

CHAPTER 240

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

HOUSE BILL 05-1261

BY REPRESENTATIVE(S) Buescher, Hall, Plant, Borodkin, Boyd, Carroll M., Gallegos, Madden, Marshall, McFadyen, Paccione, Solano, Todd, and Butcher;
also SENATOR(S) Owen, Keller, and Tapia.

AN ACT

CONCERNING THE IMPLEMENTATION OF TOBACCO TAXES FOR HEALTH-RELATED PURPOSES PURSUANT TO SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION, AND, IN CONNECTION THEREWITH, REPEALING THE USE OF TOBACCO SETTLEMENT MONEYS FOR TOBACCO EDUCATION, PREVENTION, AND CESSATION PROGRAMS AND USING TOBACCO TAX MONEYS TO FUND TOBACCO EDUCATION, PREVENTION, AND CESSATION PROGRAMS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Article 22 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-22-117. Tobacco tax cash fund - accounts - creation - repeal.

(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 SECTIONS 39-28-103.5 AND 39-28.5-102.5, C.R.S., AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE CASH FUND SHALL BE CREDITED TO THE CASH 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.

(b) (I) WITHIN TEN DAYS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION, THE STATE TREASURER SHALL TRANSFER TO THE CASH FUND ALL MONEYS COLLECTED FROM THE CIGARETTE AND TOBACCO TAXES IMPOSED PURSUANT TO SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION ON AND AFTER JANUARY 1, 2005, AND UNTIL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

EFFECTIVE DATE OF THIS SECTION, PLUS ANY INTEREST EARNED ON THOSE MONEYS.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JANUARY 1, 2006.

(c) THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE THREE PERCENT OF THE MONEYS ESTIMATED TO BE DEPOSITED IN THAT FISCAL YEAR INTO THE CASH FUND FOR HEALTH-RELATED PURPOSES TO PROVIDE REVENUE FOR THE STATE'S GENERAL FUND AND OLD AGE PENSION FUND AND FOR MUNICIPAL AND COUNTY GOVERNMENTS TO COMPENSATE PROPORTIONATELY FOR TAX REVENUE REDUCTIONS ATTRIBUTABLE TO LOWER CIGARETTE AND TOBACCO SALES RESULTING FROM THE IMPLEMENTATION OF THE TAX IMPOSED PURSUANT TO SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION.

(2) THERE ARE HEREBY CREATED IN THE STATE TREASURY THE FOLLOWING FUNDS:

(a) THE HEALTH CARE EXPANSION FUND TO BE ADMINISTERED BY THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING. THE STATE TREASURER AND THE CONTROLLER SHALL TRANSFER AN AMOUNT EQUAL TO FORTY-SIX PERCENT OF THE MONEYS DEPOSITED INTO THE CASH FUND TO THE HEALTH CARE EXPANSION FUND. MONEYS IN THE HEALTH CARE EXPANSION FUND SHALL BE USED TO INCREASE THE NUMBER OF CHILDREN AND PREGNANT WOMEN ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN ABOVE THE AVERAGE ENROLLMENT FOR STATE FISCAL YEAR 2004, TO ADD THE PARENTS OF ENROLLED CHILDREN, AND TO EXPAND ELIGIBILITY OF LOW-INCOME ADULTS AND CHILDREN WHO RECEIVE MEDICAL CARE THROUGH THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 19 OF TITLE 26, C.R.S., OR THROUGH THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLE 4 OF TITLE 26, C.R.S. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE HEALTH CARE EXPANSION FUND SHALL BE CREDITED TO THE HEALTH CARE EXPANSION FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE HEALTH CARE EXPANSION 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.

