A BILL FOR AN ACT

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

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

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

PART 4

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

39-28-401. Submission of ballot issue - increased tax cigarettes and tobacco products - new tax on nicotine products - definition - repeal. (1) As used in this section, "BALLOT ISSUE" MEANS THE QUESTION REFERRED TO VOTERS IN SUBSECTION (2) OF THIS SECTION.

(2) At the election held on November 5, 2019, the secretary of state shall submit to the registered electors of the state for their approval or rejection the following ballot issue: "SHALL STATE TAXES BE INCREASED BY $390,000,000 ANNUALLY IN THE FIRST FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER BY IMPOSING A TAX ON NICOTINE LIQUIDS USED IN E-CIGARETTES THAT IS EQUAL TO THE TOTAL STATE TAX ON TOBACCO
PRODUCTS, INCREASING THE TOBACCO PRODUCTS TAX BY 22% OF THE
MANUFACTURER'S LIST PRICE, AND INCREASING THE CIGARETTE TAX BY
8.75 CENTS PER CIGARETTE, AND USING THE REVENUE TO INVEST IN
COLORADANS' HEALTH AND EDUCATION, SPECIFICALLY PROGRAMS THAT
REDUCE THE USE OF TOBACCO AND NICOTINE PRODUCTS, PROVIDE MENTAL
HEALTH AND SUBSTANCE ABUSE SERVICES FOR CHILDREN AND YOUTH,
LOWER THE COST OF HEALTH CARE, ENHANCE THE VOLUNTARY COLORADO
PRESCHOOL PROGRAM AND MAKE IT WIDELY AVAILABLE, PROVIDE
EXPANDED LEARNING OPPORTUNITIES FOR COLORADO'S CHILDREN AND
YOUTH, AND MAINTAIN THE FUNDING FOR PROGRAMS THAT CURRENTLY
RECEIVE REVENUE FROM TOBACCO TAXES, WITH ANNUAL AUDITS ON THE
USE OF THE NEW TAX REVENUE AND WITH THE STATE KEEPING AND
SPENDING THE NEW TAX REVENUE NOTWITHSTANDING ANY LIMITATIONS
PROVIDED BY LAW?"

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

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

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

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

39-28-103. Tax levied. (1) PRIOR TO JANUARY 1, 2020, there is
levied and shall be collected and paid to the department a tax upon the
sale of cigarettes by wholesalers of ten mills on each cigarette.

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

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

(1) (a) Payment of the taxes imposed by the provisions of this article
ARTICLE 28 and section 21 of article X of the state constitution shall be
evidenced by the affixing of stamps to, or by an imprint or impression by
suitable metering machines approved by the department on, packages
containing cigarettes. The department shall procure stamps of such design
and legend as it deems necessary and suitable for the purpose. Except as
provided in paragraph (b) of this subsection (1) SUBSECTION (1)(b) OF
THIS SECTION, the department shall sell such stamps for cash to licensed
wholesalers at a discount of four percent of their face value for sales
occurring prior to July 1, 2003, or on or after July 1, 2005, and three
percent of their face value for sales occurring on or after July 1, 2003, but
before July 1, 2005 BUT BEFORE JANUARY 1, 2020, AND FOUR-TENTHS
PERCENT OF THEIR FACE VALUE FOR SALES OCCURRING ON AND AFTER
JANUARY 1, 2020, if payment is made on or before the tenth day of the
month following the month in which the purchase is made to cover the
licensed wholesaler's expense in the collection and remittance of such tax;
but, if any licensed wholesaler is delinquent in remitting such payment,
other than in unusual circumstances shown to the satisfaction of the
executive director of the department, the licensed wholesaler shall not be
allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and, in addition, the penalty imposed under section 39-28-108 (2) shall apply. The department shall keep accurate records of all stamps sold to each wholesaler. No wholesaler shall sell or transfer any stamps purchased pursuant to the provisions of this article ARTICLE 28.

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

39-28-107. Unstamped packages - tax collected - fines - subject to confiscation - tobacco tax enforcement cash fund - creation. (1) (b) There is hereby created in the state treasury the tobacco tax enforcement cash fund. The fund shall consist of moneys deposited therein pursuant to paragraph (a) of this subsection (1) subsection (1)(a) of this section and sections 39-28.5-106 (4) and 39-28.6-107 (4). The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the purpose of enforcing the provisions of this article ARTICLE 28 and article 28.5 ARTICLES 28.5 AND 28.6 of this title TITLE 39. Any moneys not appropriated by the general assembly shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

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

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

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

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

39-28-110.5. Revenue and spending limitations.

NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR
APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE
CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE
GENERATED BY THE EIGHT AND SEVENTY-FIVE ONE-HUNDREDTHS CENTS
PER CIGARETTE TAX INCREASE IMPOSED UNDER THIS ARTICLE 28 AS
APPROVED BY THE VOTERS' APPROVAL OF THE BALLOT ISSUE SET FORTH IN
SECTION 39-28-401 AT THE STATEWIDE ELECTION IN NOVEMBER 2019 MAY
BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE.

