

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-1329.01 Ed DeCecco x4216

HOUSE BILL 20-1427

HOUSE SPONSORSHIP

Caraveo and McCluskie,

SENATE SPONSORSHIP

Fields and Moreno,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE TAXATION OF PRODUCTS THAT CONTAIN NICOTINE,**
102 **AND, IN CONNECTION THEREWITH, INCREMENTALLY INCREASING**
103 **THE CIGARETTE TAX AND THE TOBACCO PRODUCTS TAX;**
104 **EXPANDING BOTH OF THESE TAXES TO APPLY TO SALES TO**
105 **CONSUMERS FROM OUTSIDE OF THE STATE; CREATING AN**
106 **INVENTORY TAX THAT APPLIES WHEN THE CIGARETTE TAX**
107 **INCREASES; CREATING A MINIMUM TAX AMOUNT FOR MOIST**
108 **SNUFF TOBACCO PRODUCTS; CREATING A TAX ON NICOTINE**
109 **PRODUCTS THAT IS EQUAL TO THE TOTAL TAX ON TOBACCO**
110 **PRODUCTS; ESTABLISHING NEW RATES FOR CIGARETTES,**
111 **TOBACCO PRODUCTS, AND NICOTINE PRODUCTS THAT ARE**
112 **MODIFIED RISK TOBACCO PRODUCTS THAT ARE HALF OF THE**
113 **STATUTORY TAX; REFERRING A BALLOT ISSUE FOR PRIOR VOTER**

*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.*

101
102

**APPROVAL FOR THE NEW AND INCREASED TAXES; AND
ALLOCATING THE NEW TAX REVENUE.**

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 refers a ballot issue to the voters at the November 2020 general election for the following incremental tax changes beginning January 1, 2021:

- ! To increase the statutory per cigarette tax from one cent to 6.5 cents until July 1, 2024, then to 8 cents until July 1, 2027, and thereafter to 10 cents;
- ! To increase the statutory tobacco products tax from 20% of the manufacturer's list price (MLP) to 30% of MLP until July 1, 2024, then to 36% of MLP until July 1, 2027, and to 42% thereafter of MLP for tobacco products;
- ! To create a tax on nicotine products that is equal to 50% of MLP until July 1, 2024, then 56% of MLP until July 1, 2027, and thereafter 62% of MLP, which is the same tax as the total tax levied on tobacco products, including the tax from Amendment 35, with the increase; and
- ! To establish a tax rate for cigarettes, tobacco products, and nicotine products that are modified risk tobacco products approved by the United States department of health and human services that is 50% of the statutory tax rate.

The bill establishes a minimum tax for tobacco products that are moist snuff that is based on a combined minimum tax between the statutory tobacco tax and the tax imposed under Amendment 35. If voters approve the tax, then the state will have the authority to impose these taxes beginning January 1, 2021, and retain and spend the revenue as a voter-approved revenue change, and the remainder of the bill takes effect upon approval.

The cigarette and tobacco products taxes are expanded to include delivery sales made by a seller outside of the state directly to a consumer, and the delivery sellers are defined to be wholesalers or distributors. For any tax increase that takes place after January 1, 2022, an inventory tax is created on cigarettes that is imposed on all stamped cigarettes and unaffixed stamps in a wholesaler or wholesale subcontractor's possession or control at the time of a tax increase.

The bill also establishes a minimum price for cigarettes that is equal to:

- ! \$7 for a pack and \$70 for a carton until July 1, 2024; and
- ! \$7.50 for a pack and \$75 for a carton on and after July 1, 2024.

There are civil penalties imposed for any person who sells cigarettes for less than the minimum amount. As part of its annual June forecast, legislative council staff is required to include an estimate for the current state fiscal year of the additional sales tax revenue that is attributable to the minimum price requirement. On June 30 of the fiscal year, the state treasurer is required to transfer an amount equal to 73% of the estimate from the general fund to the newly created preschool programs cash fund, with the other 27% remaining in the general fund for the distribution to local governments, as required under current law.

The new nicotine products tax is modeled after the tobacco products tax. Nicotine products are products that contain nicotine and that are ingested into the body, which at this time is typically through vaping with an electronic cigarette. The excise tax is levied on the sale, use, consumption, handling, or distribution of all nicotine products in the state, and it is imposed on a distributor at the time the product is brought into the state, made here, or shipped or transported to retailers in the state, or the wholesaler or distributor makes a delivery sale. If a distributor fails to pay the tax, then any person or entity in possession of the nicotine products is liable for the tax.

To be a distributor of nicotine products, a person must have a license. The license costs \$10 per year and requires that the distributor must have a tax license and comply with all of the laws relating to the collection of the tax. Distributors are required to file quarterly returns, and the department of revenue may require electronic fund transfers of the taxes paid. Licensees are required to maintain certain records, and retailers are likewise required to maintain records about nicotine products they purchase from a licensed distributor. The department may share the names and addresses of persons who purchased nicotine products for resale with the department of public health and environment and county and district public health agencies.

To account for the fully phased-in increased taxes per cigarette, the discount percentage on cigarette stamps that a cigarette wholesaler may retain for its collection costs is reduced from 4% to .4% and the similar discount for a tobacco products distributor is reduced from 3.33% to 1.6%. A nicotine products distributor will be permitted to retain 1.1% of the taxes collected.

The revenue from the new nicotine products tax, the inventory tax, and the additional cigarette and tobacco products taxes is deposited in the old age pension fund and then credited to the general fund in accordance with the state constitution. For fiscal years prior to July 1, 2023, most of

the tax revenue will stay in the general fund, except for an amount the state treasurer transfers to the 2020 tax holding fund to offset the decreased revenue from the existing taxes that may result from the voter-approved rate increases for the tobacco tax cash fund and to reimburse local governments. Thereafter, the state treasurer will transfer an amount equal to the total tax revenue from the general fund to the 2020 tax holding fund and then transfer specified amounts to the tobacco tax cash fund, the tobacco education programs fund, and the general fund and the remainder after those amounts to the newly created preschool programs cash fund, from which the general assembly may appropriate money to a designated department to be used for an array of preschool education purposes.

The state auditor is required to annually conduct a financial audit of the use of the new tax revenue.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 4 to article
3 28 of title 39 as follows:

4 **PART 4**

5 **SUBMISSION OF BALLOT ISSUE - CIGARETTES,**
6 **TOBACCO PRODUCTS, AND NICOTINE PRODUCTS TAXES**

7 **39-28-401. Submission of ballot issue - increased tax cigarettes**
8 **and tobacco products - new tax on nicotine products - definition -**
9 **repeal.** (1) AS USED IN THIS SECTION, "BALLOT ISSUE" MEANS THE
10 QUESTION REFERRED TO VOTERS IN SUBSECTION (2) OF THIS SECTION.

11 (2) AT THE ELECTION HELD ON NOVEMBER 3, 2020, THE
12 SECRETARY OF STATE SHALL SUBMIT TO THE REGISTERED ELECTORS OF
13 THE STATE FOR THEIR APPROVAL OR REJECTION THE FOLLOWING BALLOT
14 ISSUE: "SHALL STATE TAXES BE INCREASED BY \$294,000,000 ANNUALLY
15 IN THE FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED
16 ANNUALLY THEREAFTER BY IMPOSING A TAX ON NICOTINE LIQUIDS USED
17 IN E-CIGARETTES AND OTHER VAPING PRODUCTS THAT IS EQUAL TO THE

1 TOTAL STATE TAX ON TOBACCO PRODUCTS, INCREMENTALLY INCREASING
2 THE TOBACCO PRODUCTS TAX BY UP TO 22% OF THE MANUFACTURER'S
3 LIST PRICE, INCREMENTALLY INCREASING THE CIGARETTE TAX BY UP TO 9
4 CENTS PER CIGARETTE, EXPANDING THE EXISTING CIGARETTE AND
5 TOBACCO TAXES TO APPLY TO SALES TO CONSUMERS FROM OUTSIDE OF
6 THE STATE, ESTABLISHING A MINIMUM TAX FOR MOIST SNUFF TOBACCO
7 PRODUCTS, CREATING AN INVENTORY TAX THAT APPLIES WHEN THE
8 CIGARETTE TAX INCREASES, AND INITIALLY USING THE TAX REVENUE TO
9 BACKFILL GENERAL FUND REVENUE THAT HAS BEEN LOST AS A RESULT OF
10 THE ECONOMIC IMPACTS RELATED TO COVID-19 AND THEN FOR
11 PROGRAMS THAT REDUCE THE USE OF TOBACCO AND NICOTINE PRODUCTS,
12 ENHANCE THE VOLUNTARY COLORADO PRESCHOOL PROGRAM AND MAKE
13 IT WIDELY AVAILABLE FOR FREE, AND MAINTAIN THE FUNDING FOR
14 PROGRAMS THAT CURRENTLY RECEIVE REVENUE FROM TOBACCO TAXES,
15 WITH THE STATE KEEPING AND SPENDING THE NEW TAX REVENUE
16 NOTWITHSTANDING ANY LIMITATIONS PROVIDED BY LAW?"

17 (3) FOR PURPOSES OF SECTION 1-5-407, THE BALLOT ISSUE IS A
18 PROPOSITION. SECTION 1-40-106 (3)(d) DOES NOT APPLY TO THE BALLOT
19 ISSUE.

20 (4) (a) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT
21 ISSUE VOTE "NO/AGAINST", THEN THIS SECTION IS REPEALED, EFFECTIVE
22 JULY 1, 2021.

23 (b) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE
24 VOTE "YES/FOR", THEN THIS SUBSECTION (4) IS REPEALED, EFFECTIVE
25 JULY 1, 2021.

26 **SECTION 2.** In Colorado Revised Statutes, 39-28-101, **amend**
27 the introductory portion, (3), and (4); and **add** (1.3), (1.7), and (2.7) as

1 follows:

2 **39-28-101. Definitions.** As used in this ~~article~~ ARTICLE 28, unless
3 the context otherwise requires:

4 (1.3) "DELIVERY SALE" MEANS A SALE OF CIGARETTES TO A
5 CONSUMER IN THIS STATE WHEN:

6 (a) THE CONSUMER SUBMITS AN ORDER FOR CIGARETTES TO A
7 DELIVERY SELLER FOR SALE BY MEANS OTHER THAN AN
8 OVER-THE-COUNTER SALE ON THE DELIVERY SELLER'S PREMISES,
9 INCLUDING, BUT NOT LIMITED TO, TELEPHONE OR OTHER VOICE
10 TRANSMISSION, THE MAIL OR OTHER DELIVERY SERVICE, OR THE INTERNET
11 OR OTHER ONLINE SERVICE; AND

12 (b) THE CIGARETTES ARE DELIVERED WHEN THE SELLER IS NOT IN
13 THE PHYSICAL PRESENCE OF THE CONSUMER WHEN THE CONSUMER
14 OBTAINS POSSESSION OF THE CIGARETTES BY USE OF A COMMON CARRIER,
15 PRIVATE DELIVERY SERVICE, MAIL, OR ANY OTHER MEANS.

16 (1.7) "DELIVERY SELLER" MEANS A PERSON LOCATED OUTSIDE OF
17 THIS STATE WHO MAKES DELIVERY SALES.

18 (2.7) "MODIFIED RISK TOBACCO PRODUCT" MEANS ANY TOBACCO
19 PRODUCT FOR WHICH THE SECRETARY OF THE UNITED STATES
20 DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS ISSUED AN ORDER
21 AUTHORIZING THE PRODUCT TO BE COMMERCIALY MARKETED AS A
22 MODIFIED RISK TOBACCO PRODUCT IN ACCORDANCE WITH 21 U.S.C. SEC.
23 387k, OR ANY SUCCESSOR SECTION.

