

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0538.01 Ed DeCecco x4216

HOUSE BILL 19-1245

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A BILL FOR AN ACT

101 **CONCERNING AN INCREASE IN AFFORDABLE HOUSING FUNDING FROM**
102 **INCREASED STATE SALES TAX REVENUE THAT RESULTS FROM A**
103 **MODIFICATION TO THE STATE SALES TAX VENDOR FEE, AND, IN**
104 **CONNECTION THEREWITH, ENACTING THE "AFFORDABLE**
105 **HOUSING ACT OF 2019" AND MAKING AN APPROPRIATION.**

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 state treasurer is required to credit an amount equal to the increase in sales taxes attributable to the vendor fee changes that result

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.

HOUSE
3rd Reading Unamended
April 22, 2019

HOUSE
Amended 2nd Reading
April 19, 2019

from the bill to the housing development grant fund, which the division of housing in the department of local affairs (division) uses to make grants and loans to improve, preserve, or expand the supply of affordable housing in the state. The division is required to annually award at least 1/3 of this money for affordable housing projects for households whose annual income is less than or equal to 30% of the area median income.

The increase in sales taxes attributable to the vendor fee changes that result from the bill are excluded from the definition of "state sales tax increment revenue" for purposes of the "Colorado Regional Tourism Act" so that the increase is payable to the state and not an applicable financing entity.

A retailer who collects state sales tax is currently allowed to retain 3 1/3% of the state sales taxes collected as compensation for the retailer's expenses incurred in collecting and remitting the tax (vendor fee). Beginning January 1, 2020, the bill increases the vendor fee to 4% and establishes a \$1,000 monthly cap on the vendor fee. This limit applies regardless of the number of the retailer's locations. A vendor with multiple locations is required to register all locations under one account with the department of revenue. The changes to the state vendor fee do not apply to a local government that imposes a sales tax and permits a vendor fee that is based on the state's vendor fee.

The sales and use tax revenue that is deposited in the housing development grant fund for the state fiscal year 2019-20 is reduced by a specified amount to cover the department of revenue's expenses to make the IT changes necessary to implement the bill, which results in a corresponding increase in the general fund. In turn, this amount is appropriated from the general fund to the department of revenue for this purpose.

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

2 **SECTION 1. Short title.** The short title of this act is the
3 "Affordable Housing Act of 2019".

4 **SECTION 2. Legislative declaration.** (1) The general assembly
5 hereby finds and declares that:

6 (a) According to a 2017 centennial state survey by Colorado
7 Mesa university, "Coloradans rank housing and real estate as the number
8 one problem facing their communities today.";

9 (b) Metro area rents and home prices have increased nearly fifty

1 percent since 2011 and nonmetro area home prices have increased
2 twenty-eight percent, while wages have increased only eleven percent
3 during this time;

4 (c) Fifty percent of Colorado rental households statewide are
5 cost-burdened, spending thirty percent or more of total household income
6 on housing;

7 (d) During the 2017-18 school year, the department of education
8 counted over twenty-four thousand children in Colorado's public schools
9 that at some point during the year were homeless-either unsheltered or
10 living in shelters, motels, or cars-due to economic hardship, domestic
11 violence, or other familial instability;

12 (e) In both 2017 and 2018, Colorado had at least one thousand
13 homeless veterans, according to the annual homeless assessment report
14 to congress;

15 (f) Home prices in Colorado have increased three hundred
16 sixty-six percent since 1991, which is more than any other state,
17 according to the federal housing finance agency;

18 (g) The Colorado association of REALTORS affordability index
19 reached its lowest level ever in November 2018;

20 (h) Independent analysis of Colorado demographic data projects
21 a deficit of over twenty thousand housing units until at least 2025;

22 (i) Among all states that allow retailers to retain a vendor fee,
23 Colorado is among a minority of such states that do not impose an upper
24 limit on the amount of the vendor fee allowance;

25 (j) The purpose of the state sales tax vendor fee is to assist
26 Colorado retailers in complying with the obligation to collect and remit
27 sales tax, but fewer than two percent of all retailers retain nearly

1 two-thirds of all vendor fees retained, an amount exceeding fifty million
2 dollars annually; and

3 (k) By aligning state sales tax vendor fee policy with national
4 norms, Colorado can increase funding for affordable housing without
5 raising taxes.