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

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

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

39-28.5-106. Returns and remittance of tax - civil penalty.
(2) Every distributor shall file a return with the department by the
twentieth day of the month following the month reported and shall
therewith remit the amount of tax due, less three and one-third percent of
any sum so remitted that consists of tax collected before July 1, 2003, or
on or after July 1, 2005, and less two and one-third percent of any sum so
remitted that consists of tax collected on or after July 1, 2003, but before
July 1, 2005 BUT BEFORE JANUARY 1, 2020, AND LESS ONE AND
SIX-TENTHS PERCENT OF ANY SUM SO REMITTED THAT CONSISTS OF TAX
COLLECTED ON OR AFTER JANUARY 1, 2020, to cover the distributor's expense in the collection and remittance of said tax; except that no part of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of article X of the state constitution shall be subject to the discount provided for in this subsection (2). If any distributor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director of the department, the distributor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and in addition the penalty imposed under section 39-28.5-110 (2)(b) shall apply.

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

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

(b) The net revenue that is credited to the old age pension fund created in section 1 of article XXIV of the state constitution in accordance with subsection (1)(a) of this section and section 2 (a) of article XXIV of the state constitution is transferred to the general fund in accordance with section 7 (c) of article XXIV of the state constitution. Of this money or the fifteen percent that is directly credited to the general fund, the state treasurer shall transfer an amount equal to the
TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX INCREASE SET FORTH IN SECTION 39-28.5-102 (1) AS APPROVED BY THE VOTERS' APPROVAL OF THE BALLOT ISSUE SET FORTH IN SECTION 39-28-401 AT THE STATEWIDE ELECTION IN NOVEMBER 2019 TO THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY AND ACCESSIBILITY CASH FUND AND THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 24-22-118 AND THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND CREATED IN SECTION 22-86.5-106 (1), AS REQUIRED BY SECTION 24-22-118 (2).

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

39-28.5-108.5. Revenue and spending limitations.

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

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

ARTICLE 28.6

Nicotine Products Tax

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

(a) NICOTINE IS A HIGHLY ADDICTIVE AND TOXIC SUBSTANCE;
(b) There has been a significant increase in the use of electronic cigarettes, which heat nicotine, flavorings, and other chemicals to create an aerosol that is inhaled;

(c) Children in middle school and high school have reported using electronic cigarettes at alarming rates, and studies have linked electronic cigarette use among youth to nicotine addiction and cigarette smoking;

(d) The long-term health risks of this use are unknown, but electronic cigarette aerosol can contain harmful and potentially harmful substances including nicotine, cancer-causing chemicals, heavy metals, flavoring chemicals, ultrafine particles, and volatile organic compounds;

(e) Yet nicotine products are not subject to the same excise tax as cigarettes and tobacco products;

(f) Taxing nicotine products at the wholesale level will increase the total cost, which may serve as a deterrent to children and adolescents and in turn prevent and reduce consumption; and

(g) Revenue from the tax can be used toward positive outcomes in children’s lives and other important health initiatives.

(2) Therefore, the general assembly intends to create a tax on nicotine products so that they are taxed in the same manner as tobacco products, including the licensing requirements that facilitate the collection of the tax.

39-28.6-102. Definitions. As used in this article 28.6, unless the context otherwise requires:
(1) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

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

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

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

   (a) A CIGARETTE;

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

   OR

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

(5) "SALE" MEANS ANY TRANSFER, EXCHANGE, OR BARTER, IN ANY MANNER OR BY ANY MEANS WHATSOEVER, FOR A CONSIDERATION, INCLUDING ALL SALES MADE BY ANY PERSON. THE TERM INCLUDES A GIFT BY A PERSON ENGAGED IN THE BUSINESS OF SELLING NICOTINE PRODUCTS, FOR ADVERTISING, AS A MEANS OF EVADING THE PROVISIONS OF THIS
ARTICLE 28.6, OR FOR ANY OTHER PURPOSES WHATSOEVER.

39-28.6-103. Tax levied. (1) On and after January 1, 2020, there is levied a tax upon the sale, use, consumption, handling, or distribution of all nicotine products in this state at the rate of sixty-two percent of the manufacturer's list price of the nicotine products. The tax is collected by the department and is imposed at the time the distributor:

(a) Brings, or causes to be brought, into this state from without the state nicotine products for sale;

(b) Makes, manufactures, or fabricates nicotine products in this state for sale in this state; or

(c) Ships or transports nicotine products to retailers in this state to be sold by those retailers.

39-28.6-104. Exempt sales. The tax imposed by section 39-28.6-103 shall not apply with respect to any nicotine products that, under the constitution and laws of the United States, may not be made the subject of taxation by this state. A person shall report the exempt sales to the department, as required by the department.