(b) THE PRIMARY CARE FUND TO BE ADMINISTERED BY THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING. THE STATE TREASURER AND THE CONTROLLER SHALL TRANSFER AN AMOUNT EQUAL TO NINETEEN PERCENT OF THE MONEYS DEPOSITED INTO THE CASH FUND TO THE PRIMARY CARE FUND. MONEYS IN THE PRIMARY CARE FUND SHALL BE USED TO PAY FOR COMPREHENSIVE PRIMARY CARE THROUGH ANY COLORADO QUALIFIED PROVIDER, AS DEFINED IN THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLE 4 OF TITLE 26, C.R.S., THAT MEETS EITHER OF THE FOLLOWING CRITERIA: IS A COMMUNITY HEALTH CENTER AS DEFINED IN SECTION 330 OF THE UNITED STATES PUBLIC HEALTH SERVICES ACT, 42 U.S.C. SEC. 254b, OR ANY SUCCESSOR ACT; OR SERVES PATIENTS, AT LEAST FIFTY PERCENT OF WHOM ARE UNINSURED OR MEDICALLY INDIGENT, AS DEFINED IN THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLE 4 OF TITLE 26, C.R.S., OR ARE ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN OR THE COLORADO MEDICAL ASSISTANCE PROGRAM. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PRIMARY CARE FUND SHALL BE CREDITED TO THE PRIMARY CARE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE PRIMARY CARE 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.

(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 TO THE TOBACCO EDUCATION PROGRAMS FUND. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE TOBACCO EDUCATION PROGRAMS FUND SHALL BE CREDITED TO THE TOBACCO EDUCATION PROGRAMS 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.

(II) THE INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE TOBACCO EDUCATION PROGRAMS FUND MAY BE USED TO GIVE CREDIT TO A WHOLESALER OR DISTRIBUTOR FOR TAXES PAID ON CIGARETTES OR OTHER TOBACCO PRODUCTS THAT ARE BAD DEBTS PURSUANT TO SECTIONS 39-28-104 AND 39-28.5-107, C.R.S.; EXCEPT THAT THE INTEREST EARNED ON THE TOBACCO EDUCATION PROGRAMS FUND SHALL BE USED ONLY FOR THAT PORTION OF THE BAD DEBT ATTRIBUTABLE TO THE TAXES IMPOSED PURSUANT TO SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION.

(III) FOR FISCAL YEAR 2004-05 AND FOR EACH FISCAL YEAR THEREAFTER, MONEYS IN THE TOBACCO EDUCATION PROGRAMS FUND SHALL BE ANNUALLY APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR THE TOBACCO EDUCATION, PREVENTION, AND CESSATION PROGRAMS SPECIFIED IN PART 8 OF ARTICLE 3.5 OF TITLE 25, C.R.S.

(d) THE PREVENTION, EARLY DETECTION, AND TREATMENT 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 TO THE PREVENTION, EARLY DETECTION, AND TREATMENT FUND. MONEYS IN THE PREVENTION, EARLY DETECTION, AND TREATMENT FUND SHALL BE USED FOR THE PREVENTION, EARLY DETECTION, AND TREATMENT OF CANCER AND CARDIOVASCULAR AND PULMONARY DISEASES. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PREVENTION, EARLY DETECTION, AND TREATMENT FUND SHALL BE CREDITED TO THE PREVENTION, EARLY DETECTION, AND TREATMENT FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE PREVENTION, EARLY DETECTION, AND TREATMENT 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.

(3) FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION AND ARTICLE 77 OF THIS TITLE, ANY MONEYS COLLECTED OR EXPENDED FROM THE IMPOSITION OF THE CIGARETTE AND TOBACCO TAX IMPOSED PURSUANT TO SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION ARE NOT INCLUDED IN STATE FISCAL YEAR SPENDING, AS DEFINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, AND ARE EXCLUDED FROM THE SPENDING LIMIT CONTAINED IN SECTION 24-75-201.1 AND ANY CORRESPONDING SPENDING LIMITS ON LOCAL GOVERNMENTS RECEIVING SUCH REVENUES.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY

MAY USE REVENUE GENERATED BY THE IMPLEMENTATION OF THE CIGARETTE AND TOBACCO TAXES PURSUANT TO SECTIONS 39-28-103.5 AND 39-28.5-102.5, C.R.S., AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION FOR ANY HEALTH-RELATED PURPOSE AND TO SERVE POPULATIONS ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN AND THE COLORADO MEDICAL ASSISTANCE PROGRAM AT THE RESPECTIVE PROGRAM LEVELS OF ENROLLMENT AS OF JANUARY 1, 2005. SUCH USE OF REVENUE SHALL BE PRECEDED BY A DECLARATION OF A STATE FISCAL EMERGENCY, WHICH SHALL BE ADOPTED BY A JOINT RESOLUTION, APPROVED BY A TWO-THIRDS MAJORITY VOTE OF THE MEMBERS OF THE SENATE AND OF THE HOUSE OF REPRESENTATIVES, AND SIGNED BY THE GOVERNOR. THE DECLARATION SHALL APPLY ONLY TO A SINGLE FISCAL YEAR.

SECTION 2. Part 1 of article 28 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-28-103.5. Tax levied - state constitution. PURSUANT TO SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION, THERE IS LEVIED, IN ADDITION TO THE TAX LEVIED PURSUANT TO SECTION 39-28-103, A TAX ON THE SALE OF CIGARETTES BY WHOLESALERS, AT A RATE OF THREE AND TWO-TENTHS CENTS PER CIGARETTE. THE TAX SHALL BE PAID TO AND COLLECTED BY THE DEPARTMENT.

SECTION 3. 39-28-104 (1) and (4) (a), Colorado Revised Statutes, are amended to read:

39-28-104. Evidence of payment of tax - credits - redemptions.
(1) (a) Payment of the ~~tax~~ TAXES imposed by the provisions of this article 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), 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, 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.

(b) THE TAX IMPOSED PURSUANT TO SECTION 39-28-103.5 AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION SHALL NOT BE SUBJECT TO THE DISCOUNT PROVIDED FOR IN PARAGRAPH (a) OF THIS SUBSECTION (1).

(c) WHOLESALERS SHALL ELECTRONICALLY REMIT TAX PAYMENTS DUE PURSUANT TO THIS ARTICLE AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION TO THE

DEPARTMENT. THE DEPARTMENT MAY REQUIRE WHOLESALERS TO FILE TAX RETURNS ELECTRONICALLY. THE DEPARTMENT SHALL PROMULGATE RULES GOVERNING ELECTRONIC PAYMENT AND FILING.

(4) (a) Credit shall be given by the department to a wholesaler for all taxes LEVIED PURSUANT TO THIS ARTICLE AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION AND paid pursuant to the provisions of this article that are bad debts. Such credit shall offset taxes LEVIED PURSUANT TO THIS ARTICLE AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION AND paid pursuant to the provisions of this article only. No credit shall be given unless the bad debt has been charged off as uncollectible on the books of the wholesaler. Subsequent to receiving the credit, if the wholesaler receives a payment for the bad debt, the wholesaler shall be liable to the department for the amount received and shall remit this amount in the next payment to the department under this section or section 39-28-105.

SECTION 4. 39-28-105 (2), Colorado Revised Statutes, is amended to read:

39-28-105. Use of metering machines. (2) (a) The department may cause each metering machine approved by it to be read and inspected at least once each month. The department shall set the machine to the number of units requested by the wholesaler and shall determine as of the time of setting the amount of tax due from the wholesaler using such machine, after allowing the discount provided in section 39-28-104. The tax for each unit placed on the machine at the time of setting, less ~~the~~ ANY discount THAT IS NOT OTHERWISE PROHIBITED BY PARAGRAPH (b) OF THIS SUBSECTION (2) to cover the licensed wholesaler's expense in the collection and remittance of such tax, shall be due and payable to the department on or before the tenth day of the month following the month in which the meter is set. If any licensed wholesaler is delinquent in remitting such payment, other than in unusual circumstances shown to the satisfaction of the executive director, 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.