6 **SECTION 3.** In Colorado Revised Statutes, 24-32-721, **amend**
7 (1) and (2)(a) as follows:

8 **24-32-721. Colorado affordable housing construction grants**
9 **and loans - housing development grant fund - creation - housing**
10 **assistance for a person with a behavioral or mental health disorder**
11 **in the criminal or juvenile justice system - cash fund - definition.**

12 (1) There is hereby created in the state treasury the housing development
13 grant fund, which fund ~~shall be~~ IS administered by the division and is
14 referred to in this section as the "fund". The fund ~~shall consist~~ CONSISTS
15 of ~~moneys~~ MONEY CREDITED TO THE FUND IN ACCORDANCE WITH SECTION
16 39-26-123 (3)(b); MONEY appropriated to the ~~Colorado affordable~~
17 ~~housing construction grants and loan~~ fund by the general assembly; all
18 ~~moneys~~ MONEY collected by the division for purposes of this section from
19 federal grants, from other contributions, gifts, grants, and donations
20 received from any other organization, entity, or individual, public or
21 private; and from any fees or interest earned on such ~~moneys~~ MONEY. The
22 division is hereby authorized and directed to solicit, accept, expend, and
23 disburse all ~~moneys~~ MONEY collected for the fund from the sources
24 specified in this subsection (1) for the purpose of making grants or loans
25 and for program administration as provided in this section. All such
26 ~~moneys~~ MONEY shall be transmitted to the state treasurer to be credited to
27 the fund. The ~~moneys~~ MONEY in the fund ~~are hereby~~ IS continuously

1 appropriated to the division for the purposes of this section. The ~~moneys~~
2 MONEY in the fund may be expended for the purpose of funding activities
3 initiated during the current state fiscal year that are to be completed in
4 subsequent state fiscal years.

5 (2) (a) Subject to the requirements of this section, upon the
6 approval of the board, the division may make a grant or loan from ~~moneys~~
7 MONEY in the fund to improve, preserve, or expand the supply of
8 affordable housing in Colorado as well as to fund the acquisition of
9 housing and economic data necessary to advise the board on local housing
10 conditions. In making loans ~~of moneys~~ or grants from the fund, the
11 division shall give priority to owners of property that was either destroyed
12 or incurred substantial damage as a result of one or more state or federally
13 declared natural disasters where the property owner has received the
14 maximum insurance proceeds and public disaster assistance. THE
15 DIVISION SHALL ANNUALLY ALLOCATE, WITH OR WITHOUT BOARD
16 APPROVAL, AT LEAST ONE-THIRD OF THE MONEY CREDITED TO THE FUND
17 IN ACCORDANCE WITH SECTION 39-26-123 (3)(b) TO IMPROVE, PRESERVE,
18 OR EXPAND AFFORDABLE HOUSING FOR HOUSEHOLDS WHOSE ANNUAL
19 INCOME IS LESS THAN OR EQUAL TO THIRTY PERCENT OF THE AREA MEDIAN
20 INCOME, AS PUBLISHED ANNUALLY BY THE UNITED STATES DEPARTMENT
21 OF HOUSING AND URBAN DEVELOPMENT.

22 **SECTION 4.** In Colorado Revised Statutes, 24-46-303, **amend**
23 (12) as follows:

24 **24-46-303. Definitions.** As used in this part 3, unless the context
25 otherwise requires:

26 (12) "State sales tax increment revenue" means the portion of the
27 revenue derived from state sales taxes, including any revenue attributable

1 to the baseline growth rate and not including any sales taxes for remote
2 sales as specified in section 39-26-104 (2), ~~C.R.S.~~, collected within a
3 designated regional tourism zone in excess of the amount of base year
4 revenue. "STATE SALES TAX INCREMENT REVENUE" DOES NOT INCLUDE
5 ANY ADDITIONAL REVENUE DERIVED FROM STATE SALES TAXES THAT ARE
6 DUE TO THE CHANGES SET FORTH IN SECTION 39-26-105 (1)(d), ENACTED
7 IN 2019, TO THE AMOUNT RETAINED BY A VENDOR TO COVER THE
8 VENDOR'S EXPENSES IN COLLECTING AND REMITTING SALES TAX.