39-28.6-105. Licensing required - rules - fines. Beginning January 1, 2020, it is unlawful for any person to engage in the business of a distributor of nicotine products at any place of business without first obtaining a license granted and issued by the department, which license is in effect until June 30 following the date of issue, unless sooner revoked. The department shall grant a license only to a person who owns or operates the place from which the person engages in the business of a distributor of nicotine products.
NICOTINE PRODUCTS, AND, IF THE BUSINESS IS OPERATED IN TWO OR MORE
SEPARATE PLACES BY THE PERSON, A SEPARATE LICENSE FOR EACH PLACE
OF BUSINESS IS REQUIRED. A LICENSE MAY BE RENEWED ONLY UPON
TIMELY APPLICATION AND PAYMENT OF THE REQUIRED FEE PRIOR TO
EXPIRATION. A LICENSE MAY BE TRANSFERRED IN THE DISCRETION OF AND
PURSUANT TO THE RULES ADOPTED BY THE DEPARTMENT. THE FEE FOR A
LICENSE IS TEN DOLLARS PER YEAR, AND THE FEE IS CREDITED TO THE
GENERAL FUND. THE FEE IS REDUCED AT THE RATE OF TWO DOLLARS AND
FIFTY CENTS FOR EACH EXPIRED QUARTER OF THE LICENSE YEAR. THE
DEPARTMENT SHALL, ON REASONABLE NOTICE AND AFTER A HEARING,
SUSPEND OR REVOKE THE LICENSE OF ANY PERSON VIOLATING ANY
PROVISION OF THIS ARTICLE 28.6, AND THE DEPARTMENT SHALL NOT ISSUE
A LICENSE TO THE SAME PERSON WITHIN A PERIOD OF TWO YEARS
THEREAFTER. THE DEPARTMENT MAY SHARE INFORMATION ON 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. THE DEPARTMENT
SHALL REFUSE TO ISSUE A NEW OR RENEWAL DISTRIBUTOR LICENSE, AND
SHALL REVOKE A DISTRIBUTOR'S LICENSE, IF THE DISTRIBUTOR OWES THE
STATE ANY DELINQUENT TAXES ADMINISTERED BY THE DEPARTMENT OR
INTEREST THEREON PURSUANT TO THIS TITLE 39 THAT HAVE BEEN
DETERMINED BY LAW TO BE DUE AND UNPAID, UNLESS THE DISTRIBUTOR
HAS ENTERED INTO AN AGREEMENT APPROVED BY THE DEPARTMENT TO
PAY THE AMOUNT DUE. THE DEPARTMENT SHALL ONLY ISSUE A NEW OR
RENEWAL DISTRIBUTOR LICENSE TO A DISTRIBUTOR THAT HAS A CURRENT
LICENSE ISSUED PURSUANT TO SECTION 39-26-103.

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

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

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

(4) (a) EVERY RETAILER THAT IS NOT ALSO A LICENSED DISTRIBUTOR SHALL KEEP AT ITS PLACE OF BUSINESS COMPLETE AND ACCURATE RECORDS TO SHOW THAT ALL NICOTINE PRODUCTS RECEIVED BY THE RETAILER WERE PURCHASED FROM A LICENSED DISTRIBUTOR. THE RETAILER SHALL PROVIDE A COPY OF SUCH RECORDS TO THE DEPARTMENT IF SO REQUESTED. THE DEPARTMENT MAY ESTABLISH THE ACCEPTABLE
(b) The General Assembly shall appropriate money for any expenses incurred by the department related to enforcing subsection (4)(a) of this section from the tobacco tax enforcement cash fund created in section 39-28-107 (1)(b).

39-28.6-107. Returns and remittance of tax - civil penalty - rules. (1) Every distributor shall file a return with the department each quarter. The return, which must be upon forms prescribed and furnished by the department, must contain, among other things, the total amount of nicotine products purchased by the distributor during the preceding quarter and the tax due thereon.

(2) Every distributor shall file a return with the department by the twentieth day of the month following the month reported and shall therewith remit the amount of tax due, less one and one-tenth percent of any amount remitted to cover the distributor's expense in the collection and remittance of the tax. If any distributor is delinquent in remitting the tax, other than in unusual circumstances shown to the satisfaction of the executive director of the department, the distributor is not allowed to retain any amounts to cover his or her expense in collecting and remitting the tax and, in addition, the penalty imposed under section 39-28.6-111 (2)(b) applies.

(3) The department may require distributors to use electronic funds transfers to remit tax payments due pursuant to this article 28.6 to the department and may require distributors to file tax returns electronically. The department
MAY PROMULGATE RULES GOVERNING ELECTRONIC PAYMENT AND FILING.

(4) (a) Any person, firm, limited liability company, partnership, or corporation, other than a distributor, in possession of nicotine products for which taxes have not otherwise been remitted pursuant to this section is liable and responsible for the uncollected tax that is levied pursuant to section 39-28.6-103 on behalf of the distributor who failed to pay the tax. The person or entity shall make the payment to the department within thirty days of first taking possession of the nicotine product. The department shall establish a form to be used for remittance of the payment. The department shall remit the proceeds it receives pursuant to this subsection (4)(a) to the state treasurer, and the state treasurer shall credit fifteen percent of the proceeds to the tobacco tax enforcement cash fund created in section 39-28-107 (1)(b) and eighty-five percent to the old age pension fund created in section 1 of article XXIV of the state constitution.

(b) The executive director of the department may impose a civil penalty on any person, firm, limited liability company, partnership, or corporation in possession of nicotine products that fails to make a payment required pursuant to subsection (4)(a) of this section or who is a distributor by virtue of being the first person who receives the nicotine products in the state and who fails to make a payment required pursuant to this section in an amount that does not exceed five hundred percent of such payment. The department shall remit any money received pursuant to this subsection (4)(b) to the state treasurer for
DEPOSIT IN THE TOBACCO TAX ENFORCEMENT CASH FUND CREATED IN
SECTION 39-28-107 (1)(b).