24 (3) "Sale" or "resale" includes installment, credit, and conditional
25 sales and means any exchange, barter, or transfer of title or possession,
26 or both, for a consideration to any other person, firm, partnership, limited
27 liability company, or corporation within this state. It includes:

1 (a) A gift by a person engaged in the business of selling cigarettes,
2 for advertising, as a means of evading provisions of this ~~article~~ ARTICLE
3 28 or for any other purpose whatsoever; AND

4 (b) DELIVERY SALES.

5 (4) "Wholesaler" means any person, firm, limited liability
6 company, partnership, or corporation who imports cigarettes into this
7 state for sale or resale. THE TERM ALSO INCLUDES A DELIVERY SELLER.

8 **SECTION 3.** In Colorado Revised Statutes, **amend** 39-28-103 as
9 follows:

10 **39-28-103. Tax levied.** (1) (a) PRIOR TO JANUARY 1, 2021, there
11 is levied and shall be collected and paid to the department a tax upon the
12 sale of cigarettes by wholesalers of ten mills on each cigarette.

13 (b) A TAX IS LEVIED UPON THE SALE OF CIGARETTES BY
14 WHOLESALERS, EXCLUDING CIGARETTES THAT ARE MODIFIED RISK
15 TOBACCO PRODUCTS, THAT IS EQUAL TO:

16 (I) SIX AND ONE-HALF CENTS PER CIGARETTE FOR SALES ON AND
17 AFTER JANUARY 1, 2021, BUT PRIOR TO JULY 1, 2024;

18 (II) EIGHT CENTS PER CIGARETTE FOR SALES ON AND AFTER JULY
19 1, 2024, BUT PRIOR TO JULY 1, 2027; AND

20 (III) TEN CENTS PER CIGARETTE FOR SALES ON AND AFTER JULY 1,
21 2027.

22 (c) A TAX IS LEVIED ON THE SALE OF CIGARETTES THAT ARE
23 MODIFIED RISK TOBACCO PRODUCTS THAT IS EQUAL TO:

24 (I) THREE AND ONE-QUARTER CENTS PER CIGARETTE FOR SALES ON
25 AND AFTER JANUARY 1, 2021, BUT PRIOR TO JULY 1, 2024;

26 (II) FOUR CENTS PER CIGARETTE FOR SALES ON AND AFTER JULY
27 1, 2024, BUT PRIOR TO JULY 1, 2027; AND

1 (III) FIVE CENTS PER CIGARETTE FOR SALES ON AND AFTER JULY
2 1, 2027.

3 (d) THE WHOLESALER SHALL PAY THE TAX SET FORTH IN THIS
4 SUBSECTION (2) TO THE DEPARTMENT, WHICH SHALL COLLECT THE TAX.

5 **SECTION 4.** In Colorado Revised Statutes, **add** 39-28-103.3 as
6 follows:

7 **39-28-103.3. Inventory tax - definition.** (1) AS USED IN THIS
8 SECTION, "COLORADO TAX STAMP" MEANS A STAMP THAT IS AFFIXED TO,
9 OR AN IMPRINT OR IMPRESSION BY A SUITABLE METERING MACHINE
10 APPROVED BY THE DEPARTMENT ON A PACKAGE CONTAINING CIGARETTES
11 AS EVIDENCE OF THE PAYMENT OF TAX IMPOSED BY THIS ARTICLE 28,
12 EXCLUDING THE TAX SET FORTH IN THIS SECTION.

13 (2) AFTER JANUARY 1, 2022, IN ADDITION TO ANY OTHER TAX
14 IMPOSED UNDER THIS ARTICLE 28 OR SECTION 21 OF ARTICLE X OF THE
15 STATE CONSTITUTION, THERE IS LEVIED A TAX ON CIGARETTES IN A
16 WHOLESALER'S OR WHOLESALE SUBCONTRACTOR'S POSSESSION OR
17 CONTROL THAT HAVE A COLORADO TAX STAMP THAT APPLIES ANY TIME
18 THAT THE CIGARETTE TAX IS INCREASED. THE TAX IS EQUAL TO THE
19 DIFFERENCE BETWEEN THE TAX PAID FOR THE COLORADO TAX STAMP
20 CURRENTLY AFFIXED TO A PACKAGE OF CIGARETTES AND THE TAX THAT
21 WILL BE OWED FOR THE SAME COLORADO TAX STAMP AFTER THE INCREASE
22 OR ADJUSTMENT IN THE TAX IMPOSED PER CIGARETTE. IT IS UNLAWFUL FOR
23 ANY PERSON TO AFFIX A COLORADO TAX STAMP ON OR AFTER 12:01 A.M.
24 ON THE DAY THAT A RATE INCREASE WILL TAKE EFFECT, TO A PACKAGE OF
25 CIGARETTES THAT REFLECTS PAYMENT OF THE TAX IMPOSED PRIOR TO THE
26 INCREASE. ANY UNAFFIXED STAMPS MAY BE REDEEMED FOR CREDIT
27 PURSUANT TO SECTION 39-28-104 (3).

1 (3) (a) AFTER JANUARY 1, 2022, A WHOLESALER SHALL TAKE AN
2 INVENTORY OF ALL PACKAGES OF CIGARETTES WITH A COLORADO TAX
3 STAMP AFFIXED THERETO AND OF ALL UNAFFIXED COLORADO TAX STAMPS
4 IN THE WHOLESALER'S POSSESSION OR CONTROL AS OF 12:01 A.M. ON THE
5 DAY THAT A RATE INCREASE WILL TAKE EFFECT.

6 (b) AFTER JANUARY 1, 2022, A WHOLESALE SUBCONTRACTOR
7 SHALL TAKE AN INVENTORY OF ALL PACKAGES OF CIGARETTES WITH A
8 COLORADO TAX STAMP AFFIXED THERETO IN THE WHOLESALE
9 SUBCONTRACTOR'S POSSESSION OR CONTROL AS OF 12:01 A.M. ON THE DAY
10 THAT A RATE INCREASE WILL TAKE EFFECT.

11 (4) EVERY WHOLESALER AND WHOLESALE SUBCONTRACTOR SHALL
12 FILE A REPORT, ON A FORM CREATED BY THE DEPARTMENT, OF THE
13 INVENTORY IDENTIFIED IN ACCORDANCE WITH SUBSECTION (3) OF THIS
14 SECTION AND PAY THE TAX IMPOSED UNDER THIS SECTION FOR THE
15 INVENTORY. A WHOLESALER SHALL SEPARATELY IDENTIFY THE NUMBER
16 OF PACKAGES WITH A COLORADO TAX STAMP AND THE UNAFFIXED
17 COLORADO TAX STAMPS. THE WHOLESALER OR WHOLESALE
18 SUBCONTRACTOR SHALL REMIT THE TAX PAYMENT ON OR BEFORE THE
19 TENTH DAY OF THE MONTH FOLLOWING THE REQUIRED INVENTORY. IF
20 PAYMENT IS MADE ON OR BEFORE THE DUE DATE, THE WHOLESALER OR
21 WHOLESALE SUBCONTRACTOR MAY DEDUCT THREE PERCENT OF THE TAX
22 IMPOSED UNDER THIS SECTION, BUT, IF ANY WHOLESALER OR WHOLESALE
23 SUBCONTRACTOR IS DELINQUENT IN REMITTING SUCH PAYMENT, OTHER
24 THAN IN UNUSUAL CIRCUMSTANCES SHOWN TO THE SATISFACTION OF THE
25 EXECUTIVE DIRECTOR OF THE DEPARTMENT, THE WHOLESALER OR
26 WHOLESALE SUBCONTRACTOR SHALL NOT BE ALLOWED TO RETAIN ANY
27 AMOUNTS TO COVER THE EXPENSE IN COLLECTING AND REMITTING THE

1 TAX AND THE PENALTY IMPOSED UNDER SECTION 39-28-108 (2) APPLIES.

2 (5) THE DEPARTMENT MAY REQUIRE WHOLESALERS AND
3 WHOLESALE SUBCONTRACTORS TO USE ELECTRONIC FUNDS TRANSFERS TO
4 REMIT TAX PAYMENTS DUE UNDER THIS SECTION AND MAY REQUIRE
5 WHOLESALERS AND WHOLESALE SUBCONTRACTORS TO FILE TAX RETURNS
6 ELECTRONICALLY. THE DEPARTMENT MAY PROMULGATE RULES
7 GOVERNING ELECTRONIC PAYMENT AND FILING.

8 **SECTION 5.** In Colorado Revised Statutes, 39-28-104, **amend**
9 (1)(a) and (3) as follows:

10 **39-28-104. Evidence of payment of tax - credits - redemptions.**

11 (1) (a) (I) Payment of the taxes imposed by ~~the provisions of this article~~
12 SECTIONS 39-28-103 AND 39-28-103.5 and section 21 of article X of the
13 state constitution shall be evidenced by the affixing of stamps to, or by an
14 imprint or impression by suitable metering machines approved by the
15 department on, packages containing cigarettes. The department shall
16 procure stamps of such design and legend as it deems necessary and
17 suitable for the purpose. Except as provided in ~~paragraph (b) of this~~
18 ~~subsection (1)~~ SUBSECTION (1)(b) OF THIS SECTION, the department shall
19 sell such stamps for cash to licensed wholesalers at a discount of four
20 percent of their face value for sales occurring ~~prior to July 1, 2003, or on~~
21 ~~or after July 1, 2005, and three percent of their face value for sales~~
22 ~~occurring on or after July 1, 2003, but before July 1, 2005~~ BUT BEFORE
23 JANUARY 1, 2021, AND FOUR-TENTHS PERCENT OF THEIR FACE VALUE FOR
24 SALES OCCURRING ON AND AFTER JANUARY 1, 2021, if payment is made
25 on or before the tenth day of the month following the month in which the
26 purchase is made to cover the licensed wholesaler's expense in the
27 collection and remittance of such tax; but, if any licensed wholesaler is

1 delinquent in remitting such payment, other than in unusual circumstances
2 shown to the satisfaction of the executive director of the department, the
3 licensed wholesaler shall not be allowed to retain any amounts to cover
4 his or her expense in collecting and remitting said tax, and, in addition,
5 the penalty imposed under section 39-28-108 (2) shall apply. The
6 department shall keep accurate records of all stamps sold to each
7 wholesaler. No wholesaler shall sell or transfer any stamps purchased
8 pursuant to ~~the provisions of this article~~ ARTICLE 28.

9 (II) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY ENTER
10 INTO CONTRACTS WITH THIRD PARTIES TO ACT AS THE DEPARTMENT'S
11 AGENTS FOR THE SALE OF STAMPS AND MATTERS RELATING TO THE SALE
12 OF STAMPS.

13 (3) Credit shall be given by the department for all taxes levied
14 pursuant to ~~the provisions of this article~~ ARTICLE 28 on unsalable
15 merchandise when the department is satisfied that the same has been
16 returned to the manufacturer or has been destroyed by the wholesaler OR
17 WHEN THE STAMPS ARE UNUSABLE BECAUSE THE TAX RATE HAS CHANGED.
18 The department shall redeem any unused and uncanceled stamps
19 presented by any wholesaler within one year after the date of issue of said
20 stamps at the price paid therefor by such wholesaler.