9 **SECTION 5.** In Colorado Revised Statutes, 39-26-105, **amend**
10 (1)(c) and (5)(c); and **add** (1)(d) as follows:

11 **39-26-105. Vendor liable for tax - repeal - definitions.**
12 (1) (c) (I) (A) Except as provided in ~~sub-subparagraph (B) of this~~
13 ~~subparagraph (I)~~ SUBSECTION (1)(c)(I)(B) OF THIS SECTION, every retailer
14 shall remit, along with the return required in ~~paragraph (b) of this~~
15 ~~subsection (I)~~ SUBSECTION (1)(b) OF THIS SECTION, an amount equivalent
16 to the percentage on sales as specified in ~~subparagraph (I) of paragraph~~
17 ~~(a) of this subsection (I)~~ SUBSECTION (1)(a)(I) OF THIS SECTION to the
18 executive director of the department of revenue, less an amount as set
19 forth in ~~subparagraph (H) of this paragraph (c)~~ SUBSECTION (1)(c)(II) OR
20 (1)(d) OF THIS SECTION to cover the retailer's expense in the collection and
21 remittance of said tax.

22 (B) Every remote seller shall remit, along with the return required
23 in ~~paragraph (b) of this subsection (I)~~ SUBSECTION (1)(b) OF THIS
24 SECTION, the amounts specified in section 39-26-104 (2)(a), less an
25 amount as set forth in ~~subparagraph (H) of this paragraph (c)~~ SUBSECTION
26 (1)(c)(II) OR (1)(d) OF THIS SECTION to cover the retailer's expense in the
27 collection and remittance of said tax.

1 ~~(H) Except as provided in section 39-26-105.3 (8)(b)(H):~~

2 (II) (A) Except as provided in ~~sub-subparagraph (B)~~ SUBSECTION
3 (1)(c)(II)(B) OF THIS SECTION, FOR SALES MADE PRIOR TO JANUARY 1,
4 2020, the amount retained by a retailer to cover the retailer's expense in
5 collecting and remitting tax pursuant to this section ~~shall be~~ IS three and
6 one-third percent of all sales tax reported.

7 (B) For a twelve-month period commencing upon the first day of
8 the third month following the effective date of any act of congress
9 authorizing states to require certain retailers to pay, collect, or remit state
10 or local sales tax, the percentage of all sales tax reported as specified in
11 ~~sub-subparagraph (A) of this subparagraph (H) shall be~~ SUBSECTION
12 (1)(c)(II)(A) OR (1)(d) OF THIS SECTION IS reduced by one hundred five
13 one-thousandths percentage points.

14 (III) If any retailer is delinquent in remitting said tax, other than
15 in unusual circumstances shown to the satisfaction of the executive
16 director of the department of revenue, the retailer shall not be allowed to
17 retain any amounts UNDER THIS SUBSECTION (1)(c) OR SUBSECTION (1)(d)
18 OF THIS SECTION to cover such retailer's expense in collecting and
19 remitting said tax, and an amount equivalent to the said percentage, plus
20 the amount of any local vendor expense that may be allowed by the local
21 government to the vendor, shall be remitted to the executive director by
22 any such delinquent vendor. Any local vendor expense remitted to the
23 executive director shall be deposited to the state general fund.

24 (d) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(c)(II)(B) OF THIS
25 SECTION, FOR SALES MADE ON OR AFTER JANUARY 1, 2020, THE AMOUNT
26 RETAINED BY A RETAILER TO COVER THE RETAILER'S EXPENSE IN
27 COLLECTING AND REMITTING TAX IN ACCORDANCE WITH THIS SECTION IS

1 FOUR PERCENT OF THE TAX REPORTED; EXCEPT THAT A RETAILER SHALL
2 NOT RETAIN MORE THAN ONE THOUSAND DOLLARS IN ANY FILING PERIOD.