39-28.6-108. When credit may be obtained for tax paid.
WHERE NICOTINE PRODUCTS, UPON WHICH THE TAX IMPOSED BY THIS
ARTICLE 28.6 HAS BEEN REPORTED AND PAID, ARE SHIPPED OR
TRANSPORTED BY THE DISTRIBUTOR TO RETAILERS WITHOUT THE STATE TO
BE SOLD BY THOSE RETAILERS OR ARE RETURNED TO THE MANUFACTURER
BY THE DISTRIBUTOR OR DESTROYED BY THE DISTRIBUTOR, CREDIT OF
SUCH TAX MAY BE MADE TO THE DISTRIBUTOR IN ACCORDANCE WITH
REGULATIONS PRESCRIBED BY THE DEPARTMENT.

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

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

39-28.6-110. Taxation by cities and towns. THIS ARTICLE
28.6 DOES NOT PREVENT A STATUTORY OR HOME RULE MUNICIPALITY,
COUNTY, OR CITY AND COUNTY FROM IMPOSING, LEVying, AND
COLLECTING ANY SPECIAL SALES TAX UPON SALES OF CIGARETTES,
TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, AS THAT TERM IS DEFINED
IN SECTION 18-13-121 (5), OR UPON THE OCCUPATION OR PRIVILEGE OF
SELLING CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. THIS
ARTICLE 28.6 DOES NOT AFFECT ANY EXISTING AUTHORITY OF LOCAL
GOVERNMENTS TO IMPOSE A SPECIAL SALES TAX ON CIGARETTES,
TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, IN ACCORDANCE WITH
SECTION 39-28-112, TO BE USED FOR LOCAL AND GOVERNMENTAL
PURPOSES.

39-28.6-111. Prohibited acts - penalties. (1) BEGINNING
JANUARY 1, 2020, IT IS UNLAWful FOR ANY DISTRIBUTOR TO SELL AND
DISTRIBUTE ANY NICOTINE PRODUCTS IN THIS STATE WITHOUT A LICENSE
AS REQUIRED IN SECTION 39-28.6-105, OR TO WILLFULLY MAKE ANY FALSE
OR FRAUDULENT RETURN OR FALSE STATEMENT ON ANY RETURN, OR TO
WILLFULLY EVADE THE PAYMENT OF THE TAX, OR ANY PART THEREOF, AS
IMPOSED BY THIS ARTICLE 28.6. ANY DISTRIBUTOR OR AGENT THEREOF
WHO WILLFULLY VIOLATES ANY PROVISION OF THIS ARTICLE 28.6 IS
SUBJECT TO PUNISHMENT AS PROVIDED BY SECTION 39-21-118.

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

(b) IF A PERSON FAILS TO PAY THE TAX IN THE TIME ALLOWED IN
SECTION 39-28.6-107, A PENALTY EQUAL TO TEN PERCENT OF THE TAX
PLUS ONE-HALF OF ONE PERCENT PER MONTH FROM THE DATE WHEN DUE,
TOGETHER WITH INTEREST ON SUCH DELINQUENT TAXES AT THE RATE
COMPUTED UNDER SECTION 39-21-110.5, APPLIES.

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


NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE GENERATED BY THE TAX IMPOSED BY THIS ARTICLE 28.6 AS APPROVED BY THE VOTERS' APPROVAL OF THE BALLOT ISSUE SET FORTH IN SECTION 39-28-401 AT THE STATEWIDE ELECTION IN NOVEMBER 2019 MAY BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE.

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

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

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

ARTICLE 86.5

Colorado Expanded Learning
Opportunities Program

22-86.5-101. Short title. The short title of this article 86.5 is the "COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM Act".

22-86.5-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Expanded learning opportunities are critical for all children and youth because these opportunities, which occur outside of their regular school schedules, provide essential academic and life skills for children and youth to thrive in school and life;

(b) These opportunities allow children and youth to learn new skills, participate in outdoor activities, be exposed to different and challenging real world experiences, and receive exposure to music, dance, arts, sports, physical education, and career and technical education programs;

(c) All children and youth should have consistent and reliable access to these out-of-school learning experiences; and

(d) All Coloradans will benefit from children and youth experiencing these expanded learning opportunities.

22-86.5-103. Definitions. As used in this article 86.5, unless the context otherwise requires:

(1) "ADMINISTERING NONPROFIT ORGANIZATION" OR "ORGANIZATION" MEANS A TAX-EXEMPT NONPROFIT ORGANIZATION UNDER 26 U.S.C. SEC. 501 (c)(3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THAT IS SELECTED OR CREATED BY THE AGENCY UNDER SECTION 22-86.5-105 (2) TO ADMINISTER THE PROGRAM.
(2) "Agency" means the Colorado Expanded Learning Opportunities Agency created in section 22-86.5-104 (1).

(3) "Board" means the board of directors of the Colorado Expanded Learning Opportunities Agency created in section 22-86.5-104 (2).

(4) "Eligible student" means a person who is at least six years old but less than twenty-one years old and who resides within the State and is eligible for admission to public school within the State, or a person who is at least three years old but less than six years old and who resides in the State.