21 **SECTION 6.** In Colorado Revised Statutes, 39-28-107, **amend**
22 (1)(b) as follows:

23 **39-28-107. Unstamped packages - tax collected - fines - subject**
24 **to confiscation - tobacco tax enforcement cash fund - creation.**

25 (1) (b) There is hereby created in the state treasury the tobacco tax
26 enforcement cash fund. The fund ~~shall consist of moneys~~ CONSISTS OF
27 MONEY deposited therein pursuant to ~~paragraph (a) of this subsection (1)~~

1 SUBSECTION (1)(a) OF THIS SECTION and ~~section 39-28.5-106(4)~~ SECTIONS
2 39-28-116(5), 39-28.5-106(4) AND 39-28.6-107(4). The ~~moneys~~ MONEY
3 in the fund ~~shall be~~ IS subject to annual appropriation by the general
4 assembly to the department for the purpose of enforcing ~~the provisions of~~
5 this ~~article~~ ARTICLE 28 and ~~article 28.5~~ ARTICLES 28.5 AND 28.6 of this
6 ~~title~~ TITLE 39. Any ~~moneys~~ MONEY not appropriated by the general
7 assembly ~~shall remain~~ REMAINS in the fund and shall not be transferred
8 or revert to the general fund at the end of any fiscal year.

9 **SECTION 7.** In Colorado Revised Statutes, 39-28-108, **amend**
10 (2)(b) as follows:

11 **39-28-108. Penalty.** (2) (b) If a person fails to pay the tax in the
12 time allowed for the discount in section 39-28-104 (1) OR 39-28-103.3,
13 a penalty equal to ten percent thereof plus one-half of one percent per
14 month from the date when due, not to exceed eighteen percent in the
15 aggregate, together with interest on such delinquent taxes at the rate
16 computed under section 39-21-110.5, shall apply.

17 **SECTION 8.** In Colorado Revised Statutes, 39-28-110, **amend**
18 (1) as follows:

19 **39-28-110. Distribution of tax collected.** (1) (a) All ~~sums of~~
20 money received and collected in payment of the tax imposed by ~~the~~
21 ~~provisions of this article~~ ARTICLE 28, except license fees received under
22 section 39-28-102 and the ~~moneys~~ MONEY collected pursuant to section
23 39-28-103.5, shall be transmitted to the state treasurer who shall distribute
24 the money as follows: Fifteen percent to the general fund and eighty-five
25 percent to the old age pension fund.

26 (b) (I) THE NET REVENUE THAT IS CREDITED TO THE OLD AGE
27 PENSION FUND CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE

1 CONSTITUTION IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION
2 AND SECTION 2 (a) OF ARTICLE XXIV OF THE STATE CONSTITUTION IS
3 TRANSFERRED TO THE GENERAL FUND IN ACCORDANCE WITH SECTION 7 (c)
4 OF ARTICLE XXIV OF THE STATE CONSTITUTION. OF THIS MONEY OR THE
5 FIFTEEN PERCENT THAT IS DIRECTLY CREDITED TO THE GENERAL FUND,
6 THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE
7 TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX IMPOSED UNDER
8 SECTION 39-28-103.3 AND THE TAX INCREASE SET FORTH IN SECTION
9 39-28-103 (2) APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN
10 NOVEMBER 2020 TO THE 2020 TAX HOLDING FUND CREATED IN SECTION
11 24-22-118 (1), EXCEPT AS SET FORTH IN SUBSECTION (1)(b)(II) OF THIS
12 SECTION.

13 (II) FOR THE STATE FISCAL YEAR 2020-21, THE TOTAL AMOUNT
14 THE STATE TREASURER TRANSFERS UNDER THIS SECTION AND SECTIONS
15 39-28.5-108 AND 39-28.6-109 SHALL NOT EXCEED SEVEN MILLION FIVE
16 HUNDRED THOUSAND DOLLARS. FOR THE STATE FISCAL YEARS 2021-22
17 AND 2022-23, THE TOTAL AMOUNT THE STATE TREASURER TRANSFERS
18 UNDER THIS SECTION AND SECTIONS 39-28.5-108 AND 39-28.6-109 SHALL
19 NOT EXCEED FIFTEEN MILLION DOLLARS PER FISCAL YEAR.

20 **SECTION 9.** In Colorado Revised Statutes, **add** 39-28-110.5 as
21 follows:

22 **39-28-110.5. Revenue and spending limitations.**
23 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR
24 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE
25 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE
26 GENERATED BY THE INVENTORY TAX IMPOSED UNDER SECTION
27 39-28-103.3 AND THE PER CIGARETTE TAX INCREASE SET FORTH IN

1 SECTION 39-28-103 (2) APPROVED BY THE VOTERS AT THE STATEWIDE
2 ELECTION IN NOVEMBER 2020, MAY BE COLLECTED AND SPENT AS A
3 VOTER-APPROVED REVENUE CHANGE.

4 **SECTION 10.** In Colorado Revised Statutes, **add** 39-28-116 as
5 follows:

6 **39-28-116. Minimum price for cigarettes.** (1) ON AND AFTER
7 JANUARY 1, 2021, BUT BEFORE JULY 1, 2024, NO PERSON SHALL SELL OR
8 OFFER FOR SALE CIGARETTES TO A CONSUMER FOR LESS THAN SEVEN
9 DOLLARS PER PACKAGE OF TWENTY CIGARETTES OR SEVENTY DOLLARS
10 PER CARTON OF TWO HUNDRED CIGARETTES, INCLUDING ALL APPLICABLE
11 TAXES.

12 (2) ON AND AFTER JULY 1, 2024, NO PERSON SHALL SELL OR OFFER
13 FOR SALE CIGARETTES TO A CONSUMER FOR LESS THAN SEVEN DOLLARS
14 AND FIFTY CENTS PER PACKAGE OF TWENTY CIGARETTES OR SEVENTY-FIVE
15 DOLLARS PER CARTON OF TWO HUNDRED CIGARETTES, INCLUDING ALL
16 APPLICABLE TAXES.

17 (3) A PERSON WHO VIOLATES SUBSECTION (1) OR (2) OF THIS
18 SECTION, IN ADDITION TO OTHER PENALTIES PROVIDED BY LAW, SHALL BE
19 LIABLE FOR A CIVIL PENALTY IN THE FOLLOWING AMOUNTS:

20 (a) FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION WITHIN A
21 FIVE-YEAR PERIOD;

22 (b) ONE THOUSAND DOLLARS FOR A SECOND VIOLATION WITHIN A
23 FIVE-YEAR PERIOD; AND

24 (c) ONE THOUSAND FIVE HUNDRED DOLLARS FOR A THIRD
25 VIOLATION WITHIN A FIVE-YEAR PERIOD.

26 (4) NO PERSON SHALL BE LIABLE UNDER THIS SECTION FOR MORE
27 THAN ONE VIOLATION OF THIS SECTION DURING A SINGLE DAY.

1 (5) THE DEPARTMENT OF REVENUE SHALL REMIT ANY CIVIL
2 PENALTIES RECEIVED PURSUANT TO THIS SECTION TO THE STATE
3 TREASURER FOR DEPOSIT IN THE TOBACCO TAX ENFORCEMENT CASH FUND
4 CREATED SECTION 39-28-107 (1)(b).

5 (6) IN ITS ANNUAL JUNE FORECAST, LEGISLATIVE COUNCIL STAFF
6 SHALL REPORT AN ESTIMATE FOR THE CURRENT STATE FISCAL YEAR OF THE
7 ADDITIONAL SALES TAX REVENUE THAT IS ATTRIBUTABLE TO THE
8 APPLICABLE MINIMUM PRICE SET FORTH IN THIS SECTION. ON JUNE 30 OF
9 THE FISCAL YEAR, THE STATE TREASURER SHALL TRANSFER AN AMOUNT
10 EQUAL TO SEVENTY-THREE PERCENT OF THE LEGISLATIVE COUNCIL STAFF
11 ESTIMATE FROM THE GENERAL FUND TO THE PRESCHOOL PROGRAMS CASH
12 FUND CREATED IN SECTION 24-22-118 (3)(a).

13 **SECTION 11.** In Colorado Revised Statutes, 39-28.5-101,
14 **amend** the introductory portion, (1), (2), and (4); and **add** (1.2), (1.4),
15 (3.3), and (3.7) as follows:

16 **39-28.5-101. Definitions.** As used in this ~~article~~ ARTICLE 28.5,
17 unless the context otherwise requires:

18 (1) ~~"Department" means the department of revenue~~ "DELIVERY
19 SALE" MEANS THE SALE OF TOBACCO PRODUCTS TO A CONSUMER IN THIS
20 STATE WHEN:

21 (a) THE CONSUMER SUBMITS AN ORDER FOR THE TOBACCO
22 PRODUCTS TO A DELIVERY SELLER FOR SALE BY MEANS OTHER THAN AN
23 OVER-THE-COUNTER SALE ON THE DELIVERY SELLER'S PREMISES,
24 INCLUDING, BUT NOT LIMITED TO, TELEPHONE OR OTHER VOICE
25 TRANSMISSION, THE MAIL OR OTHER DELIVERY SERVICE, OR THE INTERNET
26 OR OTHER ONLINE SERVICE; AND

27 (b) THE TOBACCO PRODUCTS ARE DELIVERED WHEN THE SELLER IS

1 NOT IN THE PHYSICAL PRESENCE OF THE CONSUMER WHEN THE CONSUMER
2 OBTAINS POSSESSION OF THE TOBACCO PRODUCTS BY USE OF A COMMON
3 CARRIER, PRIVATE DELIVERY SERVICE, MAIL, OR ANY OTHER MEANS.

4 (1.2) "DELIVERY SELLER" MEANS A PERSON LOCATED OUTSIDE OF
5 THIS STATE WHO MAKES DELIVERY SALES.

6 (1.4) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

7 (2) "Distributor" means every person who:

8 (a) First receives tobacco products in this state;

9 (b) ~~every person who~~ Sells tobacco products in this state ~~who~~ AND
10 is primarily liable for the tobacco products tax on such products;

11 (c) ~~and every person who~~ First sells or offers for sale in this state
12 tobacco products imported into this state from any other state or country;

13 OR

14 (d) IS A DELIVERY SELLER.

15 (3.3) "MODIFIED RISK TOBACCO PRODUCT" MEANS ANY TOBACCO
16 PRODUCT FOR WHICH THE SECRETARY OF THE UNITED STATES
17 DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS ISSUED AN ORDER
18 AUTHORIZING THE PRODUCT TO BE COMMERCIALY MARKETED AS A
19 MODIFIED RISK TOBACCO PRODUCT IN ACCORDANCE WITH 21 U.S.C. SEC.
20 387k, OR ANY SUCCESSOR SECTION.

21 (3.7) "MOIST SNUFF" MEANS ANY FINELY CUT, GROUND, OR
22 POWDERED TOBACCO THAT IS NOT INTENDED TO BE SMOKED BUT DOES NOT
23 INCLUDE ANY FINELY CUT, GROUND, OR POWDERED TOBACCO THAT IS
24 INTENDED TO BE PLACED IN THE NASAL CAVITY.

25 (4) "Sale" means any transfer, exchange, or barter, in any manner
26 or by any means whatsoever, for a consideration, including all sales made
27 by any person. The term includes:

1 (a) A gift by a person engaged in the business of selling tobacco
2 products, for advertising, as a means of evading the provisions of this
3 article or for any other purposes whatsoever; AND

4 (b) A DELIVERY SALE.