3 (II) A RETAILER WITH MULTIPLE LOCATIONS IS TREATED AS A
4 SINGLE RETAILER FOR PURPOSES OF THIS SUBSECTION (1)(d) AND IS
5 REQUIRED TO REGISTER ALL LOCATIONS UNDER ONE ACCOUNT WITH THE
6 DEPARTMENT OF REVENUE.

7 (III) IF A RETAILER IS PERMITTED TO RETAIN AN AMOUNT TO COVER
8 THE RETAILER'S EXPENSE IN COLLECTING AND REMITTING LOCAL SALES
9 TAX THAT IS THE SAME AMOUNT AS PERMITTED BY THE STATE UNDER THIS
10 SECTION, THEN SUCH AMOUNT IS THE AMOUNT THAT WAS PERMITTED AS
11 OF DECEMBER 31, 2019, UNLESS MODIFIED AS PROVIDED IN SUBSECTION
12 (1)(c)(II)(B) OF THIS SECTION.

13 (5) (c) From the amount of the tax required to be remitted
14 pursuant to ~~paragraph (a) of this subsection (5)~~ SUBSECTION (5)(a) OF THIS
15 SECTION, a qualified purchaser shall be entitled to retain the amount
16 specified in ~~subparagraph (H) of paragraph (c) of subsection (1)~~
17 SUBSECTION (1)(c)(II) OR (1)(d) of this section that a retailer would
18 otherwise be entitled to retain to cover the retailer's expense in collecting
19 and remitting the tax imposed by this ~~article~~ ARTICLE 26 if the qualified
20 purchaser had not provided a direct payment permit number to the
21 retailer.

22 **SECTION 6. In Colorado Revised Statutes, 39-26-105, amend**
23 **(1)(c)(III) and (5)(c); amend as amended by House Bill 19-1240**
24 **(1)(c)(I) and (1)(c)(II); and add (1)(d) as follows:**

25 **39-26-105. Vendor liable for tax - repeal. (1) (c) (I) Every**
26 **retailer shall remit, along with the return required in subsection (1)(b) of**
27 **this section, an amount equivalent to the percentage on sales as specified**

1 in subsection (1)(a)(I) of this section to the executive director of the
2 department of revenue, less an amount as set forth in subsection (1)(c)(H)
3 SUBSECTION (1)(c)(II) OR (1)(d) of this section to cover the retailer's
4 expense in the collection and remittance of said tax.

5 (II) FOR SALES MADE PRIOR TO JANUARY 1, 2020, the amount
6 retained by a retailer to cover the retailer's expense in collecting and
7 remitting tax pursuant to this section is three and one-third percent of all
8 sales tax reported.

9 (III) If any retailer is delinquent in remitting said tax, other than
10 in unusual circumstances shown to the satisfaction of the executive
11 director of the department of revenue, the retailer shall not be allowed to
12 retain any amounts UNDER THIS SUBSECTION (1)(c) OR SUBSECTION (1)(d)
13 OF THIS SECTION to cover such retailer's expense in collecting and
14 remitting said tax, and an amount equivalent to the said percentage, plus
15 the amount of any local vendor expense that may be allowed by the local
16 government to the vendor, shall be remitted to the executive director by
17 any such delinquent vendor. Any local vendor expense remitted to the
18 executive director shall be deposited to the state general fund.

19 (d) (I) FOR SALES MADE ON OR AFTER JANUARY 1, 2020, THE
20 AMOUNT RETAINED BY A RETAILER TO COVER THE RETAILER'S EXPENSE IN
21 COLLECTING AND REMITTING TAX IN ACCORDANCE WITH THIS SECTION IS
22 FOUR PERCENT OF THE TAX REPORTED; EXCEPT THAT A RETAILER SHALL
23 NOT RETAIN MORE THAN ONE THOUSAND DOLLARS IN ANY FILING PERIOD.

24 (II) A RETAILER WITH MULTIPLE LOCATIONS IS TREATED AS A
25 SINGLE RETAILER FOR PURPOSES OF THIS SUBSECTION (1)(d) AND IS
26 REQUIRED TO REGISTER ALL LOCATIONS UNDER ONE ACCOUNT WITH THE
27 DEPARTMENT OF REVENUE.