(5) "Local education provider" means a school district, a charter school authorized by a school district pursuant to part 1 of article 30.5 of this title 22, a charter school authorized by the State Charter School Institute pursuant to part 5 of article 30.5 of this title 22, or a board of cooperative services created and operating pursuant to article 5 of this title 22 that operates one or more public schools.

(6) (a) "Out-of-school learning experience" means any evidence-based program, service, or activity that provides supplemental educational or developmental support to eligible students outside of normal school operations. "Out-of-school learning experience" includes tutoring and supplemental academic instruction including reading, mathematics, science, and writing; targeted support for special needs and learning disabilities or English language or foreign language acquisition; in-depth programs that teach children and youth new skills in the context of outdoor activities; challenging real
WORLD EXPERIENCES THAT BUILD ESSENTIAL SKILL SETS; AND PROGRAMS
THAT PROVIDE MUSIC, DANCE, ARTS, SPORTS, PHYSICAL EDUCATION, OR
CAREER AND TECHNICAL EDUCATION TRAINING.

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

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

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

(III) ANY FORM OF RELIGIOUS INSTRUCTION;

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

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

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

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

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

22-86.5-104. Colorado expanded learning opportunities
agency - board - created - rules. (1) The Colorado expanded

(2) (a) The agency is governed and administered by a board of directors that consists of eight members appointed by the governor. The speaker or minority leader of the house of representatives, whomever is not affiliated with the same political party as the governor, shall present the governor with a list of eight candidates, which includes at least two candidates from the western slope and two candidates from the eastern plains. The governor shall select four members from the list of candidates. For the board as a whole, the governor shall ensure that the board includes at least two members from the western slope and two members from the eastern plains. Initial appointments must be made by February 1, 2020. Members serve for two-year terms; except the four members appointed to the first board who were not from the list of candidates serve for three years. Members serve at the pleasure of the governor and may serve up to three consecutive terms. If there is a vacancy of a member who was selected from the list of candidates, the speaker or minority leader of the house of representatives, whomever is not affiliated with the same political party as the governor, shall present the governor with two candidates from which to select a replacement.
(b) Board members are not entitled to compensation but
are entitled to reimbursement for actual and necessary
expenses incurred in the performance of their board duties.
During their terms of service, board members shall not be
employed by, contract with, or be board members of
organizations, entities, public agencies, or individuals that
provide or offer to provide out-of-school learning experiences
under the program. No person who has an ownership interest or
other financial interest in a provider of an out-of-school
learning experience in the program may serve on the board.

(3) In addition to all other powers and duties conferred
or imposed upon the board by this article 86.5, the board shall,
by rule:

(a) Develop criteria for allowable uses of money from the
fund granted to the administering nonprofit organization;
(b) Develop criteria that the administering nonprofit
organization must use to determine which providers are
certified to receive a payment under the program;
(c) Determine the amount of a payment to a provider on
behalf of an eligible student that is based on the eligible
student’s family income;
(d) Analyze the expense for and quality of programs,
services, or activities offered by providers that are engaged in
the certification process and use such analysis to inform the
provider certification process;
(e) Determine the amount of money that the administering
nonprofit organization is permitted to retain and spend on
ADMINISTRATIVE EXPENSES, WHICH AMOUNT MAXIMIZES THE FUNDING AVAILABLE TO BE USED TO PAY FOR OUT-OF-SCHOOL LEARNING EXPERIENCES;

(f) Adopt standards to ensure the safety of eligible students, including background checks for providers or employees of providers who come in contact with eligible students, which standards are based on those set forth in section 22-32-109.8;

(g) Hire such staff as may be necessary to assist the board in its duties;

(h) Establish protocols to identify, investigate, and take action on any suspected fraud or misuse of money related to the program;

(i) Adopt standards to ensure that an eligible student is participating in an out-of-school learning experience through the program that is not part of a nonpublic home-based educational program, as defined in section 22-33-104.5;

(j) Define the term "evidence-based" for the purpose of meeting the definition of "out-of-school learning experience";

(k) Establish guidelines for the amount that may be allocated to transportation to an out-of-school learning experience.

(4)(a) The criteria created by the board under subsection (3)(b) of this section must:

(I) Maximize the number and diversity of providers that parents can choose and ensure that small community-based
PROVIDERS ARE ABLE TO PARTICIPATE IN THE PROGRAM;

(II) GIVE CONSIDERATION TO THE QUALITY OF THE PROGRAM AND

THE ELIGIBLE PROVIDER’S PROPOSED COST OF OUT-OF-SCHOOL LEARNING

EXPERIENCES; AND

(III) DENY PROVIDERS WHO HAVE INFLATED THE COST OF

OUT-OF-SCHOOL LEARNING EXPERIENCES BASED ON THE POTENTIAL

PAYMENT RECEIVED THROUGH THE PROGRAM.