5 **SECTION 12.** In Colorado Revised Statutes, **repeal and reenact,**
6 **with amendments,** 39-28.5-102 as follows:

7 **39-28.5-102. Tax levied.** (1) EXCEPT AS SET FORTH IN
8 SUBSECTION (3) OF THIS SECTION, THERE IS LEVIED A TAX UPON THE SALE,
9 USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF ALL TOBACCO
10 PRODUCTS IN THIS STATE, EXCLUDING MODIFIED RISK TOBACCO PRODUCTS,
11 AT THE RATE OF:

12 (a) TWENTY PERCENT OF THE MANUFACTURER'S LIST PRICE OF THE
13 TOBACCO PRODUCTS FOR THE TAX LEVIED PRIOR TO JANUARY 1, 2021;

14 (b) THIRTY PERCENT OF THE MANUFACTURER'S LIST PRICE OF THE
15 TOBACCO PRODUCTS FOR THE TAX LEVIED ON AND AFTER JANUARY 1,
16 2021, BUT PRIOR TO JULY 1, 2024;

17 (c) THIRTY-SIX PERCENT OF THE MANUFACTURER'S LIST PRICE OF
18 THE TOBACCO PRODUCTS FOR THE TAX LEVIED ON AND AFTER JULY 1,
19 2024, BUT PRIOR TO JULY 1, 2027; AND

20 (d) FORTY-TWO PERCENT OF THE MANUFACTURER'S LIST PRICE OF
21 THE TOBACCO PRODUCTS FOR THE TAX LEVIED ON AND AFTER JULY 1,
22 2027.

23 (2) THERE IS LEVIED A TAX UPON THE SALE, USE, CONSUMPTION,
24 HANDLING, OR DISTRIBUTION OF MODIFIED RISK TOBACCO PRODUCTS IN
25 THIS STATE AT THE RATE OF:

26 (a) FIFTEEN PERCENT OF THE MANUFACTURER'S LIST PRICE OF THE
27 MODIFIED RISK TOBACCO PRODUCTS FOR THE TAX LEVIED PRIOR TO

1 JANUARY 1, 2021;

2 (b) EIGHTEEN PERCENT OF THE MANUFACTURER'S LIST PRICE OF
3 THE MODIFIED RISK TOBACCO PRODUCTS FOR THE TAX LEVIED ON AND
4 AFTER JANUARY 1, 2021, BUT PRIOR TO JULY 1, 2024;

5 (c) TWENTY-ONE PERCENT OF THE MANUFACTURER'S LIST PRICE OF
6 THE MODIFIED RISK TOBACCO PRODUCTS FOR THE TAX LEVIED ON AND
7 AFTER JULY 1, 2024, BUT PRIOR TO JULY 1, 2027; AND

8 (d) THIRTY-ONE PERCENT OF THE MANUFACTURER'S LIST PRICE OF
9 THE MODIFIED RISK TOBACCO PRODUCTS FOR THE TAX LEVIED ON AND
10 AFTER JULY 1, 2027.

11 (3) (a) IF THE TOTAL OF THE TAX IMPOSED UPON THE SALE, USE,
12 CONSUMPTION, HANDLING, OR DISTRIBUTION OF MOIST SNUFF UNDER
13 SUBSECTION (2) OF THIS SECTION AND SECTION 39-28.5-102.5 IS LESS
14 THAN THE MINIMUM MOIST SNUFF TAX SPECIFIED IN SUBSECTION (3)(b) OF
15 THIS SECTION, THEN THE TAX IMPOSED UPON THE SALE, USE,
16 CONSUMPTION, HANDLING, OR DISTRIBUTION OF MOIST SNUFF UNDER THIS
17 SECTION IS EQUAL TO THE MINIMUM MOIST SNUFF TAX MINUS THE TAX
18 IMPOSED UNDER SECTION 39-28.5-102.5.

19 (b) (I) THE MINIMUM MOIST SNUFF TAX IS EQUAL TO:

20 (A) ONE DOLLAR FORTY-EIGHT CENTS FOR EACH ONE AND
21 TWO-TENTH OUNCE CONTAINER FOR THE TAX LEVIED ON AND AFTER
22 JANUARY 1, 2021, BUT PRIOR TO JULY 1, 2024;

23 (B) ONE DOLLAR EIGHTY-FOUR CENTS FOR EACH ONE AND
24 TWO-TENTH OUNCE CONTAINER FOR THE TAX LEVIED ON AND AFTER JULY
25 1, 2024, BUT PRIOR TO JULY 1, 2027; AND

26 (C) TWO DOLLARS TWENTY-SIX CENTS FOR EACH ONE AND
27 TWO-TENTH OUNCE CONTAINER FOR THE TAX LEVIED ON AND AFTER JULY

1 1, 2027.

2 (II) THE AMOUNT SPECIFIED IN SUBSECTION (3)(b)(I) OF THIS
3 SECTION IS PROPORTIONALLY INCREASED FOR ANY CONTAINER LARGER
4 THAN ONE AND TWO-TENTHS OUNCES.

5 (4) THE TAX SET FORTH IN THIS SECTION IS COLLECTED BY THE
6 DEPARTMENT AND IS IMPOSED AT THE TIME THE DISTRIBUTOR:

7 (a) BRINGS, OR CAUSES TO BE BROUGHT, INTO THIS STATE FROM
8 WITHOUT THE STATE TOBACCO PRODUCTS FOR SALE;

9 (b) MAKES, MANUFACTURES, OR FABRICATES TOBACCO PRODUCTS
10 IN THIS STATE FOR SALE IN THIS STATE;

11 (c) SHIPS OR TRANSPORTS TOBACCO PRODUCTS TO RETAILERS IN
12 THIS STATE TO BE SOLD BY THOSE RETAILERS; OR

13 (d) MAKES A DELIVERY SALE.

14 **SECTION 13.** In Colorado Revised Statutes, 39-28.5-105,
15 **amend** (1) and (3) as follows:

16 **39-28.5-105. Books and records to be preserved.** (1) Every
17 distributor shall keep at each licensed place of business complete and
18 accurate records for that place of business, including itemized invoices of
19 tobacco products held, purchased, manufactured, brought in or caused to
20 be brought in from without the state, or shipped or transported to retailers
21 in this state, and of all sales of tobacco products made, except sales to the
22 ultimate consumer WITHIN THE STATE.

23 (3) When a licensed distributor sells tobacco products exclusively
24 to the ultimate consumer WITHIN THE STATE at the address given in the
25 license, no invoice of those sales shall be required, but itemized invoices
26 shall be made of all tobacco products transferred to other retail outlets
27 owned or controlled by that licensed distributor. All books, records, and

1 other papers and documents required by this section to be kept shall be
2 preserved for a period of at least three years after the date of the
3 documents, unless the department, in writing, authorizes their destruction
4 or disposal at an earlier date.

5 **SECTION 14.** In Colorado Revised Statutes, 39-28.5-106,
6 **amend** (2) as follows:

7 **39-28.5-106. Returns and remittance of tax - civil penalty.**

8 (2) Every distributor shall file a return with the department by the
9 twentieth day of the month following the month reported and shall
10 therewith remit the amount of tax due, less three and one-third percent of
11 any sum so remitted that consists of tax collected ~~before July 1, 2003, or~~
12 ~~on or after July 1, 2005, and less two and one-third percent of any sum so~~
13 ~~remitted that consists of tax collected on or after July 1, 2003, but before~~
14 ~~July 1, 2005~~ BUT BEFORE JANUARY 1, 2021, AND LESS ONE AND
15 SIX-TENTHS PERCENT OF ANY SUM SO REMITTED THAT CONSISTS OF TAX
16 COLLECTED ON OR AFTER JANUARY 1, 2021, to cover the distributor's
17 expense in the collection and remittance of said tax; except that no part
18 of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of
19 article X of the state constitution shall be subject to the discount provided
20 for in this subsection (2). If any distributor is delinquent in remitting said
21 tax, other than in unusual circumstances shown to the satisfaction of the
22 executive director of the department, the distributor shall not be allowed
23 to retain any amounts to cover his or her expense in collecting and
24 remitting said tax, and in addition the penalty imposed under section
25 39-28.5-110 (2)(b) shall apply.

26 **SECTION 15.** In Colorado Revised Statutes, 39-28.5-107,
27 **amend** (1) as follows:

1 **39-28.5-107. When credit may be obtained for tax paid.**

2 (1) Where tobacco products, upon which the tax imposed by this ~~article~~
3 ARTICLE 28.5 has been reported and paid, are shipped or transported by
4 the distributor to retailers without the state to be sold by those retailers,
5 are shipped or transported by the distributor to a consumer without the
6 state on or after ~~September 1, 2015, but prior to September 1, 2018~~
7 JANUARY 1, 2021, or are returned to the manufacturer by the distributor
8 or destroyed by the distributor, credit of such tax may be made to the
9 distributor in accordance with regulations prescribed by the department.

10 **SECTION 16.** In Colorado Revised Statutes, 39-28.5-108,
11 **amend** (1) as follows:

12 **39-28.5-108. Distribution of tax collected.** (1) (a) All ~~sums of~~
13 money received and collected in payment of the tax imposed by ~~the~~
14 ~~provisions of this article~~ ARTICLE 28.5, except license fees received under
15 section 39-28.5-104 and the ~~moneys~~ MONEY collected pursuant to section
16 39-28.5-102.5, shall be transmitted to the state treasurer, who shall
17 distribute such money as follows: Fifteen percent to the general fund and
18 eighty-five percent to the old age pension fund.

19 (b) (I) THE NET REVENUE THAT IS CREDITED TO THE OLD AGE
20 PENSION FUND CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE
21 CONSTITUTION IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION
22 AND SECTION 2 (a) OF ARTICLE XXIV OF THE STATE CONSTITUTION IS
23 TRANSFERRED TO THE GENERAL FUND IN ACCORDANCE WITH SECTION 7 (c)
24 OF ARTICLE XXIV OF THE STATE CONSTITUTION. OF THIS MONEY OR THE
25 FIFTEEN PERCENT THAT IS DIRECTLY CREDITED TO THE GENERAL FUND,
26 THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE
27 TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX INCREASE SET FORTH

1 IN SECTION 39-28.5-102, APPROVED BY THE VOTERS AT THE STATEWIDE
2 ELECTION IN NOVEMBER 2020, TO THE 2020 TAX HOLDING FUND CREATED
3 IN SECTION 24-22-118 (1), EXCEPT AS SET FORTH IN SUBSECTION (1)(b)(II)
4 OF THIS SECTION.

5 (II) FOR THE STATE FISCAL YEAR 2020-21, THE TOTAL AMOUNT
6 THE STATE TREASURER TRANSFERS UNDER THIS SECTION AND SECTIONS
7 39-28-110 AND 39-28.6-109 SHALL NOT EXCEED SEVEN MILLION FIVE
8 HUNDRED THOUSAND DOLLARS. FOR THE STATE FISCAL YEARS 2021-22
9 AND 2022-23, THE TOTAL AMOUNT THE STATE TREASURER TRANSFERS
10 UNDER THIS SECTION AND SECTIONS 39-28-110 AND 39-28.6-109 SHALL
11 NOT EXCEED FIFTEEN MILLION DOLLARS PER STATE FISCAL YEAR.

12 **SECTION 17.** In Colorado Revised Statutes, **add** 39-28.5-108.5
13 as follows:

14 **39-28.5-108.5. Revenue and spending limitations.**
15 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR
16 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE
17 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE
18 GENERATED BY THE TAX INCREASE SET FORTH IN SECTION 39-28.5-102,
19 APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER
20 2020, MAY BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE
21 CHANGE.