1 (III) IF A RETAILER IS PERMITTED TO RETAIN AN AMOUNT TO COVER
2 THE RETAILER'S EXPENSE IN COLLECTING AND REMITTING LOCAL SALES
3 TAX THAT IS THE SAME AMOUNT AS PERMITTED BY THE STATE UNDER THIS
4 SECTION, THEN SUCH AMOUNT IS THE AMOUNT THAT WAS PERMITTED AS
5 OF DECEMBER 31, 2019.

6 (5) (c) From the amount of the tax required to be remitted
7 pursuant to paragraph (a) of this subsection (5) SUBSECTION (5)(a) OF THIS
8 SECTION, a qualified purchaser shall be entitled to retain the amount
9 specified in subparagraph (II) of paragraph (c) of subsection (1)
10 SUBSECTION (1)(c)(II) OR (1)(d) of this section that a retailer would
11 otherwise be entitled to retain to cover the retailer's expense in collecting
12 and remitting the tax imposed by this article ARTICLE 26 if the qualified
13 purchaser had not provided a direct payment permit number to the
14 retailer.

15 **SECTION 7.** In Colorado Revised Statutes, 39-26-123, **amend**
16 (1)(a) and (3); and **add** (1)(a.7) as follows:

17 **39-26-123. Receipts - disposition - transfers of general fund**
18 **surplus - sales tax holding fund - creation - definitions - repeal.**

19 (1) As used in this section, unless the context otherwise requires:

20 (a) ~~"Net revenue" means the gross amount of sales and use tax~~
21 ~~receipts collected under the provisions of this article, less a fee retained~~
22 ~~by vendors for the collection and remittance of the tax pursuant to section~~
23 ~~39-26-105 (1) and less refunds and adjustments made by the department~~
24 ~~of revenue in conjunction with its collection and enforcement duties~~
25 ~~under this article~~ "INCREASE IN SALES AND USE TAX REVENUE
26 ATTRIBUTABLE TO THE VENDOR FEE CHANGES" MEANS AN AMOUNT EQUAL
27 TO THE NET REVENUE FOR A FISCAL YEAR MINUS WHAT THE NET REVENUE

1 WOULD HAVE BEEN FOR THE FISCAL YEAR IF THE AMOUNT RETAINED BY A
2 VENDOR TO COVER THE VENDOR'S EXPENSES IN COLLECTING AND
3 REMITTING SALES TAX HAD NOT BEEN MODIFIED BY HOUSE BILL 19-1245,
4 ENACTED IN 2019.

5 (a.7) "NET REVENUE" MEANS THE GROSS AMOUNT OF SALES AND
6 USE TAX RECEIPTS COLLECTED UNDER THIS ARTICLE 26, LESS A FEE
7 RETAINED BY VENDORS FOR THE COLLECTION AND REMITTANCE OF THE
8 TAX PURSUANT TO SECTION 39-26-105 (1) AND LESS REFUNDS AND
9 ADJUSTMENTS MADE BY THE DEPARTMENT OF REVENUE IN CONJUNCTION
10 WITH ITS COLLECTION AND ENFORCEMENT DUTIES UNDER THIS ARTICLE 26.

11 (3) For any state fiscal year commencing on or after July 1, 2013,
12 the state treasurer shall credit eighty-five percent of all net revenue
13 collected under ~~the provisions of this article~~ ARTICLE 26 to the old age
14 pension fund created in section 1 of article XXIV of the state constitution.
15 The state treasurer shall credit to the general fund the remaining fifteen
16 percent of the net revenue, less:

17 (a) Ten million dollars, which the state treasurer shall credit to the
18 older Coloradans cash fund created in section 26-11-205.5 (5); ~~C.R.S.~~;
19 AND

20 (b) (I) EXCEPT AS SET FORTH IN SUBSECTION (3)(b)(II) OF THIS
21 SECTION, AN AMOUNT EQUAL TO THE INCREASE IN SALES AND USE TAX
22 REVENUE ATTRIBUTABLE TO THE VENDOR FEE CHANGES, WHICH AMOUNT
23 THE STATE TREASURER SHALL CREDIT TO THE HOUSING DEVELOPMENT
24 GRANT FUND CREATED IN SECTION 24-32-721 (1).