(b) IN DETERMINING THE AMOUNT OF A PAYMENT THAT MAY BE

PAID FOR AN ELIGIBLE STUDENT TO PARTICIPATE IN AN OUT-OF-SCHOOL

LEARNING EXPERIENCE, THE BOARD SHALL CREATE A SLIDING SCALE OF

PAYMENTS THAT PRIORITIZES LOW-INCOME FAMILIES AND GIVES GREATER

ASSISTANCE TO THEM. IF THE BOARD DETERMINES THAT THERE IS

INSUFFICIENT MONEY AVAILABLE TO PROVIDE A MEANINGFUL LEVEL OF

ASSISTANCE FOR ALL ELIGIBLE STUDENTS, THEN IT MAY ESTABLISH AN

INCOME THRESHOLD ABOVE WHICH AN ELIGIBLE STUDENT IS NOT

AUTHORIZED TO ENROLL IN THE PROGRAM.

(5) THE BOARD MAY SOLICIT, ACCEPT, AND EXPEND GIFTS, GRANTS,

AND DONATIONS FOR THE PURPOSES OF ADMINISTERING AND FUNDING THE

PROGRAM, BUT THE BOARD SHALL NOT ACCEPT A GIFT, GRANT, OR

DONATION THAT IS EARMARKED OR RESTRICTED IN ANY MANNER FOR THE

BENEFIT OF OR TO EXCLUDE ANY INDIVIDUAL OR CLASS OF RECIPIENTS OR

ANY INDIVIDUAL OR CLASS OF PROVIDERS.

(6) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), ON OR

BEFORE JANUARY 15, 2022, AND EACH JANUARY 15 THEREAFTER, THE

AGENCY SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY DESCRIBING

THE PROGRAM ENROLLMENT, TYPES OF OUT-OF-SCHOOL LEARNING
EXPERIENCES, PARTICIPATION AND OTHER OUTCOMES DISAGGREGATED BY ELIGIBLE STUDENT GROUPS, ADMINISTRATIVE COSTS, WAIVERS, AND ANY OTHER RELEVANT INFORMATION ABOUT THE PROGRAM.

**22-86.5-105. Colorado expanded learning opportunities program - administering nonprofit organization - waiver.** (1) The Colorado expanded learning opportunities program is established to increase out-of-school learning opportunities for eligible students. The agency, through an administering nonprofit organization, shall pay certified providers for eligible students to participate in out-of-school learning experiences chosen by the children’s or youths’ parents.

(2) The agency shall select or create a nonprofit organization to administer the program no later than August 1, 2020, and the administering nonprofit organization shall implement the program so that eligible students are participating in out-of-school learning experiences by January 1, 2021. The duties of the organization include:

(a) Certifying providers that parents may choose for an eligible student to participate in an out-of-school learning experience;

(b) Entering into agreements with certified providers;

(c) Providing services directly or through a third-party contract to assist enrolled eligible students and their parents in selecting an out-of-school learning experience;

(d) Conducting outreach about the program, including outreach to parents of children identified with special needs;

(e) Compensating certified providers for participating
ELIGIBLE STUDENTS, WHICH COMPENSATION MAY INCLUDE EXPENSES FOR
TRANSPORTATION OF AN ELIGIBLE STUDENT TO AND FROM THE
OUT-OF-SCHOOL LEARNING EXPERIENCE; AND

(f) Submitting in a timely manner any information
requested by the agency that relates to the program, including
information related to the evaluation of the program or its
administration and any books and records.

(3) (a) Parents of an eligible student may apply
to the administering nonprofit organization for the eligible student to
be enrolled in the program. If enrolled, the organization shall
identify out-of-school learning experiences available to all
eligible students in the area and the annual maximum amount
that may be paid on behalf of the eligible student.

(b) If the administering nonprofit organization pays for an
eligible student to participate in an out-of-school learning
experience, but the amount paid is less than the annual maximum
amount that may be paid on behalf of the eligible student, then
the organization shall set aside the difference on behalf of the
eligible student and use this money for payments made to
providers on behalf the eligible student in a future year. These
payments are in addition to the payments that would otherwise
be made based on the eligible student's family income at the time.
If a person no longer qualifies as an eligible student and there
was an amount remaining that was set aside for that person, the
organization may use that amount for any purpose of the
program.

(4) The administering nonprofit organization shall
COMPLY WITH ANY REQUIREMENTS ESTABLISHED BY THE BOARD.

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

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

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

(8) BASED ON INFORMATION FROM THE ADMINISTERING NONPROFIT ORGANIZATION THAT A PARTICULAR AREA HAS AN INSUFFICIENT NUMBER
OF CERTIFIED PROVIDERS, THE AGENCY MAY DESIGNATE ELIGIBLE STUDENTS IN THE AREA TO RECEIVE A WAIVER FOR THE ORGANIZATION TO PAY A CERTIFIED PROVIDER FOR OUT-OF-SCHOOL LEARNING EXPERIENCES THAT ARE COLLABORATIVE MATERIALS THAT MAY BE DONE IN THE ELIGIBLE STUDENT'S HOME WITHOUT ANY FACE-TO-FACE INTERACTION WITH THE PROVIDER.

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

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

22-86.5-106. Colorado expanded learning opportunities cash fund - created. (1) THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND, REFERRED TO IN THIS SECTION AS THE:"FUND", IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY
CREDITED TO THE FUND PURSUANT TO SECTION 24-22-118 (2)(a). The State Treasurer shall credit all interest and income derived from the deposit and investment of money in the Colorado Expanded Learning Opportunities Cash Fund to the Fund.

