ARTICLE OF A NEW SALES AND USE TAX DEFINITION FROM THE COMMISSION
2 PRIOR TO ADJUSTING ITS SALES AND USE TAX BASE.

3 (3) EXCEPT AS EXPLICITLY PROVIDED, THIS ARTICLE DOES NOT
4 LIMIT, ALTER, OR DIMINISH THE PLENARY POWER OF THE STATE OR A
5 LOCAL TAXING JURISDICTION'S CONSTITUTIONAL POWER TO CONTROL THE
6 LEVYING AND COLLECTING OF A SALES AND USE TAX OR TO CONTROL ITS
7 SALES AND USE TAX BASE.

8 **SECTION 2.** Each elector voting at the election may cast a vote
9 either "Yes/For" or "No/Against" on the following ballot title: "Shall
10 there be an amendment to the Colorado constitution concerning statewide
11 uniform sales and use tax definitions, and, in connection therewith,
12 creating a commission on uniform sales and use tax definitions that will
13 certify the statewide sales and use tax definitions and will provide official
14 guidance regarding the definitions, and specifying that the state and any
15 local taxing jurisdictions shall use the certified sales and use tax
16 definitions and official guidance for purposes of administering and
17 levying its sales and use tax?"

18 **SECTION 3.** Except as otherwise provided in section 1-40-123,
19 Colorado Revised Statutes, if a majority of the electors voting on the
20 ballot title vote "Yes/For", then the amendment will become part of the
21 state constitution.