

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0825.01 Ed DeCecco x4216

HOUSE BILL 19-1333

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A BILL FOR AN ACT

101 **CONCERNING THE TAXATION OF PRODUCTS THAT CONTAIN NICOTINE,**
102 **AND, IN CONNECTION THEREWITH, INCREASING THE CIGARETTE**
103 **TAX BY EIGHT AND SEVENTY-FIVE ONE-HUNDREDTHS CENTS PER**
104 **CIGARETTE AND THE TOBACCO PRODUCTS TAX BY TWENTY-TWO**
105 **PERCENT OF THE MANUFACTURER'S LIST PRICE; CREATING A**
106 **TAX ON NICOTINE PRODUCTS THAT IS EQUAL TO SIXTY-TWO**
107 **PERCENT OF THE MANUFACTURER'S LIST PRICE; REFERRING A**
108 **BALLOT ISSUE FOR PRIOR VOTER APPROVAL FOR THE NEW AND**
109 **INCREASED TAXES; DEDICATING THE NEW TAX REVENUE FOR**
110 **BEHAVIORAL HEALTH SERVICES FOR CHILDREN AND YOUTH,**
111 **HEALTH CARE AFFORDABILITY AND ACCESSIBILITY, THE**
112 **COLORADO PRESCHOOL PROGRAM EXPANSION AND**
113 **ENHANCEMENT, AND THE NEWLY CREATED COLORADO**

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
Amended 2nd Reading
April 30, 2019

101
102

**EXPANDED LEARNING OPPORTUNITIES PROGRAM; 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 bill refers a ballot issue to the voters at the November 2019 statewide election for the following tax increases:

- ! To increase the cigarette tax by 8.75 cents per cigarette;
- ! To increase the tobacco products tax by 22% of the manufacturer's list price; and
- ! To create a tax on nicotine products that is equal to 62% of the manufacturer's list price, which is the same total tax as the tax levied on tobacco products with the increase.

If voters approve the tax, then the state will have the authority to impose these taxes and retain and spend the revenue as a voter-approved revenue change, and the remainder of the bill takes effect upon approval.

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. 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 (department) 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 it purchases 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 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.

In general, 50% of the revenue from the new nicotine products tax and the additional cigarette and tobacco products taxes (new tax revenue) is allocated for purposes related to health care, and 50% is allocated for preschool programs and expanded learning opportunities. Specifically, the new tax revenue is deposited in the old age pension fund and then credited to the general fund in accordance with the state constitution. The state treasurer is then required to transfer 50% of the new tax revenue from the general fund to the behavioral health and health care affordability and accessibility cash fund (behavioral health fund).

The state treasurer is further required to transfer money in the behavioral health fund as follows:

- ! 19%, up to \$30 million, to the tobacco education programs fund, which is primarily used for tobacco education, prevention, and cessation programs, which are expanded to include nicotine products; and
- ! 9.5%, up to \$15 million, to offset the decreased revenue from the existing taxes that may result from the voter-approved rate increases, and of this amount, 73% is further allocated to the tobacco tax cash fund and 27% to the general fund.

For fiscal years that begin prior to July 1, 2023, the general assembly is required to appropriate the remainder of the money in the behavioral health fund as follows:

- ! 66% to make health care more affordable and accessible; and
- ! 34% to improve the provision of behavioral health services for children and youth.

Thereafter, the specific allocation no longer applies and the only limitation on appropriating for these 2 purposes is that each purpose must receive at least 20% of the fund remainder.

The state treasurer is required to transfer the other 50% of the new tax revenue to the newly created preschool programs cash fund, from which money is appropriated to the department of education to improve the availability, affordability, and quality of voluntary early childhood education, and to the Colorado expanded learning opportunities cash fund, from which money is used for the Colorado expanded learning opportunities program. The allocation of the new tax revenue between the 2 funds is as follows:

- ! For the 2019-20 and 2020-21 fiscal years, 35% to the preschool programs cash fund and 15% to the Colorado expanded learning opportunities cash fund;

! For the 2021-22 fiscal year, 30% to the preschool programs cash fund and 20% to the Colorado expanded learning opportunities cash fund; and

! For the 2022-23 fiscal year and each fiscal year thereafter, 27.5% to the preschool programs cash fund and 22.5% to the Colorado expanded learning opportunities cash fund.

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

The bill also creates the Colorado expanded learning opportunities program, which is established to allow eligible students to participate in out-of-school learning experiences. The Colorado expanded learning opportunities agency, which is an independent agency in the department of education, through an administering nonprofit, pays providers for eligible students to participate in such experiences.

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 5, 2019, 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 \$390,000,000 ANNUALLY
15 IN THE FIRST FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED
16 ANNUALLY THEREAFTER BY IMPOSING A TAX ON NICOTINE LIQUIDS USED
17 IN E-CIGARETTES THAT IS EQUAL TO THE TOTAL STATE TAX ON TOBACCO

1 PRODUCTS, INCREASING THE TOBACCO PRODUCTS TAX BY 22% OF THE
2 MANUFACTURER'S LIST PRICE, AND INCREASING THE CIGARETTE TAX BY
3 8.75 CENTS PER CIGARETTE, AND USING THE REVENUE TO INVEST IN
4 COLORADANS' HEALTH AND EDUCATION, SPECIFICALLY PROGRAMS THAT
5 REDUCE THE USE OF TOBACCO AND NICOTINE PRODUCTS, PROVIDE MENTAL
6 HEALTH AND SUBSTANCE ABUSE SERVICES FOR CHILDREN AND YOUTH,
7 LOWER THE COST OF HEALTH CARE, ENHANCE THE VOLUNTARY COLORADO
8 PRESCHOOL PROGRAM AND MAKE IT WIDELY AVAILABLE, PROVIDE
9 EXPANDED LEARNING OPPORTUNITIES FOR COLORADO'S CHILDREN AND
10 YOUTH, AND MAINTAIN THE FUNDING FOR PROGRAMS THAT CURRENTLY
11 RECEIVE REVENUE FROM TOBACCO TAXES, WITH ANNUAL AUDITS ON THE
12 USE OF THE NEW TAX REVENUE AND WITH THE STATE KEEPING AND
13 SPENDING THE NEW TAX REVENUE NOTWITHSTANDING ANY LIMITATIONS
14 PROVIDED BY LAW?"

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

18 (4) (a) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT
19 ISSUE VOTE "NO/AGAINST", THEN THIS SECTION IS REPEALED, EFFECTIVE
20 JULY 1, 2020.

21 (b) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE
22 VOTE "YES/FOR", THEN THIS SUBSECTION (4) IS REPEALED, EFFECTIVE
23 JULY 1, 2020.

24 **SECTION 2.** In Colorado Revised Statutes, **amend** 39-28-103 as
25 follows:

26 **39-28-103. Tax levied.** (1) PRIOR TO JANUARY 1, 2020, there is
27 levied and shall be collected and paid to the department a tax upon the

1 sale of cigarettes by wholesalers of ten mills on each cigarette.

2 (2) ON AND AFTER JANUARY 1, 2020, A TAX OF NINE AND
3 SEVENTY-FIVE ONE HUNDREDTHS CENTS PER CIGARETTE IS LEVIED ON THE
4 SALE OF CIGARETTES BY WHOLESALERS. THE WHOLESALER SHALL PAY THE
5 TAX TO THE DEPARTMENT, WHICH SHALL COLLECT THE TAX.

6 **SECTION 3.** In Colorado Revised Statutes, 39-28-104, **amend**
7 (1)(a) as follows:

8 **39-28-104. Evidence of payment of tax - credits - redemptions.**

9 (1) (a) Payment of the taxes imposed by ~~the provisions of this article~~
10 ARTICLE 28 and section 21 of article X of the state constitution shall be
11 evidenced by the affixing of stamps to, or by an imprint or impression by
12 suitable metering machines approved by the department on, packages
13 containing cigarettes. The department shall procure stamps of such design
14 and legend as it deems necessary and suitable for the purpose. Except as
15 provided in ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF
16 THIS SECTION, the department shall sell such stamps for cash to licensed
17 wholesalers at a discount of four percent of their face value for sales
18 occurring ~~prior to July 1, 2003, or on or after July 1, 2005, and three~~
19 ~~percent of their face value for sales occurring on or after July 1, 2003, but~~
20 ~~before July 1, 2005~~ BUT BEFORE JANUARY 1, 2020, AND FOUR-TENTHS
21 PERCENT OF THEIR FACE VALUE FOR SALES OCCURRING ON AND AFTER
22 JANUARY 1, 2020, if payment is made on or before the tenth day of the
23 month following the month in which the purchase is made to cover the
24 licensed wholesaler's expense in the collection and remittance of such tax;
25 but, if any licensed wholesaler is delinquent in remitting such payment,
26 other than in unusual circumstances shown to the satisfaction of the
27 executive director of the department, the licensed wholesaler shall not be

1 allowed to retain any amounts to cover his or her expense in collecting
2 and remitting said tax, and, in addition, the penalty imposed under section
3 39-28-108 (2) shall apply. The department shall keep accurate records of
4 all stamps sold to each wholesaler. No wholesaler shall sell or transfer
5 any stamps purchased pursuant to ~~the provisions of this article~~ ARTICLE
6 28.

7 **SECTION 4.** In Colorado Revised Statutes, 39-28-107, **amend**
8 (1)(b) as follows:

9 **39-28-107. Unstamped packages - tax collected - fines - subject**
10 **to confiscation - tobacco tax enforcement cash fund - creation.**

11 (1) (b) There is hereby created in the state treasury the tobacco tax
12 enforcement cash fund. The fund ~~shall consist of moneys~~ CONSISTS OF
13 MONEY deposited therein pursuant to ~~paragraph (a) of this subsection (1)~~
14 SUBSECTION (1)(a) OF THIS SECTION and ~~section 39-28.5-106(4)~~ SECTIONS
15 39-28.5-106 (4) AND 39-28.6-107 (4). The ~~moneys~~ MONEY in the fund
16 ~~shall be~~ IS subject to annual appropriation by the general assembly to the
17 department for the purpose of enforcing ~~the provisions of this article~~
18 ARTICLE 28 and ~~article 28.5~~ ARTICLES 28.5 AND 28.6 of this ~~title~~ TITLE 39.
19 Any ~~moneys~~ MONEY not appropriated by the general assembly ~~shall~~
20 ~~remain~~ REMAINS in the fund and shall not be transferred or revert to the
21 general fund at the end of any fiscal year.