22 **SECTION 18.** In Colorado Revised Statutes, **add** article 28.6 to
23 title 39 as follows:

24 **ARTICLE 28.6**

25 **Nicotine Products Tax**

26 **39-28.6-101. Legislative declaration.** (1) THE GENERAL
27 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

1 (a) NICOTINE IS A HIGHLY ADDICTIVE AND TOXIC SUBSTANCE;

2 (b) THERE HAS BEEN A SIGNIFICANT INCREASE IN THE USE OF
3 ELECTRONIC CIGARETTES, WHICH HEAT NICOTINE, FLAVORINGS, AND
4 OTHER CHEMICALS TO CREATE AN AEROSOL THAT IS INHALED;

5 (c) CHILDREN IN MIDDLE SCHOOL AND HIGH SCHOOL HAVE
6 REPORTED USING ELECTRONIC CIGARETTES AT ALARMING RATES, AND
7 STUDIES HAVE LINKED ELECTRONIC CIGARETTE USE AMONG YOUTH TO
8 NICOTINE ADDICTION AND CIGARETTE SMOKING;

9 (d) THE LONG-TERM HEALTH RISKS OF THIS USE ARE UNKNOWN,
10 BUT ELECTRONIC CIGARETTE AEROSOL CAN CONTAIN HARMFUL AND
11 POTENTIALLY HARMFUL SUBSTANCES INCLUDING NICOTINE,
12 CANCER-CAUSING CHEMICALS, HEAVY METALS, FLAVORING CHEMICALS,
13 ULTRAFINE PARTICLES, AND VOLATILE ORGANIC COMPOUNDS;

14 (e) YET NICOTINE PRODUCTS ARE NOT SUBJECT TO THE SAME
15 EXCISE TAX AS CIGARETTES AND TOBACCO PRODUCTS;

16 (f) TAXING NICOTINE PRODUCTS AT THE WHOLESALE LEVEL WILL
17 INCREASE THE TOTAL COST, WHICH MAY SERVE AS A DETERRENT TO
18 CHILDREN AND ADOLESCENTS AND IN TURN PREVENT AND REDUCE
19 CONSUMPTION; AND

20 (g) REVENUE FROM THE TAX CAN BE USED TOWARD POSITIVE
21 OUTCOMES IN CHILDREN'S LIVES.

22 (2) THEREFORE, THE GENERAL ASSEMBLY INTENDS TO CREATE A
23 TAX ON NICOTINE PRODUCTS SO THAT THEY ARE TAXED IN THE SAME
24 MANNER AS TOBACCO PRODUCTS, INCLUDING THE LICENSING
25 REQUIREMENTS THAT FACILITATE THE COLLECTION OF THE TAX.

26 **39-28.6-102. Definitions.** AS USED IN THIS ARTICLE 28.6, UNLESS
27 THE CONTEXT OTHERWISE REQUIRES:

1 (1) "DELIVERY SALE" MEANS A SALE OF NICOTINE PRODUCTS TO A
2 CONSUMER IN THIS STATE WHEN:

3 (a) THE CONSUMER SUBMITS AN ORDER FOR THE NICOTINE
4 PRODUCTS TO A DELIVERY SELLER FOR SALE BY MEANS OTHER THAN AN
5 OVER-THE-COUNTER SALE ON THE DELIVERY SELLER'S PREMISES,
6 INCLUDING, BUT NOT LIMITED TO, TELEPHONE OR OTHER VOICE
7 TRANSMISSION, THE MAIL OR OTHER DELIVERY SERVICE, OR THE INTERNET
8 OR OTHER ONLINE SERVICE; AND

9 (b) THE NICOTINE PRODUCTS ARE DELIVERED WHEN THE SELLER IS
10 NOT IN THE PHYSICAL PRESENCE OF THE CONSUMER WHEN THE CONSUMER
11 OBTAINS POSSESSION OF THE NICOTINE PRODUCTS BY USE OF A COMMON
12 CARRIER, PRIVATE DELIVERY SERVICE, MAIL, OR ANY OTHER MEANS.

13 (2) "DELIVERY SELLER" MEANS A PERSON LOCATED OUTSIDE OF
14 THIS STATE WHO MAKES DELIVERY SALES.

15 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

16 (4) "DISTRIBUTOR" MEANS EVERY PERSON WHO:

17 (a) FIRST RECEIVES NICOTINE PRODUCTS IN THIS STATE;

18 (b) SELLS NICOTINE PRODUCTS IN THIS STATE AND IS PRIMARILY
19 LIABLE FOR THE NICOTINE PRODUCTS TAX ON THE NICOTINE PRODUCTS;

20 (c) FIRST SELLS OR OFFERS FOR SALE IN THIS STATE NICOTINE
21 PRODUCTS IMPORTED INTO THIS STATE FROM ANY OTHER STATE OR
22 COUNTRY; OR

23 (d) MAKES A DELIVERY SALE.

24 (5) "MANUFACTURER'S LIST PRICE" MEANS THE INVOICE PRICE FOR
25 WHICH A MANUFACTURER OR SUPPLIER SELLS A NICOTINE PRODUCT TO A
26 DISTRIBUTOR EXCLUSIVE OF ANY DISCOUNT OR OTHER REDUCTION.

27 (6) "MODIFIED RISK TOBACCO PRODUCT" MEANS ANY TOBACCO

1 PRODUCT FOR WHICH THE SECRETARY OF THE UNITED STATES
2 DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS ISSUED AN ORDER
3 AUTHORIZING THE PRODUCT TO BE COMMERCIALY MARKETED AS A
4 MODIFIED RISK TOBACCO PRODUCT IN ACCORDANCE WITH 21 U.S.C. SEC.
5 387k, OR ANY SUCCESSOR SECTION.

6 (7) "NICOTINE PRODUCT" MEANS A PRODUCT THAT CONTAINS
7 NICOTINE DERIVED FROM TOBACCO OR CREATED SYNTHETICALLY THAT IS
8 INTENDED FOR HUMAN CONSUMPTION, WHETHER BY VAPORIZING,
9 CHEWING, SMOKING, ABSORBING, DISSOLVING, INHALING, SNORTING,
10 SNIFFING, AEROSOLIZING, OR BY ANY OTHER MEANS, AND THAT IS NOT:

11 (a) A CIGARETTE;

12 (b) TOBACCO PRODUCTS, AS DEFINED IN SECTION 39-28.5-101 (5);

13 OR

14 (c) A DRUG, DEVICE, OR COMBINATION PRODUCT AUTHORIZED FOR
15 SALE BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
16 SERVICES, AS THOSE TERMS ARE DEFINED IN THE "FEDERAL FOOD, DRUG,
17 AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ.

18 (8) "SALE" MEANS ANY TRANSFER, EXCHANGE, OR BARTER, IN ANY
19 MANNER OR BY ANY MEANS WHATSOEVER, FOR A CONSIDERATION,
20 INCLUDING ALL SALES MADE BY ANY PERSON. THE TERM INCLUDES:

21 (a) A GIFT BY A PERSON ENGAGED IN THE BUSINESS OF SELLING
22 NICOTINE PRODUCTS, FOR ADVERTISING, AS A MEANS OF EVADING THE
23 PROVISIONS OF THIS ARTICLE 28.6, OR FOR ANY OTHER PURPOSES
24 WHATSOEVER; AND

25 (b) A DELIVERY SALE.

26 **39-28.6-103. Tax levied.** (1) THERE IS LEVIED A TAX UPON THE
27 SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF ALL NICOTINE

1 PRODUCTS IN THIS STATE, EXCLUDING NICOTINE PRODUCTS THAT ARE
2 MODIFIED RISK TOBACCO PRODUCTS, AT THE RATE OF:

3 (a) FIFTY PERCENT OF THE MANUFACTURER'S LIST PRICE OF THE
4 NICOTINE PRODUCTS FOR THE TAX LEVIED ON AND AFTER JANUARY 1,
5 2021, BUT PRIOR TO JULY 1, 2024;

6 (b) FIFTY-SIX PERCENT OF THE MANUFACTURER'S LIST PRICE OF
7 THE NICOTINE PRODUCTS FOR THE TAX LEVIED ON AND AFTER JULY 1,
8 2024, BUT PRIOR TO JULY 1, 2027; AND

9 (c) SIXTY-TWO PERCENT OF THE MANUFACTURER'S LIST PRICE OF
10 THE NICOTINE PRODUCTS FOR THE TAX LEVIED ON AND AFTER JULY 1,
11 2027.

12 (2) THERE IS LEVIED A TAX UPON THE SALE, USE, CONSUMPTION,
13 HANDLING, OR DISTRIBUTION OF NICOTINE PRODUCTS THAT ARE MODIFIED
14 RISK TOBACCO PRODUCTS IN THIS STATE AT THE RATE OF:

15 (a) TWENTY-FIVE PERCENT OF THE MANUFACTURER'S LIST PRICE
16 OF THE NICOTINE PRODUCTS FOR THE TAX LEVIED ON AND AFTER JANUARY
17 1, 2021, BUT PRIOR TO JULY 1, 2024;

18 (b) TWENTY-EIGHT PERCENT OF THE MANUFACTURER'S LIST PRICE
19 OF THE NICOTINE PRODUCTS FOR THE TAX LEVIED ON AND AFTER JULY 1,
20 2024, BUT PRIOR TO JULY 1, 2027; AND

21 (c) THIRTY-ONE PERCENT OF THE MANUFACTURER'S LIST PRICE OF
22 THE NICOTINE PRODUCTS FOR THE TAX LEVIED ON AND AFTER JULY 1,
23 2027.

24 (3) THE TAX SET FORTH IN THIS SECTION IS COLLECTED BY THE
25 DEPARTMENT AND IS IMPOSED AT THE TIME THE DISTRIBUTOR:

26 (a) BRINGS, OR CAUSES TO BE BROUGHT, INTO THIS STATE FROM
27 WITHOUT THE STATE NICOTINE PRODUCTS FOR SALE;

1 (b) MAKES, MANUFACTURES, OR FABRICATES NICOTINE PRODUCTS
2 IN THIS STATE FOR SALE IN THIS STATE;

3 (c) SHIPS OR TRANSPORTS NICOTINE PRODUCTS TO RETAILERS IN
4 THIS STATE TO BE SOLD BY THOSE RETAILERS; OR

5 (d) MAKES A DELIVERY SALE.

6 **39-28.6-104. Exempt sales.** THE TAX IMPOSED BY SECTION
7 39-28.6-103 SHALL NOT APPLY WITH RESPECT TO ANY NICOTINE PRODUCTS
8 THAT, UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, MAY
9 NOT BE MADE THE SUBJECT OF TAXATION BY THIS STATE. A PERSON SHALL
10 REPORT THE EXEMPT SALES TO THE DEPARTMENT, AS REQUIRED BY THE
11 DEPARTMENT.