25 (II) THE AMOUNT CREDITED TO THE HOUSING DEVELOPMENT
26 GRANT FUND CREATED IN SECTION 24-32-721 (1) UNDER SUBSECTION
27 (1)(b)(I) OF THIS SECTION IS REDUCED BY THE FOLLOWING AMOUNTS:

1 (A) FIFTEEN MILLION THREE HUNDRED THIRTY-FIVE THOUSAND
2 SEVEN HUNDRED EIGHTY-ONE DOLLARS FOR THE STATE FISCAL YEAR
3 2019-20;

4 (B) FORTY MILLION THREE HUNDRED TWENTY-THREE THOUSAND
5 ONE HUNDRED FIFTY-EIGHT DOLLARS FOR THE STATE FISCAL YEAR
6 2020-21; AND

7 (C) NINE HUNDRED EIGHTY-FIVE THOUSAND THREE HUNDRED
8 THIRTY-FIVE DOLLARS FOR THE STATE FISCAL YEAR 2021-22 AND EACH
9 STATE FISCAL YEAR THEREAFTER.

10

11 **SECTION 8.** In Colorado Revised Statutes, 39-26-703, **amend**
12 **(2)(c) and (2)(c.5) as follows:**

13 **39-26-703. Disputes and refunds.** (2) (c) A refund shall be made
14 or a credit allowed by the executive director of the department of revenue
15 to any person entitled to an exemption where the person establishes: That
16 a tax was paid by another on a purchase made on behalf of such person
17 or that a tax was paid by an independent contractor on or before July 1,
18 1979, on tangible personal property incorporated into realty for the sole
19 use, benefit, and ownership of any person entitled to an exemption; that
20 a refund has not been granted to the person making the purchase; and that
21 the person entitled to exemption paid or reimbursed the purchaser for
22 such tax. No such refund shall be made or credit allowed in an amount
23 greater than the tax paid. ~~less the expense allowance on the purchase~~
24 ~~retained by the vendor pursuant to section 39-26-105 (1).~~

25 (c.5) The executive director of the department of revenue shall
26 make a refund or allow a credit to any person who establishes that he or
27 she has overpaid the tax due pursuant to this ~~article~~ **ARTICLE 26**. No such

1 refund shall be made or credit allowed in an amount greater than the tax
2 paid. ~~less the expense allowance on the purchase retained by the vendor~~
3 ~~pursuant to section 39-26-105 (1).~~

4 **SECTION 9. Appropriation.** (1) For the 2019-20 state fiscal
5 year, \$3,398 is appropriated to the department of local affairs for use by
6 the division of housing. This appropriation is from the general fund. To
7 implement this act, the division may use this appropriation for affordable
8 housing program costs.

9 (2) For the 2019-20 state fiscal year, \$286,408 is appropriated to
10 the department of revenue. This appropriation is from the general fund.
11 To implement this act, the department may use this appropriation as
12 follows:

13 (a) \$186,436 for use by the taxpayer services division for personal
14 services, which amount is based on an assumption that the division will
15 require an additional 0.4 FTE;

16 (b) \$5,368 for use by the taxpayer services division for operating
17 expenses; and

18 (c) \$94,604 for the tax administration IT system (GenTax)
19 support.

20 **SECTION 10. Act subject to petition - effective date.**

21 (1) Except as set forth in subsection (2) of this section, this act takes
22 effect at 12:01 a.m. on the day following the expiration of the ninety-day
23 period after final adjournment of the general assembly (August 2, 2019,
24 if adjournment sine die is on May 3, 2019); except that, if a referendum
25 petition is filed pursuant to section 1 (3) of article V of the state
26 constitution against this act or an item, section, or part of this act within
27 such period, then the act, item, section, or part will not take effect unless

1 approved by the people at the general election to be held in November
2 2020 and, in such case, will take effect on the date of the official
3 declaration of the vote thereon by the governor.

4 (2) (a) Section 5 of this act takes effect only if House Bill 19-1240
5 does not become law.

6 (b) Section 6 of this act takes effect only if House Bill 19-1240
7 becomes law, in which case section 6 of this act takes effect on the
8 effective date of this act or House Bill 19-1240, whichever is later.