22 **SECTION 5.** In Colorado Revised Statutes, 39-28-110, **amend**
23 (1) as follows:

24 **39-28-110. Distribution of tax collected.** (1) (a) All ~~sums of~~
25 money received and collected in payment of the tax imposed by ~~the~~
26 ~~provisions of this article~~ ARTICLE 28, except license fees received under
27 section 39-28-102 and the ~~moneys~~ MONEY collected pursuant to section

1 39-28-103.5, shall be transmitted to the state treasurer who shall distribute
2 the money as follows: Fifteen percent to the general fund and eighty-five
3 percent to the old age pension fund.

4 (b) THE NET REVENUE THAT IS CREDITED TO THE OLD AGE PENSION
5 FUND CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE
6 CONSTITUTION IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION
7 AND SECTION 2 (a) OF ARTICLE XXIV OF THE STATE CONSTITUTION IS
8 TRANSFERRED TO THE GENERAL FUND IN ACCORDANCE WITH SECTION 7 (c)
9 OF ARTICLE XXIV OF THE STATE CONSTITUTION. OF THIS MONEY OR THE
10 FIFTEEN PERCENT THAT IS DIRECTLY CREDITED TO THE GENERAL FUND,
11 THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE
12 TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX INCREASE SET FORTH
13 IN SECTION 39-28-103 (2) AS APPROVED BY THE VOTERS' APPROVAL OF THE
14 BALLOT ISSUE SET FORTH IN SECTION 39-28-401 AT THE STATEWIDE
15 ELECTION IN NOVEMBER 2019 TO THE BEHAVIORAL HEALTH AND HEALTH
16 CARE AFFORDABILITY AND ACCESSIBILITY CASH FUND AND THE
17 PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 24-22-118 AND
18 THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND
19 CREATED IN SECTION 22-86.5-106 (1), AS REQUIRED BY SECTION 24-22-118
20 (2).

21 **SECTION 6.** In Colorado Revised Statutes, **add** 39-28-110.5 as
22 follows:

23 **39-28-110.5. Revenue and spending limitations.**
24 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR
25 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE
26 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE
27 GENERATED BY THE EIGHT AND SEVENTY-FIVE ONE-HUNDREDTHS CENTS

1 PER CIGARETTE TAX INCREASE IMPOSED UNDER THIS ARTICLE 28 AS
2 APPROVED BY THE VOTERS' APPROVAL OF THE BALLOT ISSUE SET FORTH IN
3 SECTION 39-28-401 AT THE STATEWIDE ELECTION IN NOVEMBER 2019 MAY
4 BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE.

5 **SECTION 7.** In Colorado Revised Statutes, 39-28.5-102, **amend**
6 (1) introductory portion as follows:

7 **39-28.5-102. Tax levied.** (1) PRIOR TO JANUARY 1, 2020, there
8 is levied and shall be collected a tax upon the sale, use, consumption,
9 handling, or distribution of all tobacco products in this state at the rate of
10 twenty percent of the manufacturer's list price of such tobacco products.
11 ~~Such tax shall be~~ ON AND AFTER JANUARY 1, 2020, THERE IS LEVIED A
12 TAX UPON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF
13 ALL TOBACCO PRODUCTS IN THIS STATE AT THE RATE OF FORTY-TWO
14 PERCENT OF THE MANUFACTURER'S LIST PRICE OF SUCH TOBACCO
15 PRODUCTS. THE TAX IS COLLECTED BY THE DEPARTMENT AND IS imposed
16 at the time the distributor:

17 **SECTION 8.** In Colorado Revised Statutes, 39-28.5-106, **amend**
18 (2) as follows:

19 **39-28.5-106. Returns and remittance of tax - civil penalty.**
20 (2) Every distributor shall file a return with the department by the
21 twentieth day of the month following the month reported and shall
22 therewith remit the amount of tax due, less three and one-third percent of
23 any sum so remitted that consists of tax collected ~~before July 1, 2003, or~~
24 ~~on or after July 1, 2005, and less two and one-third percent of any sum so~~
25 ~~remitted that consists of tax collected on or after July 1, 2003, but before~~
26 ~~July 1, 2005~~ BUT BEFORE JANUARY 1, 2020, AND LESS ONE AND
27 SIX-TENTHS PERCENT OF ANY SUM SO REMITTTED THAT CONSISTS OF TAX

1 COLLECTED ON OR AFTER JANUARY 1, 2020, to cover the distributor's
2 expense in the collection and remittance of said tax; except that no part
3 of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of
4 article X of the state constitution shall be subject to the discount provided
5 for in this subsection (2). If any distributor is delinquent in remitting said
6 tax, other than in unusual circumstances shown to the satisfaction of the
7 executive director of the department, the distributor shall not be allowed
8 to retain any amounts to cover his or her expense in collecting and
9 remitting said tax, and in addition the penalty imposed under section
10 39-28.5-110 (2)(b) shall apply.

11 **SECTION 9.** In Colorado Revised Statutes, 39-28.5-108, **amend**
12 (1) as follows:

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

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

1 TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX INCREASE SET FORTH
2 IN SECTION 39-28.5-102 (1) AS APPROVED BY THE VOTERS' APPROVAL OF
3 THE BALLOT ISSUE SET FORTH IN SECTION 39-28-401 AT THE STATEWIDE
4 ELECTION IN NOVEMBER 2019 TO THE BEHAVIORAL HEALTH AND HEALTH
5 CARE AFFORDABILITY AND ACCESSIBILITY CASH FUND AND THE
6 PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 24-22-118 AND
7 THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND
8 CREATED IN SECTION 22-86.5-106(1), AS REQUIRED BY SECTION 24-22-118
9 (2).

10 **SECTION 10.** In Colorado Revised Statutes, **add** 39-28.5-108.5
11 as follows:

12 **39-28.5-108.5. Revenue and spending limitations.**
13 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR
14 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE
15 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE
16 GENERATED BY THE TWENTY-TWO PERCENT TAX INCREASE IMPOSED
17 UNDER THIS ARTICLE 28.5 AS APPROVED BY THE VOTERS' APPROVAL OF
18 THE BALLOT ISSUE SET FORTH IN SECTION 39-28-401 AT THE STATEWIDE
19 ELECTION IN NOVEMBER 2019 MAY BE COLLECTED AND SPENT AS A
20 VOTER-APPROVED REVENUE CHANGE.

21 **SECTION 11.** In Colorado Revised Statutes, **add** article 28.6 to
22 title 39 as follows:

23 **ARTICLE 28.6**

24 **Nicotine Products Tax**

25 **39-28.6-101. Legislative declaration.** (1) THE GENERAL
26 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

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

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

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

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

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

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

19 (g) REVENUE FROM THE TAX CAN BE USED TOWARD POSITIVE
20 OUTCOMES IN CHILDREN'S LIVES AND OTHER IMPORTANT HEALTH
21 INITIATIVES.

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) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

2 (2) "DISTRIBUTOR" MEANS EVERY PERSON WHO FIRST RECEIVES
3 NICOTINE PRODUCTS IN THIS STATE, EVERY PERSON WHO SELLS NICOTINE
4 PRODUCTS IN THIS STATE WHO IS PRIMARILY LIABLE FOR THE NICOTINE
5 PRODUCTS TAX ON THE NICOTINE PRODUCTS, AND EVERY PERSON WHO
6 FIRST SELLS OR OFFERS FOR SALE IN THIS STATE NICOTINE PRODUCTS
7 IMPORTED INTO THIS STATE FROM ANY OTHER STATE OR COUNTRY.

8 (3) "MANUFACTURER'S LIST PRICE" MEANS THE INVOICE PRICE FOR
9 WHICH A MANUFACTURER OR SUPPLIER SELLS A NICOTINE PRODUCT TO A
10 DISTRIBUTOR EXCLUSIVE OF ANY DISCOUNT OR OTHER REDUCTION.

11 (4) "NICOTINE PRODUCT" MEANS A PRODUCT THAT CONTAINS
12 NICOTINE DERIVED FROM TOBACCO OR CREATED SYNTHETICALLY, THAT IS
13 INTENDED FOR HUMAN CONSUMPTION, WHETHER BY VAPORIZING,
14 CHEWING, SMOKING, ABSORBING, DISSOLVING, INHALING, SNORTING,
15 SNIFFING, AEROSOLIZING, OR BY ANY OTHER MEANS, AND THAT IS NOT:

16 (a) A CIGARETTE;
17 (b) TOBACCO PRODUCTS, AS DEFINED IN SECTION 39-28.5-101 (5);
18 OR

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

23 (5) "SALE" MEANS ANY TRANSFER, EXCHANGE, OR BARTER, IN ANY
24 MANNER OR BY ANY MEANS WHATSOEVER, FOR A CONSIDERATION,
25 INCLUDING ALL SALES MADE BY ANY PERSON. THE TERM INCLUDES A GIFT
26 BY A PERSON ENGAGED IN THE BUSINESS OF SELLING NICOTINE PRODUCTS,
27 FOR ADVERTISING, AS A MEANS OF EVADING THE PROVISIONS OF THIS

1 ARTICLE 28.6, OR FOR ANY OTHER PURPOSES WHATSOEVER.

2 **39-28.6-103. Tax levied.** (1) ON AND AFTER JANUARY 1, 2020,
3 THERE IS LEVIED A TAX UPON THE SALE, USE, CONSUMPTION, HANDLING,
4 OR DISTRIBUTION OF ALL NICOTINE PRODUCTS IN THIS STATE AT THE RATE
5 OF SIXTY-TWO PERCENT OF THE MANUFACTURER'S LIST PRICE OF THE
6 NICOTINE PRODUCTS. THE TAX IS COLLECTED BY THE DEPARTMENT AND IS
7 IMPOSED AT THE TIME THE DISTRIBUTOR:

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

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

12 (c) SHIPS OR TRANSPORTS NICOTINE PRODUCTS TO RETAILERS IN
13 THIS STATE TO BE SOLD BY THOSE RETAILERS.

14 **39-28.6-104. Exempt sales.** THE TAX IMPOSED BY SECTION
15 39-28.6-103 SHALL NOT APPLY WITH RESPECT TO ANY NICOTINE PRODUCTS
16 THAT, UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, MAY
17 NOT BE MADE THE SUBJECT OF TAXATION BY THIS STATE. A PERSON SHALL
18 REPORT THE EXEMPT SALES TO THE DEPARTMENT, AS REQUIRED BY THE
19 DEPARTMENT.