(2) Money in the Fund is continuously appropriated to the agency to grant to the administering nonprofit organization for operation of the program and for the agency’s direct and indirect expenses incurred in the administration of this Article 86.5, which expenses include the costs of the independent evaluation required under Section 22-86.5-105 (9). For the 2019-20 and 2020-21 fiscal years, the agency’s administrative expenses for the program in a fiscal year shall not exceed three percent of the money transferred to the Fund in the fiscal year. For fiscal years commencing on or after July 1, 2021, the agency’s administrative expenses shall not exceed three percent of the money transferred to the Fund in the 2020-21 fiscal year.

(3) It is the General Assembly’s intent that the money from the Fund shall not supplant existing funding for programs or services available to eligible students.

22-86.5-107. Annual audits. The administering nonprofit organization shall contract with a third party to prepare an annual independent financial audit of the administering nonprofit organization. The organization shall file the audit with the agency no later than July 1 of each year for the previous calendar year. The agency shall make the audit publicly available, but before doing so, the agency shall redact any personal information, as defined in Section 24-73-103 (1)(g).
SECTION 14. In Colorado Revised Statutes, 24-22-117, amend (1)(a) and (2)(c)(I) as follows:

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

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

(c) (I) The tobacco education programs fund to be administered by the department of public health and environment. The state treasurer and the controller shall transfer an amount equal to sixteen percent of the moneys deposited into the cash fund, plus sixteen percent of the interest and income earned on the deposit and investment of those moneys AND THE AMOUNTS SPECIFIED IN SECTION 24-22-118 (3)(c)(I), to the tobacco education programs fund; except that, for the 2008-09, 2009-10, 2010-11,
and 2011-12 fiscal years, the state treasurer and the controller shall transfer to the tobacco education programs fund only an amount equal to sixteen percent of the moneys deposited into the cash fund. All interest and income derived from the deposit and investment of moneys in the tobacco education programs fund shall be credited to the tobacco education programs fund; except that all interest and income derived from the deposit and investment of moneys in the tobacco education programs fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended and unencumbered moneys remaining in the tobacco education programs fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

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

24-22-118. Revenue from nicotine products and additional tobacco tax - behavioral health and health care affordability and accessibility cash fund - preschool programs cash fund - distribution to Colorado expanded learning opportunities cash fund - creation - definitions. (1) As used in this section:

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

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

(c) "CHILDREN AND YOUTH" MEANS ANY PERSON WHO IS TWENTY-SIX YEARS OF AGE OR YOUNGER.
(d) "COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND" MEANS THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND CREATED IN SECTION 22-86.5-106 (1).

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

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

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

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

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

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

(II) FOR THE 2021-22 FISCAL YEAR:

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

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

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

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

(B) TWENTY-TWO AND ONE-HALF PERCENT OF THE AMOUNT TO
THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND.

(3) (a) The behavioral health and health care affordability and accessibility cash fund is hereby created in the state treasury. The fund consists of money credited to the fund pursuant to subsection (2)(a) of this section. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the behavioral health and health care affordability and accessibility cash fund to the fund.

(b) The departments of public health and environment, human services, health care policy and financing, and education shall administer the behavioral health and health care affordability and accessibility cash fund.

(c) The state treasurer shall annually transfer money from the behavioral health and health care affordability and accessibility cash fund as follows:

(I) Nineteen percent to the tobacco education programs fund created in section 24-22-117 (2)(c)(I); except that, this transfer shall not exceed thirty million dollars in a fiscal year; and

(II) Nine and one-half percent to offset the decrease in the existing revenue distribution from the cigarette and tobacco products taxes that results from the increase in those taxes approved by voters at the statewide election in November 2019. Of this allocation, the state treasurer shall transfer seventy-three percent to the tobacco tax cash fund created in section 24-22-117 (1) and twenty-seven percent to the general
(3)(c)(II) shall not exceed fifteen million dollars in a fiscal year.

(d)(I) For any fiscal year that commences prior to July 1, 2023, the General Assembly shall annually appropriate the net amount in the behavioral health and health care affordability and accessibility cash fund, which is the amount after the transfers required by subsection (3)(c) of this section, as follows:

(A) Sixty-six percent to the make health care more affordable and accessible in accordance with subsection (4) of this section; and

(B) Thirty-four percent to improve the provision of behavioral health services for children and youth in accordance with subsection (5) of this section.

(II) For any fiscal year that commences on or after July 1, 2023, the General Assembly shall annually appropriate the net amount in the behavioral health and health care affordability and accessibility cash fund for any of the purposes set forth in subsections (4) and (5) of this section, with at least twenty percent of the net amount appropriated under each subsection.

(4)(a) It is the General Assembly’s intent that a portion of the money in the behavioral health and health care affordability and accessibility cash fund be used to make health care more affordable and accessible.

(b) Subject to annual appropriation by the General Assembly, a department may expend money from the behavioral health and health care affordability and accessibility cash fund.
FUND:

    (I)  TO INCREASE ACCESS TO CARE;
    (II) FOR HEALTH CARE WORKFORCE DEVELOPMENT;
    (III) FOR PROGRAMS THAT REDUCE THE COST OF HEALTH CARE,
          INCLUDING LOWER PREMIUMS AND REDUCED OUT-OF-POCKET COSTS FOR
          CONSUMERS;
    (IV)  TO INCREASE STATE FUNDING FOR THE CHILDREN'S BASIC
          HEALTH PLAN CREATED IN ARTICLE 8 OF TITLE 25.5; OR
    (V)   FOR ANY OTHER USE THAT IS CONSISTENT WITH THE PURPOSE
          SPECIFIED IN SUBSECTION (4)(a) OF THIS SECTION.