12 **39-28.6-105. Licensing required - rules - fines.** BEGINNING
13 JANUARY 1, 2021, IT IS UNLAWFUL FOR ANY PERSON TO ENGAGE IN THE
14 BUSINESS OF A DISTRIBUTOR OF NICOTINE PRODUCTS AT ANY PLACE OF
15 BUSINESS WITHOUT FIRST OBTAINING A LICENSE GRANTED AND ISSUED BY
16 THE DEPARTMENT, WHICH LICENSE IS IN EFFECT UNTIL JUNE 30 FOLLOWING
17 THE DATE OF ISSUE, UNLESS SOONER REVOKED. THE DEPARTMENT SHALL
18 GRANT A LICENSE ONLY TO A PERSON WHO OWNS OR OPERATES THE PLACE
19 FROM WHICH THE PERSON ENGAGES IN THE BUSINESS OF A DISTRIBUTOR OF
20 NICOTINE PRODUCTS, AND, IF THE BUSINESS IS OPERATED IN TWO OR MORE
21 SEPARATE PLACES BY THE PERSON, A SEPARATE LICENSE FOR EACH PLACE
22 OF BUSINESS IS REQUIRED. A LICENSE MAY BE RENEWED ONLY UPON
23 TIMELY APPLICATION AND PAYMENT OF THE REQUIRED FEE PRIOR TO
24 EXPIRATION. A LICENSE MAY BE TRANSFERRED IN THE DISCRETION OF AND
25 PURSUANT TO THE RULES ADOPTED BY THE DEPARTMENT. THE FEE FOR A
26 LICENSE IS TEN DOLLARS PER YEAR, AND THE FEE IS CREDITED TO THE
27 GENERAL FUND. THE FEE IS REDUCED AT THE RATE OF TWO DOLLARS AND

1 FIFTY CENTS FOR EACH EXPIRED QUARTER OF THE LICENSE YEAR. THE
2 DEPARTMENT SHALL, ON REASONABLE NOTICE AND AFTER A HEARING,
3 SUSPEND OR REVOKE THE LICENSE OF ANY PERSON VIOLATING ANY
4 PROVISION OF THIS ARTICLE 28.6, AND THE DEPARTMENT SHALL NOT ISSUE
5 A LICENSE TO THE SAME PERSON WITHIN A PERIOD OF TWO YEARS
6 THEREAFTER. THE DEPARTMENT MAY SHARE INFORMATION ON THE NAMES
7 AND ADDRESSES OF PERSONS WHO PURCHASED NICOTINE PRODUCTS FOR
8 RESALE WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
9 AND COUNTY AND DISTRICT PUBLIC HEALTH AGENCIES. THE DEPARTMENT
10 SHALL REFUSE TO ISSUE A NEW OR RENEWAL DISTRIBUTOR LICENSE, AND
11 SHALL REVOKE A DISTRIBUTOR'S LICENSE, IF THE DISTRIBUTOR OWES THE
12 STATE ANY DELINQUENT TAXES ADMINISTERED BY THE DEPARTMENT OR
13 INTEREST THEREON PURSUANT TO THIS TITLE 39 THAT HAVE BEEN
14 DETERMINED BY LAW TO BE DUE AND UNPAID, UNLESS THE DISTRIBUTOR
15 HAS ENTERED INTO AN AGREEMENT APPROVED BY THE DEPARTMENT TO
16 PAY THE AMOUNT DUE. THE DEPARTMENT SHALL ONLY ISSUE A NEW OR
17 RENEWAL DISTRIBUTOR LICENSE TO A DISTRIBUTOR THAT HAS A CURRENT
18 LICENSE ISSUED PURSUANT TO SECTION 39-26-103.

19 **39-28.6-106. Books and records to be preserved.** (1) EVERY
20 DISTRIBUTOR SHALL KEEP AT EACH LICENSED PLACE OF BUSINESS
21 COMPLETE AND ACCURATE RECORDS FOR THAT PLACE OF BUSINESS,
22 INCLUDING ITEMIZED INVOICES OF NICOTINE PRODUCTS HELD, PURCHASED,
23 MANUFACTURED, BROUGHT IN OR CAUSED TO BE BROUGHT IN FROM
24 WITHOUT THE STATE, OR SHIPPED OR TRANSPORTED TO RETAILERS IN THIS
25 STATE, AND OF ALL SALES OF NICOTINE PRODUCTS MADE, EXCEPT SALES TO
26 THE ULTIMATE CONSUMER WITHIN THE STATE.

27 (2) THE DISTRIBUTOR'S RECORDS MUST SHOW THE NAMES AND

1 ADDRESSES OF PURCHASERS, THE INVENTORY OF ALL NICOTINE PRODUCTS
2 ON HAND, AND OTHER PERTINENT PAPERS AND DOCUMENTS RELATING TO
3 THE PURCHASE, SALE, OR DISPOSITION OF NICOTINE PRODUCTS.

4 (3) WHEN A LICENSED DISTRIBUTOR SELLS NICOTINE PRODUCTS
5 EXCLUSIVELY TO THE ULTIMATE CONSUMER WITHIN THE STATE AT THE
6 ADDRESS GIVEN IN THE LICENSE, NO INVOICE OF THOSE SALES IS REQUIRED,
7 BUT THE LICENSED DISTRIBUTOR SHALL MAKE ITEMIZED INVOICES OF ALL
8 NICOTINE PRODUCTS TRANSFERRED TO OTHER RETAIL OUTLETS OWNED OR
9 CONTROLLED BY THAT LICENSED DISTRIBUTOR. A DISTRIBUTOR SHALL
10 PRESERVE ALL BOOKS, RECORDS, AND OTHER PAPERS AND DOCUMENTS
11 REQUIRED BY THIS SECTION TO BE KEPT FOR A PERIOD OF AT LEAST THREE
12 YEARS AFTER THE DATE OF THE DOCUMENTS, UNLESS THE DEPARTMENT,
13 IN WRITING, AUTHORIZES THEIR DESTRUCTION OR DISPOSAL AT AN EARLIER
14 DATE.

15 (4) (a) EVERY RETAILER THAT IS NOT ALSO A LICENSED
16 DISTRIBUTOR SHALL KEEP AT ITS PLACE OF BUSINESS COMPLETE AND
17 ACCURATE RECORDS TO SHOW THAT ALL NICOTINE PRODUCTS RECEIVED
18 BY THE RETAILER WERE PURCHASED FROM A LICENSED DISTRIBUTOR. THE
19 RETAILER SHALL PROVIDE A COPY OF SUCH RECORDS TO THE DEPARTMENT
20 IF SO REQUESTED. THE DEPARTMENT MAY ESTABLISH THE ACCEPTABLE
21 FORM OF SUCH RECORDS.

22 (b) THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEY FOR ANY
23 EXPENSES INCURRED BY THE DEPARTMENT RELATED TO ENFORCING
24 SUBSECTION (4)(a) OF THIS SECTION FROM THE TOBACCO TAX
25 ENFORCEMENT CASH FUND CREATED IN SECTION 39-28-107 (1)(b).

26 **39-28.6-107. Returns and remittance of tax - civil penalty -**
27 **rules.** (1) EVERY DISTRIBUTOR SHALL FILE A RETURN WITH THE

1 DEPARTMENT EACH QUARTER. THE RETURN, WHICH MUST BE UPON FORMS
2 PRESCRIBED AND FURNISHED BY THE DEPARTMENT, MUST CONTAIN,
3 AMONG OTHER THINGS, THE TOTAL AMOUNT OF NICOTINE PRODUCTS
4 PURCHASED BY THE DISTRIBUTOR DURING THE PRECEDING QUARTER AND
5 THE TAX DUE THEREON.

6 (2) EVERY DISTRIBUTOR SHALL FILE A RETURN WITH THE
7 DEPARTMENT BY THE TWENTIETH DAY OF THE MONTH FOLLOWING THE
8 MONTH REPORTED AND SHALL THEREWITH REMIT THE AMOUNT OF TAX
9 DUE, LESS ONE AND ONE-TENTH PERCENT OF ANY AMOUNT REMITTED TO
10 COVER THE DISTRIBUTOR'S EXPENSE IN THE COLLECTION AND REMITTANCE
11 OF THE TAX. IF ANY DISTRIBUTOR IS DELINQUENT IN REMITTING THE TAX,
12 OTHER THAN IN UNUSUAL CIRCUMSTANCES SHOWN TO THE SATISFACTION
13 OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, THE DISTRIBUTOR IS
14 NOT ALLOWED TO RETAIN ANY AMOUNTS TO COVER HIS OR HER EXPENSE
15 IN COLLECTING AND REMITTING THE TAX AND, IN ADDITION, THE PENALTY
16 IMPOSED UNDER SECTION 39-28.6-111 (2)(b) APPLIES.

17 (3) THE DEPARTMENT MAY REQUIRE DISTRIBUTORS TO USE
18 ELECTRONIC FUNDS TRANSFERS TO REMIT TAX PAYMENTS DUE PURSUANT
19 TO THIS ARTICLE 28.6 TO THE DEPARTMENT AND MAY REQUIRE
20 DISTRIBUTORS TO FILE TAX RETURNS ELECTRONICALLY. THE DEPARTMENT
21 MAY PROMULGATE RULES GOVERNING ELECTRONIC PAYMENT AND FILING.

22 (4) (a) ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,
23 PARTNERSHIP, OR CORPORATION, OTHER THAN A DISTRIBUTOR, IN
24 POSSESSION OF NICOTINE PRODUCTS FOR WHICH TAXES HAVE NOT
25 OTHERWISE BEEN REMITTED PURSUANT TO THIS SECTION IS LIABLE AND
26 RESPONSIBLE FOR THE UNCOLLECTED TAX THAT IS LEVIED PURSUANT TO
27 SECTION 39-28.6-103 ON BEHALF OF THE DISTRIBUTOR WHO FAILED TO PAY

1 THE TAX. THE PERSON OR ENTITY SHALL MAKE THE PAYMENT TO THE
2 DEPARTMENT WITHIN THIRTY DAYS OF FIRST TAKING POSSESSION OF THE
3 NICOTINE PRODUCT. THE DEPARTMENT SHALL ESTABLISH A FORM TO BE
4 USED FOR REMITTANCE OF THE PAYMENT. THE DEPARTMENT SHALL REMIT
5 THE PROCEEDS IT RECEIVES PURSUANT TO THIS SUBSECTION (4)(a) TO THE
6 STATE TREASURER, AND THE STATE TREASURER SHALL CREDIT FIFTEEN
7 PERCENT OF THE PROCEEDS TO THE TOBACCO TAX ENFORCEMENT CASH
8 FUND CREATED IN SECTION 39-28-107 (1)(b) AND EIGHTY-FIVE PERCENT
9 TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF ARTICLE XXIV
10 OF THE STATE CONSTITUTION.

11 (b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY IMPOSE
12 A CIVIL PENALTY ON ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,
13 PARTNERSHIP, OR CORPORATION IN POSSESSION OF NICOTINE PRODUCTS
14 THAT FAILS TO MAKE A PAYMENT REQUIRED PURSUANT TO SUBSECTION
15 (4)(a) OF THIS SECTION OR WHO IS A DISTRIBUTOR BY VIRTUE OF BEING THE
16 FIRST PERSON WHO RECEIVES THE NICOTINE PRODUCTS IN THE STATE AND
17 WHO FAILS TO MAKE A PAYMENT REQUIRED PURSUANT TO THIS SECTION IN
18 AN AMOUNT THAT DOES NOT EXCEED FIVE HUNDRED PERCENT OF SUCH
19 PAYMENT. THE DEPARTMENT SHALL REMIT ANY MONEY RECEIVED
20 PURSUANT TO THIS SUBSECTION (4)(b) TO THE STATE TREASURER FOR
21 DEPOSIT IN THE TOBACCO TAX ENFORCEMENT CASH FUND CREATED IN
22 SECTION 39-28-107 (1)(b).

23 **39-28.6-108. When credit may be obtained for tax paid.**
24 WHERE NICOTINE PRODUCTS, UPON WHICH THE TAX IMPOSED BY THIS
25 ARTICLE 28.6 HAS BEEN REPORTED AND PAID, ARE SHIPPED OR
26 TRANSPORTED BY THE DISTRIBUTOR TO RETAILERS WITHOUT THE STATE TO
27 BE SOLD BY THOSE RETAILERS, ARE SHIPPED OR TRANSPORTED BY THE

1 DISTRIBUTOR TO A CONSUMER WITHOUT THE STATE ON OR AFTER JANUARY
2 1, 2021, OR ARE RETURNED TO THE MANUFACTURER BY THE DISTRIBUTOR
3 OR DESTROYED BY THE DISTRIBUTOR, CREDIT OF SUCH TAX MAY BE MADE
4 TO THE DISTRIBUTOR IN ACCORDANCE WITH REGULATIONS PRESCRIBED BY
5 THE DEPARTMENT.