20 **39-28.6-105. Licensing required - rules - fines.** BEGINNING
21 JANUARY 1, 2020, IT IS UNLAWFUL FOR ANY PERSON TO ENGAGE IN THE
22 BUSINESS OF A DISTRIBUTOR OF NICOTINE PRODUCTS AT ANY PLACE OF
23 BUSINESS WITHOUT FIRST OBTAINING A LICENSE GRANTED AND ISSUED BY
24 THE DEPARTMENT, WHICH LICENSE IS IN EFFECT UNTIL JUNE 30 FOLLOWING
25 THE DATE OF ISSUE, UNLESS SOONER REVOKED. THE DEPARTMENT SHALL
26 GRANT A LICENSE ONLY TO A PERSON WHO OWNS OR OPERATES THE PLACE
27 FROM WHICH THE PERSON ENGAGES IN THE BUSINESS OF A DISTRIBUTOR OF

1 NICOTINE PRODUCTS, AND, IF THE BUSINESS IS OPERATED IN TWO OR MORE
2 SEPARATE PLACES BY THE PERSON, A SEPARATE LICENSE FOR EACH PLACE
3 OF BUSINESS IS REQUIRED. A LICENSE MAY BE RENEWED ONLY UPON
4 TIMELY APPLICATION AND PAYMENT OF THE REQUIRED FEE PRIOR TO
5 EXPIRATION. A LICENSE MAY BE TRANSFERRED IN THE DISCRETION OF AND
6 PURSUANT TO THE RULES ADOPTED BY THE DEPARTMENT. THE FEE FOR A
7 LICENSE IS TEN DOLLARS PER YEAR, AND THE FEE IS CREDITED TO THE
8 GENERAL FUND. THE FEE IS REDUCED AT THE RATE OF TWO DOLLARS AND
9 FIFTY CENTS FOR EACH EXPIRED QUARTER OF THE LICENSE YEAR. THE
10 DEPARTMENT SHALL, ON REASONABLE NOTICE AND AFTER A HEARING,
11 SUSPEND OR REVOKE THE LICENSE OF ANY PERSON VIOLATING ANY
12 PROVISION OF THIS ARTICLE 28.6, AND THE DEPARTMENT SHALL NOT ISSUE
13 A LICENSE TO THE SAME PERSON WITHIN A PERIOD OF TWO YEARS
14 THEREAFTER. THE DEPARTMENT MAY SHARE INFORMATION ON THE NAMES
15 AND ADDRESSES OF PERSONS WHO PURCHASED NICOTINE PRODUCTS FOR
16 RESALE WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
17 AND COUNTY AND DISTRICT PUBLIC HEALTH AGENCIES. THE DEPARTMENT
18 SHALL REFUSE TO ISSUE A NEW OR RENEWAL DISTRIBUTOR LICENSE, AND
19 SHALL REVOKE A DISTRIBUTOR'S LICENSE, IF THE DISTRIBUTOR OWES THE
20 STATE ANY DELINQUENT TAXES ADMINISTERED BY THE DEPARTMENT OR
21 INTEREST THEREON PURSUANT TO THIS TITLE 39 THAT HAVE BEEN
22 DETERMINED BY LAW TO BE DUE AND UNPAID, UNLESS THE DISTRIBUTOR
23 HAS ENTERED INTO AN AGREEMENT APPROVED BY THE DEPARTMENT TO
24 PAY THE AMOUNT DUE. THE DEPARTMENT SHALL ONLY ISSUE A NEW OR
25 RENEWAL DISTRIBUTOR LICENSE TO A DISTRIBUTOR THAT HAS A CURRENT
26 LICENSE ISSUED PURSUANT TO SECTION 39-26-103.

27 **39-28.6-106. Books and records to be preserved.** (1) EVERY

1 DISTRIBUTOR SHALL KEEP AT EACH LICENSED PLACE OF BUSINESS
2 COMPLETE AND ACCURATE RECORDS FOR THAT PLACE OF BUSINESS,
3 INCLUDING ITEMIZED INVOICES OF NICOTINE PRODUCTS HELD, PURCHASED,
4 MANUFACTURED, BROUGHT IN OR CAUSED TO BE BROUGHT IN FROM
5 WITHOUT THE STATE, OR SHIPPED OR TRANSPORTED TO RETAILERS IN THIS
6 STATE, AND OF ALL SALES OF NICOTINE PRODUCTS MADE, EXCEPT SALES TO
7 THE ULTIMATE CONSUMER.

8 (2) THE DISTRIBUTOR'S RECORDS MUST SHOW THE NAMES AND
9 ADDRESSES OF PURCHASERS, THE INVENTORY OF ALL NICOTINE PRODUCTS
10 ON HAND, AND OTHER PERTINENT PAPERS AND DOCUMENTS RELATING TO
11 THE PURCHASE, SALE, OR DISPOSITION OF NICOTINE PRODUCTS.

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

22 (4) (a) EVERY RETAILER THAT IS NOT ALSO A LICENSED
23 DISTRIBUTOR SHALL KEEP AT ITS PLACE OF BUSINESS COMPLETE AND
24 ACCURATE RECORDS TO SHOW THAT ALL NICOTINE PRODUCTS RECEIVED
25 BY THE RETAILER WERE PURCHASED FROM A LICENSED DISTRIBUTOR. THE
26 RETAILER SHALL PROVIDE A COPY OF SUCH RECORDS TO THE DEPARTMENT
27 IF SO REQUESTED. THE DEPARTMENT MAY ESTABLISH THE ACCEPTABLE

1 FORM OF SUCH RECORDS.

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

6 **39-28.6-107. Returns and remittance of tax - civil penalty -**

7 **rules.** (1) EVERY DISTRIBUTOR SHALL FILE A RETURN WITH THE
8 DEPARTMENT EACH QUARTER. THE RETURN, WHICH MUST BE UPON FORMS
9 PRESCRIBED AND FURNISHED BY THE DEPARTMENT, MUST CONTAIN,
10 AMONG OTHER THINGS, THE TOTAL AMOUNT OF NICOTINE PRODUCTS
11 PURCHASED BY THE DISTRIBUTOR DURING THE PRECEDING QUARTER AND
12 THE TAX DUE THEREON.

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

24 (3) THE DEPARTMENT MAY REQUIRE DISTRIBUTORS TO USE
25 ELECTRONIC FUNDS TRANSFERS TO REMIT TAX PAYMENTS DUE PURSUANT
26 TO THIS ARTICLE 28.6 TO THE DEPARTMENT AND MAY REQUIRE
27 DISTRIBUTORS TO FILE TAX RETURNS ELECTRONICALLY. THE DEPARTMENT

1 MAY PROMULGATE RULES GOVERNING ELECTRONIC PAYMENT AND FILING.

2 (4) (a) ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,
3 PARTNERSHIP, OR CORPORATION, OTHER THAN A DISTRIBUTOR, IN
4 POSSESSION OF NICOTINE PRODUCTS FOR WHICH TAXES HAVE NOT
5 OTHERWISE BEEN REMITTED PURSUANT TO THIS SECTION IS LIABLE AND
6 RESPONSIBLE FOR THE UNCOLLECTED TAX THAT IS LEVIED PURSUANT TO
7 SECTION 39-28.6-103 ON BEHALF OF THE DISTRIBUTOR WHO FAILED TO PAY
8 THE TAX. THE PERSON OR ENTITY SHALL MAKE THE PAYMENT TO THE
9 DEPARTMENT WITHIN THIRTY DAYS OF FIRST TAKING POSSESSION OF THE
10 NICOTINE PRODUCT. THE DEPARTMENT SHALL ESTABLISH A FORM TO BE
11 USED FOR REMITTANCE OF THE PAYMENT. THE DEPARTMENT SHALL REMIT
12 THE PROCEEDS IT RECEIVES PURSUANT TO THIS SUBSECTION (4)(a) TO THE
13 STATE TREASURER, AND THE STATE TREASURER SHALL CREDIT FIFTEEN
14 PERCENT OF THE PROCEEDS TO THE TOBACCO TAX ENFORCEMENT CASH
15 FUND CREATED IN SECTION 39-28-107 (1)(b) AND EIGHTY-FIVE PERCENT
16 TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF ARTICLE XXIV
17 OF THE STATE CONSTITUTION.

18 (b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY IMPOSE
19 A CIVIL PENALTY ON ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,
20 PARTNERSHIP, OR CORPORATION IN POSSESSION OF NICOTINE PRODUCTS
21 THAT FAILS TO MAKE A PAYMENT REQUIRED PURSUANT TO SUBSECTION
22 (4)(a) OF THIS SECTION OR WHO IS A DISTRIBUTOR BY VIRTUE OF BEING THE
23 FIRST PERSON WHO RECEIVES THE NICOTINE PRODUCTS IN THE STATE AND
24 WHO FAILS TO MAKE A PAYMENT REQUIRED PURSUANT TO THIS SECTION IN
25 AN AMOUNT THAT DOES NOT EXCEED FIVE HUNDRED PERCENT OF SUCH
26 PAYMENT. THE DEPARTMENT SHALL REMIT ANY MONEY RECEIVED
27 PURSUANT TO THIS SUBSECTION (4)(b) TO THE STATE TREASURER FOR

1 DEPOSIT IN THE TOBACCO TAX ENFORCEMENT CASH FUND CREATED IN
2 SECTION 39-28-107 (1)(b).

3 **39-28.6-108. When credit may be obtained for tax paid.**

4 WHERE NICOTINE PRODUCTS, UPON WHICH THE TAX IMPOSED BY THIS
5 ARTICLE 28.6 HAS BEEN REPORTED AND PAID, ARE SHIPPED OR
6 TRANSPORTED BY THE DISTRIBUTOR TO RETAILERS WITHOUT THE STATE TO
7 BE SOLD BY THOSE RETAILERS OR ARE RETURNED TO THE MANUFACTURER
8 BY THE DISTRIBUTOR OR DESTROYED BY THE DISTRIBUTOR, CREDIT OF
9 SUCH TAX MAY BE MADE TO THE DISTRIBUTOR IN ACCORDANCE WITH
10 REGULATIONS PRESCRIBED BY THE DEPARTMENT.

11 **39-28.6-109. Distribution of tax collected.** (1) THE STATE
12 TREASURER SHALL CREDIT THE MONEY COLLECTED FOR PAYMENT OF THE
13 TAX IMPOSED UNDER THIS ARTICLE 28.6 TO THE OLD AGE PENSION FUND
14 CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE CONSTITUTION IN
15 ACCORDANCE WITH SECTION 2 (a) AND (f) OF ARTICLE XXIV OF THE
16 STATE CONSTITUTION AND SHALL FURTHER TRANSFER AN AMOUNT EQUAL
17 TO THIS AMOUNT TO THE GENERAL FUND IN ACCORDANCE WITH SECTION
18 7 (c) OF ARTICLE XXIV OF THE STATE CONSTITUTION.