(5) (a) IT IS THE GENERAL ASSEMBLY'S INTENT THAT A PORTION OF
        MONEY IN THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY
        AND ACCESSABILITY CASH FUND BE USED TO IMPROVE THE PROVISION OF
        BEHAVIORAL HEALTH SERVICES FOR CHILDREN AND YOUTH.

    (b)  SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
         ASSEMBLY, A DEPARTMENT MAY EXPEND MONEY FROM THE FUND FOR:
         (I)  SUICIDE PREVENTION SERVICES;
         (II) SCHOOL-BASED PROGRAMS AND SERVICES TO PROVIDE
              BEHAVIORAL HEALTH SERVICES;
         (III) CRISIS RESPONSE SERVICES;
         (IV)  INTENSIVE CARE PLANNING AND CASE MANAGEMENT FOR
              CHILDREN AND YOUTH WITH SERIOUS BEHAVIORAL NEEDS;
         (V)   BEHAVIORAL HEALTH WORKFORCE DEVELOPMENT;
         (VI)  IMPROVING ACCESS TO BEHAVIORAL HEALTH SERVICES; OR
         (VII) ANY OTHER USE THAT IS CONSISTENT WITH THE PURPOSE
              SPECIFIED IN SUBSECTION (5)(a) OF THIS SECTION.

(6) (a) THE PRESCHOOL PROGRAMS CASH FUND IS HEREBY
created in the state treasury. The fund consists of money credited to the fund pursuant to subsection (2)(b) of this section. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the preschool programs cash fund to the fund.

(b) The department of education shall administer the preschool programs cash fund.

(c) It is the general assembly's intent that the money in the preschool programs cash fund be used to expand and enhance the Colorado preschool program in order to improve the availability, affordability, and quality of voluntary early childhood education with a goal, over time and subject to adequate revenue, of serving all of Colorado's young children whose families choose it.

(d) Subject to annual appropriation by the general assembly, the department may expend money from the preschool programs cash fund to:

(I) Provide financial assistance to help families afford early childhood education;

(II) Increase access to preschool services for Colorado children and improve the quality of preschools;

(III) Provide for mixed-delivery options to support parent choice of either school-based or community-based early childhood education options;

(IV) Improve the affordability and availability of quality early childhood education programs and facilities, including offering voluntary preschool programs that match parents' and
CHILDREN'S NEEDS FOR LENGTH OF DAY AND LENGTH OF YEAR SO CHILDREN ARE READY FOR SCHOOL;

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

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

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

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

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

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

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

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

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

25-3.5-810. Nicotine products education, prevention, and
cessation programs. The education, prevention, and cessation programs that are funded with money transferred to the tobacco education programs fund in accordance with section 24-22-118 (3)(c)(I) may also apply to nicotine products.

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

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

(a) (II) (A) Effective July 1, 1987, an amount equal to twenty-seven percent of the gross state cigarette tax shall be apportioned to incorporated cities and incorporated towns that levy taxes and adopt formal budgets and to counties. For the purposes of this section, a city and county is considered a city. The city or town share shall be apportioned according to the percentage of state sales tax revenues collected by the department of revenue in an incorporated city or town as compared to the total state sales tax collections that may be allocated to all political subdivisions in the state; the county share shall be the same as that which the percentage of state sales tax revenues collected in the unincorporated area of the county bears to total state sales tax revenues that may be allocated to all political subdivisions in the state. The department of revenue shall certify to the state treasurer, at least annually, the percentage for allocation to each city, town, and county, and the department shall apply the percentage for allocation certified shall be applied by said department in all distributions to cities, towns, and counties until changed by certification to the state treasurer. In order to qualify for distributions of state income tax money, units of local
government are prohibited from imposing taxes on any person as a condition for engaging in the business of selling cigarettes. For purposes of this subsection (1)(a)(II), the "gross state cigarette tax" means the total tax FROM TEN MILLS ON EACH CIGARETTE before the discount provided for in subsection 39-28-104 (1), PLUS AN AMOUNT EQUAL TO THE AMOUNT DEPOSITED IN THE GENERAL FUND FOR THE STATE FISCAL YEAR UNDER SECTION 24-22-118 (3)(c)(II). For any city, town, or county that was previously disqualified from the apportionment set forth in this subsection (1)(a)(II)(A) by reason of imposing a fee or license related to the sale of cigarettes, the city, town, or county is eligible for any allocation of money that is based on an apportionment made on or after the effective date of this subsection (1)(a)(II)(A), as amended, but not for an allocation of money that is based on an apportionment made before the effective date of this subsection (1)(a)(II)(A), as amended.

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

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

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

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

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

(2) For the 2019-20 state fiscal year, $1,200 is appropriated to the
department of personnel. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(d) of this section. To implement this act, the department of personnel may use this appropriation to provide document management services for the department of revenue.

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

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

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