6 **39-28.6-109. Distribution of tax collected.** (1) THE STATE
7 TREASURER SHALL CREDIT THE MONEY COLLECTED FOR PAYMENT OF THE
8 TAX IMPOSED UNDER THIS ARTICLE 28.6 TO THE OLD AGE PENSION FUND
9 CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE CONSTITUTION IN
10 ACCORDANCE WITH SECTION 2 (a) AND (f) OF ARTICLE XXIV OF THE
11 STATE CONSTITUTION AND SHALL FURTHER TRANSFER AN AMOUNT EQUAL
12 TO THIS AMOUNT TO THE GENERAL FUND IN ACCORDANCE WITH SECTION
13 7 (c) OF ARTICLE XXIV OF THE STATE CONSTITUTION.

14 (2) (a) THE STATE TREASURER SHALL TRANSFER AN AMOUNT
15 EQUAL TO THE TAX IMPOSED UNDER THIS ARTICLE 28.6 FROM THE
16 GENERAL FUND TO THE 2020 TAX HOLDING FUND CREATED IN SECTION
17 24-22-118 (1), EXCEPT AS SET FORTH IN SUBSECTION (2)(b) OF THIS
18 SECTION.

19 (b) FOR THE STATE FISCAL YEAR 2020-21, THE TOTAL AMOUNT THE
20 STATE TREASURER TRANSFERS UNDER THIS SECTION AND SECTIONS
21 39-28-110 AND 39-28.5-108 SHALL NOT EXCEED SEVEN MILLION FIVE
22 HUNDRED THOUSAND DOLLARS. FOR THE STATE FISCAL YEARS 2021-22
23 AND 2022-23, THE TOTAL AMOUNT THE STATE TREASURER ANNUALLY
24 TRANSFERS UNDER THIS SECTION AND SECTIONS 39-28-110 AND
25 39-28.5-108 SHALL NOT EXCEED FIFTEEN MILLION DOLLARS PER STATE
26 FISCAL YEAR.

27 **39-28.6-110. Taxation by cities and towns.** THIS ARTICLE 28.6

1 DOES NOT PREVENT A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY,
2 OR CITY AND COUNTY FROM IMPOSING, LEVYING, AND COLLECTING ANY
3 SPECIAL SALES TAX UPON SALES OF CIGARETTES, TOBACCO PRODUCTS, OR
4 NICOTINE PRODUCTS, AS THAT TERM IS DEFINED IN SECTION 18-13-121 (5),
5 OR UPON THE OCCUPATION OR PRIVILEGE OF SELLING CIGARETTES,
6 TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. THIS ARTICLE 28.6 DOES
7 NOT AFFECT ANY EXISTING AUTHORITY OF LOCAL GOVERNMENTS TO
8 IMPOSE A SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR
9 NICOTINE PRODUCTS, IN ACCORDANCE WITH SECTION 39-28-112, TO BE
10 USED FOR LOCAL AND GOVERNMENTAL PURPOSES.

11 **39-28.6-111. Prohibited acts - penalties.** (1) BEGINNING
12 JANUARY 1, 2021, IT IS UNLAWFUL FOR ANY DISTRIBUTOR TO SELL AND
13 DISTRIBUTE ANY NICOTINE PRODUCTS IN THIS STATE WITHOUT A LICENSE
14 AS REQUIRED IN SECTION 39-28.6-105, OR TO WILLFULLY MAKE ANY FALSE
15 OR FRAUDULENT RETURN OR FALSE STATEMENT ON ANY RETURN, OR TO
16 WILLFULLY EVADE THE PAYMENT OF THE TAX, OR ANY PART THEREOF, AS
17 IMPOSED BY THIS ARTICLE 28.6. ANY DISTRIBUTOR OR AGENT THEREOF
18 WHO WILLFULLY VIOLATES ANY PROVISION OF THIS ARTICLE 28.6 IS
19 SUBJECT TO PUNISHMENT AS PROVIDED BY SECTION 39-21-118.

20 (2) (a) IF A PERSON NEGLECTS OR REFUSES TO MAKE A RETURN AS
21 REQUIRED BY THIS ARTICLE 28.6 AND NO AMOUNT OF TAX IS DUE, THE
22 EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL IMPOSE A PENALTY IN
23 THE AMOUNT OF TWENTY-FIVE DOLLARS.

24 (b) IF A PERSON FAILS TO PAY THE TAX IN THE TIME ALLOWED IN
25 SECTION 39-28.6-107, A PENALTY EQUAL TO TEN PERCENT OF THE TAX
26 PLUS ONE-HALF OF ONE PERCENT PER MONTH FROM THE DATE WHEN DUE,
27 TOGETHER WITH INTEREST ON SUCH DELINQUENT TAXES AT THE RATE

1 COMPUTED UNDER SECTION 39-21-110.5, APPLIES.

2 (c) IN COMPUTING AND ASSESSING THE PENALTY, PENALTY
3 INTEREST, AND INTEREST PURSUANT TO SUBSECTION (2)(b) OF THIS
4 SECTION, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY MAKE AN
5 ESTIMATE, BASED UPON INFORMATION AS MAY BE AVAILABLE, OF THE
6 AMOUNT OF TAXES DUE FOR THE PERIOD FOR WHICH THE TAXPAYER IS
7 DELINQUENT.

8 **39-28.6-112. Revenue and spending limitations.**

9 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR
10 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE
11 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE
12 GENERATED BY THE TAX IMPOSED BY THIS ARTICLE 28.6 APPROVED BY THE
13 VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2020 MAY BE
14 COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE.

15 **SECTION 19.** In Colorado Revised Statutes, 24-22-117, **amend**
16 (1)(a) and (2)(c)(I) as follows:

17 **24-22-117. Tobacco tax cash fund - accounts - creation -**
18 **legislative declaration.** (1) (a) There is hereby created in the state
19 treasury the tobacco tax cash fund, which fund is referred to in this
20 section as the "cash fund". The cash fund ~~shall consist~~ CONSISTS of
21 ~~moneys~~ MONEY collected from the cigarette and tobacco taxes imposed
22 pursuant to section 21 of article X of the state constitution AND MONEY
23 TRANSFERRED IN ACCORDANCE WITH SECTION 24-22-118 (2). All interest
24 and income derived from the deposit and investment of ~~moneys~~ MONEY
25 in the cash fund shall be credited to the cash fund; except that all interest
26 and income derived from the deposit and investment of ~~moneys~~ MONEY
27 in the cash fund during the 2008-09, 2009-10, 2010-11, and 2011-12

1 fiscal years shall be credited to the general fund. Any unexpended and
2 unencumbered ~~moneys~~ MONEY remaining in the cash fund at the end of
3 a fiscal year shall remain in the cash fund and shall not be credited or
4 transferred to the general fund or any other fund, except as otherwise
5 provided in this section.

6 (2) There are hereby created in the state treasury the following
7 funds:

8 (c) (I) The tobacco education programs fund IS to be administered
9 by the department of public health and environment. The state treasurer
10 and the controller shall transfer an amount equal to sixteen percent of the
11 ~~moneys~~ MONEY deposited into the cash fund, plus sixteen percent of the
12 interest and income earned on the deposit and investment of ~~those moneys~~
13 SUCH MONEY AND THE AMOUNTS SPECIFIED IN SECTION 24-22-118 (2)(a),
14 to the tobacco education programs fund; except that, for the 2008-09,
15 2009-10, 2010-11, and 2011-12 fiscal years, the state treasurer and the
16 controller shall transfer to the tobacco education programs fund only an
17 amount equal to sixteen percent of the ~~moneys~~ MONEY deposited into the
18 cash fund. All interest and income derived from the deposit and
19 investment of ~~moneys~~ MONEY in the tobacco education programs fund
20 shall be credited to the tobacco education programs fund; except that all
21 interest and income derived from the deposit and investment of ~~moneys~~
22 MONEY in the tobacco education programs fund during the 2008-09,
23 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the
24 general fund. Any unexpended and unencumbered ~~moneys~~ MONEY
25 remaining in the tobacco education programs fund at the end of a fiscal
26 year shall remain in the fund and shall not be credited or transferred to the
27 general fund or any other fund.

1 **SECTION 20.** In Colorado Revised Statutes, **add** 24-22-118 as
2 follows:

3 **24-22-118. Revenue from nicotine products and additional**
4 **tobacco taxes - 2020 tax holding fund - preschool programs cash fund**
5 **- creation - definitions.** (1) THE 2020 TAX HOLDING FUND IS HEREBY
6 CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY
7 CREDITED TO THE FUND PURSUANT TO SECTIONS 39-28-110 (1)(b),
8 39-28.5-108 (1)(b), AND 39-28.6-109 (2).

9 (2) THE STATE TREASURER SHALL TRANSFER THE MONEY IN THE
10 2020 TAX HOLDING FUND AS FOLLOWS:

11 (a) FOR THE FISCAL YEAR COMMENCING ON JULY 1, 2020:

12 (I) FIVE MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND
13 DOLLARS TO THE TOBACCO TAX CASH FUND CREATED IN SECTION
14 24-22-117 (1); AND

15 (II) TWO MILLION TWO HUNDRED THOUSAND DOLLARS TO THE
16 GENERAL FUND;

17 (b) FOR EACH OF THE FISCAL YEARS COMMENCING ON JULY 1,
18 2021, AND JULY 1, 2022:

19 (I) TEN MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS TO THE
20 TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117 (1); AND

21 (II) FOUR MILLION FIFTY THOUSAND DOLLARS TO THE GENERAL
22 FUND;

23 (c) FOR THE FISCAL YEAR COMMENCING ON JULY 1, 2023:

24 (I) TEN MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS TO THE
25 TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117 (1);

26 (II) FOUR MILLION FIFTY THOUSAND DOLLARS TO THE GENERAL
27 FUND; AND

1 (III) THE REMAINDER TO THE PRESCHOOL PROGRAMS CASH FUND
2 CREATED IN SUBSECTION (3) OF THIS SECTION;

3 (d) FOR EACH FISCAL YEAR COMMENCING ON OR AFTER JULY 1,
4 2024, BUT BEFORE JULY 1, 2027:

5 (I) TEN MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS TO THE
6 TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117 (1);

7 (II) FOUR MILLION FIFTY THOUSAND DOLLARS TO THE GENERAL
8 FUND;

9 (III) TWENTY MILLION DOLLARS TO THE TOBACCO EDUCATION
10 PROGRAMS FUND CREATED IN SECTION 24-22-117 (2)(c)(I); AND

11 (IV) THE REMAINDER TO THE PRESCHOOL PROGRAMS CASH FUND
12 CREATED IN SUBSECTION (3) OF THIS SECTION;

13 (e) FOR EACH FISCAL YEAR COMMENCING ON OR AFTER JULY 1,
14 2027:

15 (I) TEN MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS TO THE
16 TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117 (1);

17 (II) FOUR MILLION FIFTY THOUSAND DOLLARS TO THE GENERAL
18 FUND;

19 (III) THIRTY MILLION DOLLARS TO THE TOBACCO EDUCATION
20 PROGRAMS FUND CREATED IN SECTION 24-22-117 (2)(c)(I); AND

21 (IV) THE REMAINDER TO THE PRESCHOOL PROGRAMS CASH FUND
22 CREATED IN SUBSECTION (3) OF THIS SECTION.