19 (2) THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL
20 TO THE TAX IMPOSED UNDER THIS ARTICLE 28.6 FROM THE GENERAL FUND
21 TO THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY AND
22 ACCESSIBILITY CASH FUND AND THE PRESCHOOL PROGRAMS CASH FUND
23 CREATED IN SECTION 24-22-118 AND THE COLORADO EXPANDED
24 LEARNING OPPORTUNITIES CASH FUND CREATED IN SECTION 22-86.5-106
25 (1), AS REQUIRED BY SECTION 24-22-118 (2).

26 **39-28.6-110. Taxation by cities and towns.** THIS ARTICLE
27 28.6 DOES NOT PREVENT A STATUTORY OR HOME RULE MUNICIPALITY,

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

11 **39-28.6-111. Prohibited acts - penalties.** (1) BEGINNING
12 JANUARY 1, 2020, 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 AS APPROVED BY
13 THE VOTERS' APPROVAL OF THE BALLOT ISSUE SET FORTH IN SECTION
14 39-28-401 AT THE STATEWIDE ELECTION IN NOVEMBER 2019 MAY BE
15 COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE.

16 **SECTION 12.** In Colorado Revised Statutes, 24-1-115, **add** (17)
17 as follows:

18 **24-1-115. Department of education - creation.** (17) THE
19 DEPARTMENT OF EDUCATION INCLUDES THE COLORADO EXPANDED
20 LEARNING OPPORTUNITIES AGENCY ESTABLISHED IN SECTION 22-86.5-104,
21 AND ITS POWERS, DUTIES, AND FUNCTIONS, AS IF THE AGENCY WERE
22 TRANSFERRED BY A **TYPE 1** TRANSFER TO THE DEPARTMENT OF
23 EDUCATION.

24 **SECTION 13.** In Colorado Revised Statutes, **add** article 86.5 to
25 title 22 as follows:

26 **ARTICLE 86.5**
27 **Colorado Expanded Learning**

1 **Opportunities Program**

2 **22-86.5-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 86.5
3 IS THE "COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM
4 ACT".

5 **22-86.5-102. Legislative declaration.** (1) THE GENERAL
6 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

7 (a) EXPANDED LEARNING OPPORTUNITIES ARE CRITICAL FOR ALL
8 CHILDREN AND YOUTH BECAUSE THESE OPPORTUNITIES, WHICH OCCUR
9 OUTSIDE OF THEIR REGULAR SCHOOL SCHEDULES, PROVIDE ESSENTIAL
10 ACADEMIC AND LIFE SKILLS FOR CHILDREN AND YOUTH TO THRIVE IN
11 SCHOOL AND LIFE;

12 (b) THESE OPPORTUNITIES ALLOW CHILDREN AND YOUTH TO LEARN
13 NEW SKILLS, PARTICIPATE IN OUTDOOR ACTIVITIES, BE EXPOSED TO
14 DIFFERENT AND CHALLENGING REAL WORLD EXPERIENCES, AND RECEIVE
15 EXPOSURE TO MUSIC, DANCE, ARTS, SPORTS, PHYSICAL EDUCATION, AND
16 CAREER AND TECHNICAL EDUCATION PROGRAMS;

17 (c) ALL CHILDREN AND YOUTH SHOULD HAVE CONSISTENT AND
18 RELIABLE ACCESS TO THESE OUT-OF-SCHOOL LEARNING EXPERIENCES; AND

19 (d) ALL COLORADANS WILL BENEFIT FROM CHILDREN AND YOUTH
20 EXPERIENCING THESE EXPANDED LEARNING OPPORTUNITIES.

21 **22-86.5-103. Definitions.** AS USED IN THIS ARTICLE 86.5, UNLESS
22 THE CONTEXT OTHERWISE REQUIRES:

23 (1) "ADMINISTERING NONPROFIT ORGANIZATION" OR
24 "ORGANIZATION" MEANS A TAX-EXEMPT NONPROFIT ORGANIZATION
25 UNDER 26 U.S.C. SEC. 501 (c)(3) OF THE FEDERAL "INTERNAL REVENUE
26 CODE OF 1986", AS AMENDED, THAT IS SELECTED OR CREATED BY THE
27 AGENCY UNDER SECTION 22-86.5-105 (2) TO ADMINISTER THE PROGRAM.

1 (2) "AGENCY" MEANS THE COLORADO EXPANDED LEARNING
2 OPPORTUNITIES AGENCY CREATED IN SECTION 22-86.5-104 (1).

3 (3) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE COLORADO
4 EXPANDED LEARNING OPPORTUNITIES AGENCY CREATED IN SECTION
5 22-86.5-104 (2).

6 (4) "ELIGIBLE STUDENT" MEANS A PERSON WHO IS AT LEAST SIX
7 YEARS OLD BUT LESS THAN TWENTY-ONE YEARS OLD AND WHO RESIDES
8 WITHIN THE STATE AND IS ELIGIBLE FOR ADMISSION TO PUBLIC SCHOOL
9 WITHIN THE STATE, OR A PERSON WHO IS AT LEAST THREE YEARS OLD BUT
10 LESS THAN SIX YEARS OLD AND WHO RESIDES IN THE STATE.

11 (5) "LOCAL EDUCATION PROVIDER" MEANS A SCHOOL DISTRICT, A
12 CHARTER SCHOOL AUTHORIZED BY A SCHOOL DISTRICT PURSUANT TO PART
13 1 OF ARTICLE 30.5 OF THIS TITLE 22, A CHARTER SCHOOL AUTHORIZED BY
14 THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE
15 30.5 OF THIS TITLE 22, OR A BOARD OF COOPERATIVE SERVICES CREATED
16 AND OPERATING PURSUANT TO ARTICLE 5 OF THIS TITLE 22 THAT
17 OPERATES ONE OR MORE PUBLIC SCHOOLS.

18 (6) (a) "OUT-OF-SCHOOL LEARNING EXPERIENCE" MEANS ANY
19 EVIDENCE-BASED PROGRAM, SERVICE, OR ACTIVITY THAT PROVIDES
20 SUPPLEMENTAL EDUCATIONAL OR DEVELOPMENTAL SUPPORT TO ELIGIBLE
21 STUDENTS OUTSIDE OF NORMAL SCHOOL OPERATIONS. "OUT-OF-SCHOOL
22 LEARNING EXPERIENCE" INCLUDES TUTORING AND SUPPLEMENTAL
23 ACADEMIC INSTRUCTION INCLUDING READING, MATHEMATICS, SCIENCE,
24 AND WRITING; TARGETED SUPPORT FOR SPECIAL NEEDS AND LEARNING
25 DISABILITIES OR ENGLISH LANGUAGE OR FOREIGN LANGUAGE
26 ACQUISITION; IN-DEPTH PROGRAMS THAT TEACH CHILDREN AND YOUTH
27 NEW SKILLS IN THE CONTEXT OF OUTDOOR ACTIVITIES; CHALLENGING REAL

1 WORLD EXPERIENCES THAT BUILD ESSENTIAL SKILL SETS; AND PROGRAMS
2 THAT PROVIDE MUSIC, DANCE, ARTS, SPORTS, PHYSICAL EDUCATION, OR
3 CAREER AND TECHNICAL EDUCATION TRAINING.

4 (b) "OUT-OF-SCHOOL LEARNING EXPERIENCE" DOES NOT INCLUDE:

5 (I) INSTRUCTION, SERVICES, MATERIALS, CURRICULA, OR
6 PROGRAMS PROVIDED AS PART OF A NORMAL COURSE OF STUDY
7 CONDUCTED IN ACCORDANCE WITH A STUDENT ATTENDING A
8 KINDERGARTEN-THROUGH-TWELFTH PUBLIC OR PRIVATE SCHOOL OR A
9 NONPUBLIC HOME-BASED EDUCATIONAL PROGRAM, AS DEFINED IN SECTION
10 22-33-104.5;

11 (II) TUITION FOR NORMAL SCHOOL ATTENDANCE AT A PRIVATE
12 SCHOOL;

13 (III) ANY FORM OF RELIGIOUS INSTRUCTION;

14 (IV) MATERIALS THAT MAY BE USED AT HOME WITHOUT ANY
15 FACE-TO-FACE INTERACTION WITH A PROVIDER, EXCEPT AS OTHERWISE
16 PROVIDED IN SECTION 22-86.5-105 (8); OR

17 (V) CHILDCARE PROVIDED DURING NORMAL SCHOOL HOURS OR
18 PRESCHOOL.

19 (7) "PARENT" MEANS A PARENT OR LEGAL GUARDIAN OF AN
20 ELIGIBLE STUDENT.

21 (8) "PROGRAM" MEANS THE COLORADO EXPANDED LEARNING
22 OPPORTUNITIES PROGRAM CREATED AND ADMINISTERED UNDER THIS
23 ARTICLE 86.5.

24 (9) "PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES AN
25 OUT-OF-SCHOOL LEARNING EXPERIENCE.

26 **22-86.5-104. Colorado expanded learning opportunities**
27 **agency - board - created - rules. (1) THE COLORADO EXPANDED**

1 LEARNING OPPORTUNITIES AGENCY IS ESTABLISHED AS AN INDEPENDENT
2 AGENCY IN THE DEPARTMENT OF EDUCATION. THE AGENCY EXERCISES ITS
3 POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS AS IF IT WERE
4 TRANSFERRED TO THE DEPARTMENT BY A **TYPE 1** TRANSFER UNDER THE
5 PROVISIONS OF THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968",
6 ARTICLE 1 OF TITLE 24.

7 (2) (a) THE AGENCY IS GOVERNED AND ADMINISTERED BY A
8 BOARD OF DIRECTORS THAT CONSISTS OF EIGHT MEMBERS APPOINTED BY
9 THE GOVERNOR. THE SPEAKER OR MINORITY LEADER OF THE HOUSE OF
10 REPRESENTATIVES, WHOMEVER IS NOT AFFILIATED WITH THE SAME
11 POLITICAL PARTY AS THE GOVERNOR, SHALL PRESENT THE GOVERNOR
12 WITH A LIST OF EIGHT CANDIDATES, WHICH INCLUDES AT LEAST TWO
13 CANDIDATES FROM THE WESTERN SLOPE AND TWO CANDIDATES FROM THE
14 EASTERN PLAINS. THE GOVERNOR SHALL SELECT FOUR MEMBERS FROM
15 THE LIST OF CANDIDATES. FOR THE BOARD AS A WHOLE, THE GOVERNOR
16 SHALL ENSURE THAT THE BOARD INCLUDES AT LEAST TWO MEMBERS FROM
17 THE WESTERN SLOPE AND TWO MEMBERS FROM THE EASTERN PLAINS.
18 INITIAL APPOINTMENTS MUST BE MADE BY FEBRUARY 1, 2020. MEMBERS
19 SERVE FOR TWO-YEAR TERMS; EXCEPT THE FOUR MEMBERS APPOINTED TO
20 THE FIRST BOARD WHO WERE NOT FROM THE LIST OF CANDIDATES SERVE
21 FOR THREE YEARS. MEMBERS SERVE AT THE PLEASURE OF THE GOVERNOR
22 AND MAY SERVE UP TO THREE CONSECUTIVE TERMS. IF THERE IS A
23 VACANCY OF A MEMBER WHO WAS SELECTED FROM THE LIST OF
24 CANDIDATES, THE SPEAKER OR MINORITY LEADER OF THE HOUSE OF
25 REPRESENTATIVES, WHOMEVER IS NOT AFFILIATED WITH THE SAME
26 POLITICAL PARTY AS THE GOVERNOR, SHALL PRESENT THE GOVERNOR
27 WITH TWO CANDIDATES FROM WHICH TO SELECT A REPLACEMENT.

1 (b) BOARD MEMBERS ARE NOT ENTITLED TO COMPENSATION BUT
2 ARE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY
3 EXPENSES INCURRED IN THE PERFORMANCE OF THEIR BOARD DUTIES.
4 DURING THEIR TERMS OF SERVICE, BOARD MEMBERS SHALL NOT BE
5 EMPLOYED BY, CONTRACT WITH, OR BE BOARD MEMBERS OF
6 ORGANIZATIONS, ENTITIES, PUBLIC AGENCIES, OR INDIVIDUALS THAT
7 PROVIDE OR OFFER TO PROVIDE OUT-OF-SCHOOL LEARNING EXPERIENCES
8 UNDER THE PROGRAM. NO PERSON WHO HAS AN OWNERSHIP INTEREST OR
9 OTHER FINANCIAL INTEREST IN A PROVIDER OF AN OUT-OF-SCHOOL
10 LEARNING EXPERIENCE IN THE PROGRAM MAY SERVE ON THE BOARD.

11 (3) IN ADDITION TO ALL OTHER POWERS AND DUTIES CONFERRED
12 OR IMPOSED UPON THE BOARD BY THIS ARTICLE 86.5, THE BOARD SHALL,
13 BY RULE:

14 (a) DEVELOP CRITERIA FOR ALLOWABLE USES OF MONEY FROM THE
15 FUND GRANTED TO THE ADMINISTERING NONPROFIT ORGANIZATION;

16 (b) DEVELOP CRITERIA THAT THE ADMINISTERING NONPROFIT
17 ORGANIZATION MUST USE TO DETERMINE WHICH PROVIDERS ARE
18 CERTIFIED TO RECEIVE A PAYMENT UNDER THE PROGRAM;

19 (c) DETERMINE THE AMOUNT OF A PAYMENT TO A PROVIDER ON
20 BEHALF OF AN ELIGIBLE STUDENT THAT IS BASED ON THE ELIGIBLE
21 STUDENT'S FAMILY INCOME;

22 (d) ANALYZE THE EXPENSE FOR AND QUALITY OF PROGRAMS,
23 SERVICES, OR ACTIVITIES OFFERED BY PROVIDERS THAT ARE ENGAGED IN
24 THE CERTIFICATION PROCESS AND USE SUCH ANALYSIS TO INFORM THE
25 PROVIDER CERTIFICATION PROCESS;

26 (e) DETERMINE THE AMOUNT OF MONEY THAT THE ADMINISTERING
27 NONPROFIT ORGANIZATION IS PERMITTED TO RETAIN AND SPEND ON

1 ADMINISTRATIVE EXPENSES, WHICH AMOUNT MAXIMIZES THE FUNDING
2 AVAILABLE TO BE USED TO PAY FOR OUT-OF-SCHOOL LEARNING
3 EXPERIENCES;

4 (f) ADOPT STANDARDS TO ENSURE THE SAFETY OF ELIGIBLE
5 STUDENTS, INCLUDING BACKGROUND CHECKS FOR PROVIDERS OR
6 EMPLOYEES OF PROVIDERS WHO COME IN CONTACT WITH ELIGIBLE
7 STUDENTS, WHICH STANDARDS ARE BASED ON THOSE SET FORTH IN
8 SECTION 22-32-109.8;

9 (g) HIRE SUCH STAFF AS MAY BE NECESSARY TO ASSIST THE BOARD
10 IN ITS DUTIES;

11 (h) ESTABLISH PROTOCOLS TO IDENTIFY, INVESTIGATE, AND TAKE
12 ACTION ON ANY SUSPECTED FRAUD OR MISUSE OF MONEY RELATED TO THE
13 PROGRAM;

14 (i) ADOPT STANDARDS TO ENSURE THAT AN ELIGIBLE STUDENT IS
15 PARTICIPATING IN AN OUT-OF-SCHOOL LEARNING EXPERIENCE THROUGH
16 THE PROGRAM THAT IS NOT PART OF A NONPUBLIC HOME-BASED
17 EDUCATIONAL PROGRAM, AS DEFINED IN SECTION 22-33-104.5;

18 (j) DEFINE THE TERM "EVIDENCE-BASED" FOR THE PURPOSE OF
19 MEETING THE DEFINITION OF "OUT-OF-SCHOOL LEARNING EXPERIENCE";
20 AND

21 (k) ESTABLISH GUIDELINES FOR THE AMOUNT THAT MAY BE
22 ALLOCATED TO TRANSPORTATION TO AN OUT-OF-SCHOOL LEARNING
23 EXPERIENCE.

24 (4) (a) THE CRITERIA CREATED BY THE BOARD UNDER SUBSECTION
25 (3)(b) OF THIS SECTION MUST:

26 (I) MAXIMIZE THE NUMBER AND DIVERSITY OF PROVIDERS THAT
27 PARENTS CAN CHOOSE AND ENSURE THAT SMALL COMMUNITY-BASED


1 PROVIDERS ARE ABLE TO PARTICIPATE IN THE PROGRAM;

2 (II) GIVE CONSIDERATION TO THE QUALITY OF THE PROGRAM AND
3 THE ELIGIBLE PROVIDER'S PROPOSED COST OF OUT-OF-SCHOOL LEARNING
4 EXPERIENCES; AND

5 (III) DENY PROVIDERS WHO HAVE INFLATED THE COST OF
6 OUT-OF-SCHOOL LEARNING EXPERIENCES BASED ON THE POTENTIAL
7 PAYMENT RECEIVED THROUGH THE PROGRAM.

8 (b) IN DETERMINING THE AMOUNT OF A PAYMENT THAT MAY BE
9 PAID FOR AN ELIGIBLE STUDENT TO PARTICIPATE IN AN OUT-OF-SCHOOL
10 LEARNING EXPERIENCE, THE BOARD SHALL CREATE A SLIDING SCALE OF
11 PAYMENTS THAT PRIORITIZES LOW-INCOME FAMILIES AND GIVES GREATER
12 ASSISTANCE TO THEM. IF THE BOARD DETERMINES THAT THERE IS
13 INSUFFICIENT MONEY AVAILABLE TO PROVIDE A MEANINGFUL LEVEL OF
14 ASSISTANCE FOR ALL ELIGIBLE STUDENTS, THEN IT MAY ESTABLISH AN
15 INCOME THRESHOLD ABOVE WHICH AN ELIGIBLE STUDENT IS NOT
16 AUTHORIZED TO ENROLL IN THE PROGRAM.

17 (5) THE BOARD MAY SOLICIT, ACCEPT, AND EXPEND GIFTS, GRANTS,
18 AND DONATIONS FOR THE PURPOSES OF ADMINISTERING AND FUNDING THE
19 PROGRAM, BUT THE BOARD SHALL NOT ACCEPT A GIFT, GRANT, OR
20 DONATION THAT IS EARMARKED OR RESTRICTED IN ANY MANNER FOR THE
21 BENEFIT OF OR TO EXCLUDE ANY INDIVIDUAL OR CLASS OF RECIPIENTS OR
22 ANY INDIVIDUAL OR CLASS OF PROVIDERS.

23 
24 (6) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), ON OR
25 BEFORE JANUARY 15, 2022, AND EACH JANUARY 15 THEREAFTER, THE
26 AGENCY SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY DESCRIBING
27 THE PROGRAM ENROLLMENT, TYPES OF OUT-OF-SCHOOL LEARNING

1 EXPERIENCES, PARTICIPATION AND OTHER OUTCOMES DISAGGREGATED BY
2 ELIGIBLE STUDENT GROUPS, ADMINISTRATIVE COSTS, WAIVERS, AND ANY
3 OTHER RELEVANT INFORMATION ABOUT THE PROGRAM.

4 **22-86.5-105. Colorado expanded learning opportunities**
5 **program - administering nonprofit organization - waiver.** (1) THE
6 COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM IS
7 ESTABLISHED TO INCREASE OUT-OF-SCHOOL LEARNING OPPORTUNITIES
8 FOR ELIGIBLE STUDENTS. THE AGENCY, THROUGH AN ADMINISTERING
9 NONPROFIT ORGANIZATION, SHALL PAY CERTIFIED PROVIDERS FOR
10 ELIGIBLE STUDENTS TO PARTICIPATE IN OUT-OF-SCHOOL LEARNING
11 EXPERIENCES CHOSEN BY THE CHILDREN'S OR YOUTHS' PARENTS.

12 (2) THE AGENCY SHALL SELECT OR CREATE A NONPROFIT
13 ORGANIZATION TO ADMINISTER THE PROGRAM NO LATER THAN AUGUST 1,
14 2020, AND THE ADMINISTERING NONPROFIT ORGANIZATION SHALL
15 IMPLEMENT THE PROGRAM SO THAT ELIGIBLE STUDENTS ARE
16 PARTICIPATING IN OUT-OF-SCHOOL LEARNING EXPERIENCES BY JANUARY
17 1, 2021. THE DUTIES OF THE ORGANIZATION INCLUDE:

18 (a) CERTIFYING PROVIDERS THAT PARENTS MAY CHOOSE FOR AN
19 ELIGIBLE STUDENT TO PARTICIPATE IN AN OUT-OF-SCHOOL LEARNING
20 EXPERIENCE;

21 (b) ENTERING INTO AGREEMENTS WITH CERTIFIED PROVIDERS;

22 (c) PROVIDING SERVICES DIRECTLY OR THROUGH A THIRD-PARTY
23 CONTRACT TO ASSIST ENROLLED ELIGIBLE STUDENTS AND THEIR PARENTS
24 IN SELECTING AN OUT-OF-SCHOOL LEARNING EXPERIENCE;

25 (d) CONDUCTING OUTREACH ABOUT THE PROGRAM, INCLUDING
26 OUTREACH TO PARENTS OF CHILDREN IDENTIFIED WITH SPECIAL NEEDS;

27 (e) COMPENSATING CERTIFIED PROVIDERS FOR PARTICIPATING

1 ELIGIBLE STUDENTS, WHICH COMPENSATION MAY INCLUDE EXPENSES FOR
2 TRANSPORTATION OF AN ELIGIBLE STUDENT TO AND FROM THE
3 OUT-OF-SCHOOL LEARNING EXPERIENCE; AND

4 (f) SUBMITTING IN A TIMELY MANNER ANY INFORMATION
5 REQUESTED BY THE AGENCY THAT RELATES TO THE PROGRAM, INCLUDING
6 INFORMATION RELATED TO THE EVALUATION OF THE PROGRAM OR ITS
7 ADMINISTRATION AND ANY BOOKS AND RECORDS.