23 (f) THE STATE TREASURER SHALL MAKE THE TRANSFERS REQUIRED
24 BY THIS SUBSECTION (2) ON AN ONGOING BASIS THROUGHOUT THE FISCAL
25 YEAR. IF THERE IS INSUFFICIENT REVENUE TO TRANSFER THE SPECIFIC
26 AMOUNTS REQUIRED BY THIS SUBSECTION (2) FOR A FISCAL YEAR, THEN
27 THE STATE TREASURER SHALL PROPORTIONALLY REDUCE EACH OF THE

1 TRANSFERS.

2 (3) (a) THE PRESCHOOL PROGRAMS CASH FUND IS HEREBY
3 CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY
4 CREDITED TO THE FUND PURSUANT TO SUBSECTION (2) OF THIS SECTION
5 AND MONEY TRANSFERRED TO THE FUND PURSUANT TO SECTION 39-28-116
6 (6). THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME
7 DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
8 PRESCHOOL PROGRAMS CASH FUND TO THE FUND. THE GENERAL
9 ASSEMBLY SHALL ANNUALLY APPROPRIATE MONEY IN THE PRESCHOOL
10 PROGRAMS CASH FUND TO A DESIGNATED DEPARTMENT FOR THE PURPOSES
11 SET FORTH IN THIS SUBSECTION (3).

12 (b) (I) A DESIGNATED DEPARTMENT SHALL PRIORITIZE ITS USE OF
13 MONEY FROM THE PRESCHOOL PROGRAMS CASH FUND TO EXPAND AND
14 ENHANCE THE COLORADO PRESCHOOL PROGRAM OR ANY SUCCESSOR
15 PROGRAM IN ORDER TO OFFER AT LEAST TEN HOURS PER WEEK OF
16 VOLUNTARY PRESCHOOL FREE OF CHARGE TO EVERY CHILD IN COLORADO
17 DURING THE LAST YEAR OF PRESCHOOL BEFORE HIS OR HER ENTRY TO
18 KINDERGARTEN.

19 (II) THE DESIGNATED DEPARTMENT SHALL USE THE MONEY
20 REMAINING IN THE PRESCHOOL PROGRAMS CASH FUND AFTER THE USE
21 IDENTIFIED IN SUBSECTION (3)(b)(I) OF THIS SECTION TO PROVIDE
22 ADDITIONAL PRESCHOOL PROGRAMMING FOR LOW-INCOME FAMILIES AND
23 CHILDREN AT RISK OF ENTERING KINDERGARTEN WITHOUT BEING SCHOOL
24 READY.

25 (c) IN DESIGNING A PROGRAM THAT IS FUNDED THROUGH THIS
26 SUBSECTION (3), A DESIGNATED DEPARTMENT MUST ENSURE THAT THE
27 PROGRAM ADDRESSES THE FOLLOWING:

1 (I) PROGRAMMATIC ADMINISTRATION THAT ALLOWS FOR PARENT
2 CHOICE, ENSURES SCHOOL-BASED AND COMMUNITY-BASED PROGRAMS
3 THAT MEET QUALITY AND PROGRAM STANDARDS ARE ABLE TO
4 PARTICIPATE, PRIORITIZES COMMUNITY NEEDS IN A MANNER THAT WILL
5 SUPPORT AND STRENGTHEN THE DIVERSITY OF BIRTH THROUGH
6 KINDERGARTEN ENTRY SERVICE PROVIDERS, AND WILL HELP TO ACHIEVE
7 STATE AND LOCAL MIXED DELIVERY GOALS;

8 (II) HIGH-QUALITY PROGRAMMING THAT HELPS PREPARE CHILDREN
9 FOR KINDERGARTEN;

10 (III) COORDINATION WITH EXISTING EARLY CHILDHOOD SYSTEMS
11 AND INITIATIVES, FUNDING STREAMS, AND ADVANCING ALIGNMENT WITH
12 KINDERGARTEN THROUGH TWELFTH GRADE SYSTEMS TO SUPPORT
13 CHILDREN'S TRANSITIONS TO SCHOOL;

14 (IV) OPPORTUNITIES FOR EVIDENCE-BASED PARENT, FAMILY, AND
15 COMMUNITY ENGAGEMENT; AND

16 (V) AN EVALUATION OF EARLY CHILDHOOD EDUCATION PROGRAM
17 EFFECTIVENESS, INCLUDING THE IMPACT OF PRESCHOOL ON CHILD AND
18 FAMILY OUTCOMES.

19 (d) IN FURTHERANCE OF THE PURPOSES SET FORTH IN SUBSECTION
20 (3)(b) OF THIS SECTION AND IN ORDER TO MEET AN EXPANSION OF
21 CURRENT PRESCHOOL POPULATIONS, A DESIGNATED DEPARTMENT MAY
22 USE MONEY IN THE FUND TO ENSURE THE AVAILABILITY OF QUALITY,
23 VOLUNTARY, MIXED-DELIVERY PRESCHOOL BY MEANS THE DEPARTMENT
24 DEEMS APPROPRIATE INCLUDING:

25 (I) RECRUITING, TRAINING, AND RETAINING EARLY CHILDHOOD
26 EDUCATION PROFESSIONALS;

27 (II) EXPANDING OR IMPROVING THE STAFF, FACILITIES, EQUIPMENT,

1 TECHNOLOGY, AND PHYSICAL INFRASTRUCTURE OF PRESCHOOL PROGRAMS
2 OFFERED BY LICENSED PROVIDERS SO AS TO INCREASE PRESCHOOL ACCESS;

3 (III) PARENT AND FAMILY OUTREACH TO FACILITATE TIMELY AND
4 EFFECTIVE ENROLLMENT; AND

5 (IV) SUCH OTHER USES AS ARE CONSISTENT WITH AND FURTHER
6 THE PURPOSE OF THIS SECTION.

7 (e) THE DESIGNATED DEPARTMENT MAY USE MONEY
8 APPROPRIATED FROM THE PRESCHOOL PROGRAMS CASH FUND FOR THE
9 COSTS OF A THIRD-PARTY ENTITY THAT ADMINISTERS THE PROGRAM
10 ESTABLISHED ON BEHALF OF THE DESIGNATED DEPARTMENT IN
11 ACCORDANCE WITH THIS SUBSECTION (3).

12 (f) AS USED IN THIS SUBSECTION (3), "DESIGNATED DEPARTMENT"
13 MEANS ONE OR MORE DEPARTMENTS THAT THE GENERAL ASSEMBLY HAS
14 DETERMINED TO BE BEST QUALIFIED TO ADMINISTER THE COLORADO
15 PRESCHOOL PROGRAM OR ANY SUCCESSOR PROGRAM TO ENSURE THE
16 AVAILABILITY OF QUALITY, VOLUNTARY, MIXED-DELIVERY PRESCHOOL BY
17 APPROPRIATING MONEY FROM THE PRESCHOOL PROGRAMS CASH FUND TO
18 THE DEPARTMENT OR DEPARTMENTS.

19 (4) THE STATE AUDITOR SHALL ANNUALLY CONDUCT A FINANCIAL
20 AUDIT OF THE USE OF THE MONEY ALLOCATED AND APPROPRIATED UNDER
21 THIS SECTION.

22 **SECTION 21.** In Colorado Revised Statutes, **add 25-3.5-810** as
23 follows:

24 **25-3.5-810. Nicotine products education, prevention, and**
25 **cessation programs.** THE EDUCATION, PREVENTION, AND CESSATION
26 PROGRAMS THAT ARE FUNDED WITH MONEY TRANSFERRED TO THE
27 TOBACCO EDUCATION PROGRAMS FUND IN ACCORDANCE WITH SECTION

1 24-22-118 (2) MAY ALSO APPLY TO NICOTINE PRODUCTS.

2 **SECTION 22.** In Colorado Revised Statutes, 39-21-119.5,
3 **amend** (1), (4)(e), and (4)(f); and **add** (4)(g) as follows:

4 **39-21-119.5. Mandatory electronic filing of returns -**
5 **mandatory electronic payment - penalty - waiver - definitions.**

6 (1) For purposes of this section, "return" means any report, claim, tax
7 return statement, or other document required or authorized under articles
8 11 and 25 of title 29, article 11 of title 30, articles 22, 26, 27, 28, 28.5,
9 **28.6**, 28.8, and 29 of this title 39, article 2 of title 40, article 3 of title 42,
10 article 4 of title 43, and title 44, and any form, statement report, or other
11 document prescribed by the executive director for reporting a tax liability,
12 a fee liability, or other information required to be returned to the
13 executive director, including the reporting of changes or amendments
14 thereto, and any schedule certification, worksheet, or other document
15 required to accompany the return.

16 (4) Except as provided in subsection (6) of this section, on and
17 after August 2, 2019, electronic filing of returns and the payment of any
18 tax or fee by electronic funds transfer is required for the following:

19 (e) Any retail marijuana excise tax return required to be filed and
20 payment required to be made pursuant to section 39-28.8-304; ~~and~~

21 (f) Any retail marijuana sales tax return required to be filed and
22 payment required to be paid pursuant to section 39-28.8-202; AND

23 (g) ANY NICOTINE PRODUCTS TAX RETURN REQUIRED TO BE FILED
24 AND PAYMENT REQUIRED TO BE PAID PURSUANT TO ARTICLE 28.6 OF THIS
25 TITLE 39.

26 **SECTION 23.** In Colorado Revised Statutes, 39-22-623, **amend**
27 (1)(a)(II)(A) as follows:

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

4 (a) (II) (A) Effective July 1, 1987, an amount equal to
5 twenty-seven percent of the gross state cigarette tax shall be apportioned
6 to incorporated cities and incorporated towns that levy taxes and adopt
7 formal budgets and to counties. For the purposes of this section, a city
8 and county is considered a city. The city or town share shall be
9 apportioned according to the percentage of state sales tax revenues
10 collected by the department of revenue in an incorporated city or town as
11 compared to the total state sales tax collections that may be allocated to
12 all political subdivisions in the state; the county share shall be the same
13 as that which the percentage of state sales tax revenues collected in the
14 unincorporated area of the county bears to total state sales tax revenues
15 that may be allocated to all political subdivisions in the state. The
16 department of revenue shall certify to the state treasurer, at least annually,
17 the percentage for allocation to each city, town, and county, and the
18 department shall apply the percentage for allocation certified in all
19 distributions to cities, towns, and counties until changed by certification
20 to the state treasurer. In order to qualify for distributions of state income
21 tax money, units of local government are prohibited from imposing taxes
22 on any person as a condition for engaging in the business of selling
23 cigarettes. For purposes of this subsection (1)(a)(II), the "gross state
24 cigarette tax" means the total tax FROM TEN MILLS ON EACH CIGARETTE
25 before the discount provided for in section 39-28-104 (1), PLUS AN
26 AMOUNT EQUAL TO THE AMOUNT TRANSFERRED TO THE GENERAL FUND
27 FOR THE STATE FISCAL YEAR IN ACCORDANCE WITH SECTION 24-22-118

1 (2). For any city, town, or county that was previously disqualified from
2 the apportionment set forth in this subsection (1)(a)(II)(A) by reason of
3 imposing a fee or license related to the sale of cigarettes, the city, town,
4 or county is eligible for any allocation of money that is based on an
5 apportionment made on or after July 1, 2019, but not for an allocation of
6 money that is based on an apportionment made before July 1, 2019.

7 **SECTION 24. Effective date.** (1) Except as otherwise provided
8 in subsection (2) of this section, this act takes effect upon passage.

9 (2) Sections 2 to 23 of this act take effect only if, at the November
10 2020 statewide election, a majority of voters approve the ballot issue
11 referred in accordance with section 39-28-401, Colorado Revised
12 Statutes, created in section 1 of this act. If the voters approve the ballot
13 issue, then sections 2 to 23 of this act take effect on the date of the
14 governor's proclamation or January 1, 2021, whichever is later.

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