8 (3) (a) PARENTS OF AN ELIGIBLE STUDENT MAY APPLY TO THE
9 ADMINISTERING NONPROFIT ORGANIZATION FOR THE ELIGIBLE STUDENT TO
10 BE ENROLLED IN THE PROGRAM. IF ENROLLED, THE ORGANIZATION SHALL
11 IDENTIFY OUT-OF-SCHOOL LEARNING EXPERIENCES AVAILABLE TO ALL
12 ELIGIBLE STUDENTS IN THE AREA AND THE ANNUAL MAXIMUM AMOUNT
13 THAT MAY BE PAID ON BEHALF OF THE ELIGIBLE STUDENT.

14 (b) IF THE ADMINISTERING NONPROFIT ORGANIZATION PAYS FOR AN
15 ELIGIBLE STUDENT TO PARTICIPATE IN AN OUT-OF-SCHOOL LEARNING
16 EXPERIENCE, BUT THE AMOUNT PAID IS LESS THAN THE ANNUAL MAXIMUM
17 AMOUNT THAT MAY BE PAID ON BEHALF OF THE ELIGIBLE STUDENT, THEN
18 THE ORGANIZATION SHALL SET ASIDE THE DIFFERENCE ON BEHALF OF THE
19 ELIGIBLE STUDENT AND USE THIS MONEY FOR PAYMENTS MADE TO
20 PROVIDERS ON BEHALF THE ELIGIBLE STUDENT IN A FUTURE YEAR. THESE
21 PAYMENTS ARE IN ADDITION TO THE PAYMENTS THAT WOULD OTHERWISE
22 BE MADE BASED ON THE ELIGIBLE STUDENT'S FAMILY INCOME AT THE TIME.
23 IF A PERSON NO LONGER QUALIFIES AS AN ELIGIBLE STUDENT AND THERE
24 WAS AN AMOUNT REMAINING THAT WAS SET ASIDE FOR THAT PERSON, THE
25 ORGANIZATION MAY USE THAT AMOUNT FOR ANY PURPOSE OF THE
26 PROGRAM.

27 (4) THE ADMINISTERING NONPROFIT ORGANIZATION SHALL

1 COMPLY WITH ANY REQUIREMENTS ESTABLISHED BY THE BOARD.

2 (5) THE ADMINISTERING NONPROFIT ORGANIZATION SHALL NOT
3 ADMINISTER THE PROGRAM IN A MANNER THAT DISCRIMINATES AGAINST
4 ANY ELIGIBLE STUDENT, PARENT, OR PROVIDER ON THE BASIS OF RACE,
5 COLOR, RELIGIOUS AFFILIATION, NATIONAL ORIGIN, GENDER, MILITARY
6 STATUS, SEXUAL ORIENTATION, GENDER VARIANCE, MARITAL STATUS, OR
7 PHYSICAL OR MENTAL DISABILITY. A PROVIDER SHALL NOT ADMINISTER AN
8 OUT-OF-SCHOOL LEARNING EXPERIENCE FOR WHICH MONEY HAS BEEN
9 RECEIVED FROM THE PROGRAM IN A MANNER THAT DISCRIMINATES
10 AGAINST ANY ELIGIBLE STUDENT OR PARENT ON THE BASIS OF RACE,
11 COLOR, RELIGIOUS AFFILIATION, NATIONAL ORIGIN, GENDER, MILITARY
12 STATUS, SEXUAL ORIENTATION, GENDER VARIANCE, MARITAL STATUS, OR
13 PHYSICAL OR MENTAL DISABILITY.

14 (6) LOCAL EDUCATION PROVIDERS ARE AUTOMATICALLY
15 CERTIFIED PROVIDERS AND NEED ONLY REGISTER WITH THE ORGANIZATION
16 AS A CERTIFIED PROVIDER TO BE PART OF THE PROGRAM. NEITHER THE
17 ADMINISTERING NONPROFIT ORGANIZATION NOR ANY SUBSIDIARY
18 THEREOF IS ELIGIBLE FOR CERTIFICATION AS A PROVIDER.

19 (7) THE ADMINISTERING NONPROFIT ORGANIZATION MAY SOLICIT,
20 RECEIVE, AND EXPEND GIFTS, GRANTS, AND DONATIONS FOR THE PURPOSES
21 OF ADMINISTERING AND FUNDING THE PROGRAM, BUT THE ORGANIZATION
22 SHALL NOT ACCEPT A GIFT, GRANT, OR DONATION FOR THE PROGRAM THAT
23 IS EARMARKED OR RESTRICTED IN ANY MANNER FOR THE BENEFIT OF OR TO
24 EXCLUDE ANY INDIVIDUAL OR CLASS OF RECIPIENTS OR ANY INDIVIDUAL
25 OR CLASS OF PROVIDERS.

26 (8) BASED ON INFORMATION FROM THE ADMINISTERING NONPROFIT
27 ORGANIZATION THAT A PARTICULAR AREA HAS AN INSUFFICIENT NUMBER

1 OF CERTIFIED PROVIDERS, THE AGENCY MAY DESIGNATE ELIGIBLE
2 STUDENTS IN THE AREA TO RECEIVE A WAIVER FOR THE ORGANIZATION TO
3 PAY A CERTIFIED PROVIDER FOR OUT-OF-SCHOOL LEARNING EXPERIENCES
4 THAT ARE COLLABORATIVE MATERIALS THAT MAY BE DONE IN THE
5 ELIGIBLE STUDENT'S HOME WITHOUT ANY FACE-TO-FACE INTERACTION
6 WITH THE PROVIDER.

7 (9) THE AGENCY SHALL CONTRACT WITH A THIRD PARTY TO
8 CONDUCT AN INDEPENDENT EVALUATION OF THE COLORADO EXPANDED
9 LEARNING OPPORTUNITIES PROGRAM AFTER THREE YEARS OF PROGRAM
10 ADMINISTRATION IN ORDER TO DETERMINE PROGRAM EFFECTIVENESS,
11 INCLUDING THE EFFECT OF THE PROGRAM ON STUDENT AND FAMILY
12 PARTICIPATION AND OTHER OUTCOMES, INCLUDING EDUCATIONAL AND
13 SOCIAL-EMOTIONAL OUTCOMES, COST AND SUPPLY OF EXPANDED
14 LEARNING OPPORTUNITIES ACROSS THE STATE, AND ACCESS TO
15 HIGH-QUALITY EXPANDED LEARNING OPPORTUNITIES FOR LOW-INCOME
16 CHILDREN.

17 (10) THE POWER AND DUTIES OF THE AGENCY, BOARD, AND
18 ADMINISTERING NONPROFIT ORGANIZATION ARE LIMITED TO THOSE
19 POWERS AND DUTIES SET FORTH IN THIS ARTICLE 86.5 FOR OUT-OF-SCHOOL
20 LEARNING EXPERIENCES THAT OCCUR OUTSIDE OF THE SCHOOL DAY AND
21 THAT ARE NOT PART OF THE NORMAL COURSE OF STUDY FOR STUDENTS IN
22 KINDERGARTEN THROUGH TWELFTH GRADE ENROLLED IN PUBLIC OR
23 PRIVATE SCHOOL OR A NONPUBLIC HOME-BASED EDUCATIONAL PROGRAM.

24 **22-86.5-106. Colorado expanded learning opportunities cash**
25 **fund - created.** (1) THE COLORADO EXPANDED LEARNING OPPORTUNITIES
26 CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS HEREBY
27 CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY

1 CREDITED TO THE FUND PURSUANT TO SECTION 24-22-118 (2)(a). THE
2 STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED
3 FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE COLORADO
4 EXPANDED LEARNING OPPORTUNITIES CASH FUND TO THE FUND.

5 (2) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE
6 AGENCY TO GRANT TO THE ADMINISTERING NONPROFIT ORGANIZATION FOR
7 OPERATION OF THE PROGRAM AND FOR THE AGENCY'S DIRECT AND
8 INDIRECT EXPENSES INCURRED IN THE ADMINISTRATION OF THIS ARTICLE
9 86.5, WHICH EXPENSES INCLUDE THE COSTS OF THE INDEPENDENT
10 EVALUATION REQUIRED UNDER SECTION 22-86.5-105 (9). FOR THE
11 2019-20 AND 2020-21 FISCAL YEARS, THE AGENCY'S ADMINISTRATIVE
12 EXPENSES FOR THE PROGRAM IN A FISCAL YEAR SHALL NOT EXCEED THREE
13 PERCENT OF THE MONEY TRANSFERRED TO THE FUND IN THE FISCAL YEAR.
14 FOR FISCAL YEARS COMMENCING ON OR AFTER JULY 1, 2021, THE
15 AGENCY'S ADMINISTRATIVE EXPENSES SHALL NOT EXCEED THREE PERCENT
16 OF THE MONEY TRANSFERRED TO THE FUND IN THE 2020-21 FISCAL YEAR.

17 (3) IT IS THE GENERAL ASSEMBLY'S INTENT THAT THE MONEY FROM
18 THE FUND SHALL NOT SUPPLANT EXISTING FUNDING FOR PROGRAMS OR
19 SERVICES AVAILABLE TO ELIGIBLE STUDENTS.

20 **22-86.5-107. Annual audits.** THE ADMINISTERING NONPROFIT
21 ORGANIZATION SHALL CONTRACT WITH A THIRD PARTY TO PREPARE AN
22 ANNUAL INDEPENDENT FINANCIAL AUDIT OF THE ADMINISTERING
23 NONPROFIT ORGANIZATION. THE ORGANIZATION SHALL FILE THE AUDIT
24 WITH THE AGENCY NO LATER THAN JULY 1 OF EACH YEAR FOR THE
25 PREVIOUS CALENDAR YEAR. THE AGENCY SHALL MAKE THE AUDIT
26 PUBLICLY AVAILABLE, BUT BEFORE DOING SO, THE AGENCY SHALL REDACT
27 ANY PERSONAL INFORMATION, AS DEFINED IN SECTION 24-73-103 (1)(g).

1 **SECTION 14.** In Colorado Revised Statutes, 24-22-117, **amend**
2 (1)(a) and (2)(c)(I) as follows:

3 **24-22-117. Tobacco tax cash fund - accounts - creation -**
4 **legislative declaration.** (1) (a) There is hereby created in the state
5 treasury the tobacco tax cash fund, which fund is referred to in this
6 section as the "cash fund". The cash fund ~~shall consist~~ CONSISTS of
7 ~~moneys~~ MONEY collected from the cigarette and tobacco taxes imposed
8 pursuant to section 21 of article X of the state constitution AND MONEY
9 TRANSFERRED IN ACCORDANCE WITH SECTION 24-22-118 (3)(c)(II). All
10 interest and income derived from the deposit and investment of moneys
11 in the cash fund shall be credited to the cash fund; except that all interest
12 and income derived from the deposit and investment of moneys in the
13 cash fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal
14 years shall be credited to the general fund. Any unexpended and
15 unencumbered moneys remaining in the cash fund at the end of a fiscal
16 year shall remain in the cash fund and shall not be credited or transferred
17 to the general fund or any other fund, except as otherwise provided in this
18 section.

19 (2) There are hereby created in the state treasury the following
20 funds:

21 (c) (I) The tobacco education programs fund to be administered
22 by the department of public health and environment. The state treasurer
23 and the controller shall transfer an amount equal to sixteen percent of the
24 moneys deposited into the cash fund, plus sixteen percent of the interest
25 and income earned on the deposit and investment of those moneys AND
26 THE AMOUNTS SPECIFIED IN SECTION 24-22-118 (3)(c)(I), to the tobacco
27 education programs fund; except that, for the 2008-09, 2009-10, 2010-11,

1 and 2011-12 fiscal years, the state treasurer and the controller shall
2 transfer to the tobacco education programs fund only an amount equal to
3 sixteen percent of the moneys deposited into the cash fund. All interest
4 and income derived from the deposit and investment of moneys in the
5 tobacco education programs fund shall be credited to the tobacco
6 education programs fund; except that all interest and income derived from
7 the deposit and investment of moneys in the tobacco education programs
8 fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years
9 shall be credited to the general fund. Any unexpended and unencumbered
10 moneys remaining in the tobacco education programs fund at the end of
11 a fiscal year shall remain in the fund and shall not be credited or
12 transferred to the general fund or any other fund.

13 **SECTION 15.** In Colorado Revised Statutes, **add** 24-22-118 as
14 follows:

15 **24-22-118. Revenue from nicotine products and additional**
16 **tobacco tax - behavioral health and health care affordability and**
17 **accessibility cash fund - preschool programs cash fund - distribution**
18 **to Colorado expanded learning opportunities cash fund - creation -**
19 **definitions.** (1) AS USED IN THIS SECTION:

20 (a) "BEHAVIORAL HEALTH" HAS THE SAME MEANING AS SET FORTH
21 IN SECTION 2-4-401 (1).

22 (b) "BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY AND
23 ACCESSIBILITY CASH FUND" MEANS THE BEHAVIORAL HEALTH AND
24 HEALTH CARE AFFORDABILITY AND ACCESSIBILITY CASH FUND CREATED
25 IN SUBSECTION (3)(a) OF THIS SECTION.

26 (c) "CHILDREN AND YOUTH" MEANS ANY PERSON WHO IS
27 TWENTY-SIX YEARS OF AGE OR YOUNGER.

1 (d) "COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND"
2 MEANS THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND
3 CREATED IN SECTION 22-86.5-106 (1).

4 (e) "PRESCHOOL PROGRAMS CASH FUND" MEANS THE PRESCHOOL
5 PROGRAMS CASH FUND CREATED IN SUBSECTION (6)(a) OF THIS SECTION.

6 (2) THE STATE TREASURER SHALL TRANSFER FROM THE GENERAL
7 FUND AN AMOUNT EQUAL TO THE TOTAL REVENUE FROM THE TAXES ON
8 CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS AS
9 DESCRIBED IN SECTIONS 39-28-110 (1)(b), 39-28.5-108 (1)(b), AND
10 39-28.6-109 (2) AS FOLLOWS:

11 (a) FIFTY PERCENT OF THE AMOUNT TO THE BEHAVIORAL HEALTH
12 AND HEALTH CARE AFFORDABILITY AND ACCESSIBILITY CASH FUND; AND

13 (b) (I) FOR THE 2019-20 AND 2020-21 FISCAL YEARS:

14 (A) THIRTY-FIVE PERCENT OF THE AMOUNT TO THE PRESCHOOL
15 PROGRAMS CASH FUND; AND

16 (B) FIFTEEN PERCENT OF THE AMOUNT TO THE COLORADO
17 EXPANDED LEARNING OPPORTUNITIES CASH FUND;

18 (II) FOR THE 2021-22 FISCAL YEAR:

19 (A) THIRTY PERCENT OF THE AMOUNT TO THE PRESCHOOL
20 PROGRAMS CASH FUND; AND

21 (B) TWENTY PERCENT OF THE AMOUNT TO THE COLORADO
22 EXPANDED LEARNING OPPORTUNITIES CASH FUND; AND

23 (III) FOR THE 2022-23 FISCAL YEAR AND EACH FISCAL YEAR
24 THEREAFTER:

25 (A) TWENTY-SEVEN AND ONE-HALF PERCENT OF THE AMOUNT TO
26 THE PRESCHOOL PROGRAMS CASH FUND; AND

27 (B) TWENTY-TWO AND ONE-HALF PERCENT OF THE AMOUNT TO

1 THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND.

2 (3) (a) THE BEHAVIORAL HEALTH AND HEALTH CARE
3 AFFORDABILITY AND ACCESSIBILITY CASH FUND IS HEREBY CREATED IN
4 THE STATE TREASURY. THE FUND CONSISTS OF MONEY CREDITED TO THE
5 FUND PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION. THE STATE
6 TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE
7 DEPOSIT AND INVESTMENT OF MONEY IN THE BEHAVIORAL HEALTH AND
8 HEALTH CARE AFFORDABILITY AND ACCESSIBILITY CASH FUND TO THE
9 FUND.

10 (b) THE DEPARTMENTS OF PUBLIC HEALTH AND ENVIRONMENT,
11 HUMAN SERVICES, HEALTH CARE POLICY AND FINANCING, AND EDUCATION
12 SHALL ADMINISTER THE BEHAVIORAL HEALTH AND HEALTH CARE
13 AFFORDABILITY AND ACCESSIBILITY CASH FUND.

14 (c) THE STATE TREASURER SHALL ANNUALLY TRANSFER MONEY
15 FROM THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY AND
16 ACCESSIBILITY CASH FUND AS FOLLOWS:

17 (I) NINETEEN PERCENT TO THE TOBACCO EDUCATION PROGRAMS
18 FUND CREATED IN SECTION 24-22-117 (2)(c)(I); EXCEPT THAT, THIS
19 TRANSFER SHALL NOT EXCEED THIRTY MILLION DOLLARS IN A FISCAL
20 YEAR; AND

21 (II) NINE AND ONE-HALF PERCENT TO OFFSET THE DECREASE IN
22 THE EXISTING REVENUE DISTRIBUTION FROM THE CIGARETTE AND
23 TOBACCO PRODUCTS TAXES THAT RESULTS FROM THE INCREASE IN THOSE
24 TAXES APPROVED BY VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER
25 2019. OF THIS ALLOCATION, THE STATE TREASURER SHALL TRANSFER
26 SEVENTY-THREE PERCENT TO THE TOBACCO TAX CASH FUND CREATED IN
27 SECTION 24-22-117 (1) AND TWENTY-SEVEN PERCENT TO THE GENERAL

1 FUND; EXCEPT THAT THE TOTAL TRANSFERRED UNDER THIS SUBSECTION
2 (3)(c)(II) SHALL NOT EXCEED FIFTEEN MILLION DOLLARS IN A FISCAL YEAR.

3 (d) (I) FOR ANY FISCAL YEAR THAT COMMENCES PRIOR TO JULY 1,
4 2023, THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE THE NET
5 AMOUNT IN THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY
6 AND ACCESSIBILITY CASH FUND, WHICH IS THE AMOUNT AFTER THE
7 TRANSFERS REQUIRED BY SUBSECTION (3)(c) OF THIS SECTION, AS
8 FOLLOWS:

9 (A) SIXTY-SIX PERCENT TO THE MAKE HEALTH CARE MORE
10 AFFORDABLE AND ACCESSIBLE IN ACCORDANCE WITH SUBSECTION (4) OF
11 THIS SECTION; AND

12 (B) THIRTY-FOUR PERCENT TO IMPROVE THE PROVISION OF
13 BEHAVIORAL HEALTH SERVICES FOR CHILDREN AND YOUTH IN
14 ACCORDANCE WITH SUBSECTION (5) OF THIS SECTION.

15 (II) FOR ANY FISCAL YEAR THAT COMMENCES ON OR AFTER JULY
16 1, 2023, THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE THE NET
17 AMOUNT IN THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY
18 AND ACCESSIBILITY CASH FUND FOR ANY OF THE PURPOSES SET FORTH IN
19 SUBSECTIONS (4) AND (5) OF THIS SECTION, WITH AT LEAST TWENTY
20 PERCENT OF THE NET AMOUNT APPROPRIATED UNDER EACH SUBSECTION.

21 (4) (a) IT IS THE GENERAL ASSEMBLY'S INTENT THAT A PORTION OF
22 THE MONEY IN THE BEHAVIORAL HEALTH AND HEALTH CARE
23 AFFORDABILITY AND ACCESSIBILITY CASH FUND BE USED TO MAKE HEALTH
24 CARE MORE AFFORDABLE AND ACCESSIBLE.

25 (b) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
26 ASSEMBLY, A DEPARTMENT MAY EXPEND MONEY FROM THE BEHAVIORAL
27 HEALTH AND HEALTH CARE AFFORDABILITY AND ACCESSIBILITY CASH

1 FUND:

2 (I) TO INCREASE ACCESS TO CARE;

3 (II) FOR HEALTH CARE WORKFORCE DEVELOPMENT;

4 (III) FOR PROGRAMS THAT REDUCE THE COST OF HEALTH CARE,

5 INCLUDING LOWER PREMIUMS AND REDUCED OUT-OF-POCKET COSTS FOR

6 CONSUMERS;

7 (IV) TO INCREASE STATE FUNDING FOR THE CHILDREN'S BASIC

8 HEALTH PLAN CREATED IN ARTICLE 8 OF TITLE 25.5; OR

9 (V) FOR ANY OTHER USE THAT IS CONSISTENT WITH THE PURPOSE

10 SPECIFIED IN SUBSECTION (4)(a) OF THIS SECTION.

11 (5) (a) IT IS THE GENERAL ASSEMBLY'S INTENT THAT A PORTION OF

12 MONEY IN THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY

13 AND ACCESSABILITY CASH FUND BE USED TO IMPROVE THE PROVISION OF

14 BEHAVIORAL HEALTH SERVICES FOR CHILDREN AND YOUTH.

15 (b) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL

16 ASSEMBLY, A DEPARTMENT MAY EXPEND MONEY FROM THE FUND FOR:

17 (I) SUICIDE PREVENTION SERVICES;

18 (II) SCHOOL-BASED PROGRAMS AND SERVICES TO PROVIDE

19 BEHAVIORAL HEALTH SERVICES;

20 (III) CRISIS RESPONSE SERVICES;

21 (IV) INTENSIVE CARE PLANNING AND CASE MANAGEMENT FOR

22 CHILDREN AND YOUTH WITH SERIOUS BEHAVIORAL NEEDS;

23 (V) BEHAVIORAL HEALTH WORKFORCE DEVELOPMENT;

24 (VI) IMPROVING ACCESS TO BEHAVIORAL HEALTH SERVICES; OR

25 (VII) ANY OTHER USE THAT IS CONSISTENT WITH THE PURPOSE

26 SPECIFIED IN SUBSECTION (5)(a) OF THIS SECTION.

27 (6) (a) THE PRESCHOOL PROGRAMS CASH FUND IS HEREBY

1 CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY
2 CREDITED TO THE FUND PURSUANT TO SUBSECTION (2)(b) OF THIS
3 SECTION. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
4 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
5 PRESCHOOL PROGRAMS CASH FUND TO THE FUND.

6 (b) THE DEPARTMENT OF EDUCATION SHALL ADMINISTER THE
7 PRESCHOOL PROGRAMS CASH FUND.

8 (c) IT IS THE GENERAL ASSEMBLY'S INTENT THAT THE MONEY IN
9 THE PRESCHOOL PROGRAMS CASH FUND BE USED TO EXPAND AND
10 ENHANCE THE COLORADO PRESCHOOL PROGRAM IN ORDER TO IMPROVE
11 THE AVAILABILITY, AFFORDABILITY, AND QUALITY OF VOLUNTARY EARLY
12 CHILDHOOD EDUCATION WITH A GOAL, OVER TIME AND SUBJECT TO
13 ADEQUATE REVENUE, OF SERVING ALL OF COLORADO'S YOUNG CHILDREN
14 WHOSE FAMILIES CHOOSE IT.

15 (d) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
16 ASSEMBLY, THE DEPARTMENT MAY EXPEND MONEY FROM THE PRESCHOOL
17 PROGRAMS CASH FUND TO:

18 (I) PROVIDE FINANCIAL ASSISTANCE TO HELP FAMILIES AFFORD
19 EARLY CHILDHOOD EDUCATION;

20 (II) INCREASE ACCESS TO PRESCHOOL SERVICES FOR COLORADO
21 CHILDREN AND IMPROVE THE QUALITY OF PRESCHOOLS;

22 (III) PROVIDE FOR MIXED-DELIVERY OPTIONS TO SUPPORT PARENT
23 CHOICE OF EITHER SCHOOL-BASED OR COMMUNITY-BASED EARLY
24 CHILDHOOD EDUCATION OPTIONS;

25 (IV) IMPROVE THE AFFORDABILITY AND AVAILABILITY OF QUALITY
26 EARLY CHILDHOOD EDUCATION PROGRAMS AND FACILITIES, INCLUDING
27 OFFERING VOLUNTARY PRESCHOOL PROGRAMS THAT MATCH PARENTS' AND

1 CHILDREN'S NEEDS FOR LENGTH OF DAY AND LENGTH OF YEAR SO
2 CHILDREN ARE READY FOR SCHOOL;

3 (V) INCREASE THE CAPACITY OF LICENSED EARLY CHILDHOOD
4 EDUCATION PROGRAMS SO FAMILIES THAT NEED EARLY CHILDHOOD
5 EDUCATION HAVE ACCESS;

6 (VI) RECRUIT, TRAIN, AND RETAIN EARLY CHILDHOOD EDUCATION
7 PROFESSIONALS;

8 (VII) SUPPORT THE AVAILABILITY OF QUALITY EARLY CHILDHOOD
9 EDUCATION OFFERED IN HEAD START, EARLY HEAD START, AND LICENSED
10 EARLY CHILDHOOD EDUCATION SETTINGS;

11 (VIII) IMPROVE THE QUALITY OF EARLY CHILDHOOD EDUCATION
12 PROGRAMS;

13 (IX) STRENGTHEN COORDINATION WITH EXISTING EARLY
14 CHILDHOOD SYSTEMS AND INITIATIVES AND ADVANCE ALIGNMENT WITH
15 KINDERGARTEN THROUGH TWELFTH GRADE SYSTEMS TO SUPPORT
16 CHILDREN'S TRANSITIONS TO SCHOOL;

17 (X) COLLECT, ANALYZE, AND MEASURE DATA TO EVALUATE EARLY
18 CHILDHOOD EDUCATION PROGRAM EFFECTIVENESS, INCLUDING
19 MEASUREMENT OF CHILD AND FAMILY OUTCOMES; OR

20 (XI) FUND ANY OTHER USE THAT IS CONSISTENT WITH THE
21 PURPOSE SPECIFIED IN SUBSECTION (6)(c) OF THIS SECTION.

22 (7) THE STATE AUDITOR SHALL ANNUALLY CONDUCT A FINANCIAL
23 AUDIT OF THE USE OF THE MONEY ALLOCATED AND APPROPRIATED UNDER
24 THIS SECTION.

25 **SECTION 16.** In Colorado Revised Statutes, **add 25-3.5-810** as
26 follows:

27 **25-3.5-810. Nicotine products education, prevention, and**

1 **cessation programs.** THE EDUCATION, PREVENTION, AND CESSATION
2 PROGRAMS THAT ARE FUNDED WITH MONEY TRANSFERRED TO THE
3 TOBACCO EDUCATION PROGRAMS FUND IN ACCORDANCE WITH SECTION
4 24-22-118 (3)(c)(I) MAY ALSO APPLY TO NICOTINE PRODUCTS.

5 **SECTION 17.** In Colorado Revised Statutes, 39-26-623, **amend**
6 **as amended by House Bill 19-1240** (1)(a)(II)(A) as follows:

7 **39-22-623. Disposition of collections - definition.** (1) The
8 proceeds of all money collected under this article 22, less the reserve
9 retained for refunds, shall be credited as follows:

10 (a) (II) (A) Effective July 1, 1987, an amount equal to
11 twenty-seven percent of the gross state cigarette tax shall be apportioned
12 to incorporated cities and incorporated towns that levy taxes and adopt
13 formal budgets and to counties. For the purposes of this section, a city
14 and county is considered a city. The city or town share shall be
15 apportioned according to the percentage of state sales tax revenues
16 collected by the department of revenue in an incorporated city or town as
17 compared to the total state sales tax collections that may be allocated to
18 all political subdivisions in the state; the county share shall be the same
19 as that which the percentage of state sales tax revenues collected in the
20 unincorporated area of the county bears to total state sales tax revenues
21 that may be allocated to all political subdivisions in the state. The
22 department of revenue shall certify to the state treasurer, at least annually,
23 the percentage for allocation to each city, town, and county, and the
24 department shall apply the percentage for allocation certified shall be
25 applied by said department in all distributions to cities, towns, and
26 counties until changed by certification to the state treasurer. In order to
27 qualify for distributions of state income tax money, units of local

1 government are prohibited from imposing taxes on any person as a
2 condition for engaging in the business of selling cigarettes. For purposes
3 of this subsection (1)(a)(II), the "gross state cigarette tax" means the total
4 tax FROM TEN MILLS ON EACH CIGARETTE before the discount provided for
5 in section 39-28-104 (1), PLUS AN AMOUNT EQUAL TO THE AMOUNT
6 DEPOSITED IN THE GENERAL FUND FOR THE STATE FISCAL YEAR UNDER
7 SECTION 24-22-118 (3)(c)(II). For any city, town, or county that was
8 previously disqualified from the apportionment set forth in this subsection
9 (1)(a)(II)(A) by reason of imposing a fee or license related to the sale of
10 cigarettes, the city, town, or county is eligible for any allocation of money
11 that is based on an apportionment made on or after the effective date of
12 this subsection (1)(a)(II)(A), as amended, but not for an allocation of
13 money that is based on an apportionment made before the effective date
14 of this subsection (1)(a)(II)(A), as amended.

15 **SECTION 18. Appropriation.** (1) For the 2019-20 state fiscal
16 year, \$150,634 is appropriated to the department of revenue. This
17 appropriation is from the general fund. To implement this act, the
18 department may use this appropriation as follows:

19 (a) \$12,943 for use by the taxpayer service division for personal
20 services, which amount is based on an assumption that the division will
21 require an additional 0.2 FTE;

22 (b) \$1,131 for use by the taxpayer service division for operating
23 expenses;

24 (c) \$135,360 for tax administration IT system (GenTax) support;
25 and

26 (d) \$1,200 for the purchase of document management services.

27 (2) For the 2019-20 state fiscal year, \$1,200 is appropriated to the

1 department of personnel. This appropriation is from reappropriated funds
2 received from the department of revenue under subsection (1)(d) of this
3 section. To implement this act, the department of personnel may use this
4 appropriation to provide document management services for the
5 department of revenue.

6 **SECTION 19. Effective date.** (1) Except as otherwise provided
7 in subsection (2) of this section, this act takes effect upon passage.

8 (2) Sections 2 to 18 of this act take effect only if, at the November
9 2019 statewide election, a majority of voters approve the ballot issue
10 referred in accordance with section 39-28-401, Colorado Revised
11 Statutes, created in section 1 of this act. If the voters approve the ballot
12 issue, then sections 2 to 18 of this act take effect on the date of the
13 governor's proclamation or January 1, 2020, whichever is later.

14 **SECTION 20. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.