(b) THE TAX IMPOSED PURSUANT TO SECTION 39-28-103.5 AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION SHALL NOT BE SUBJECT TO THE DISCOUNT PROVIDED FOR IN PARAGRAPH (a) OF THIS SUBSECTION (2).

SECTION 5. 39-28-106 (1), Colorado Revised Statutes, is amended to read:

39-28-106. Nonresident wholesalers. (1) When the department determines that the collection of the tax imposed by the provisions of this article AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION would be facilitated thereby, it may authorize any person, firm, limited liability company, partnership, or corporation outside of this state and engaged in the business of selling and shipping into this state cigarettes, upon complying with the requirements of this article, to affix or cause to be affixed the stamps, imprints, or impressions required by this article on behalf of the wholesalers within this state. The department may sell such stamps and approve the use of metering machines to such nonresident wholesalers as provided in this article; except that the nonresident wholesaler shall agree in writing to submit his or her books, accounts, and records to examination during reasonable business hours by any duly authorized agent of the department. Each such nonresident wholesaler shall

appoint in writing the secretary of state of the state of Colorado to be his or her agent in this state for service of process, pursuant to part 7 of article 90 of title 7, C.R.S., with respect to foreign corporations.

SECTION 6. 39-28-107, Colorado Revised Statutes, is amended to read:

39-28-107. Unstamped packages subject to confiscation. (1) Any package of cigarettes found at any place in this state without a stamp or imprint affixed thereto as provided in this article, unless such cigarettes are in the possession of a licensed wholesaler in the original unopened shipping package or in transit to such wholesaler, are declared to be contraband goods and may be seized without a warrant by the department, its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate unstamped packages of cigarettes when it has reason to believe that the owner thereof is not willfully or intentionally evading the ~~tax~~ TAXES imposed by the provisions of this article AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION.

(2) Any cigarettes seized by virtue of the provisions of this section shall be confiscated, and the department shall sell such confiscated goods at a public sale to a licensed wholesaler to the best advantage of this state. The proceeds from such sale shall be remitted to the state treasurer and distributed as provided in ~~section 39-28-110~~ SECTION 39-28-110 (1). Such sale by the state shall not relieve the purchaser at such sale from paying the tax and stamping the articles so sold to him OR HER in the manner provided in this article. The act or omission of any officer, agent, or other person acting for or employed by any person, firm, limited liability company, partnership, or corporation shall be deemed to be the act or omission of such person, firm, limited liability company, partnership, or corporation, as well as his OR HER own.

SECTION 7. 39-28-108 (1), Colorado Revised Statutes, is amended to read:

39-28-108. Penalty. (1) Any person, firm, limited liability company, partnership, or corporation or agent thereof who at retail sells or offers for sale, displays for sale, or possesses with intent to sell any cigarettes, the package of which does not bear the stamp, or an imprint or impression by a suitable metering machine approved by the department, evidencing the payment of the ~~tax~~ TAXES imposed by this article AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION, shall be punished as provided in section 39-21-118.

SECTION 8. 39-28-110, Colorado Revised Statutes, is amended to read:

39-28-110. Distribution of tax collected. (1) All sums of money received and collected in payment of the tax imposed by the provisions of this article, 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 ~~such~~ THE money as follows: Fifteen percent to the general fund, and eighty-five percent to the old age pension fund.

(2) ALL MONEYS RECEIVED AND COLLECTED IN PAYMENT OF THE TAX IMPOSED PURSUANT TO SECTION 39-28-103.5 SHALL BE TRANSMITTED TO THE STATE

TREASURER FOR DEPOSIT IN THE TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117, C.R.S.

SECTION 9. Article 28.5 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-28.5-102.5. Tax levied - state constitution. PURSUANT TO SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION, THERE IS LEVIED, IN ADDITION TO THE TAX LEVIED PURSUANT TO SECTION 39-28.5-102, A TAX ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS, AT A RATE OF TWENTY PERCENT OF THE MANUFACTURER'S LIST PRICE. THE TAX SHALL BE PAID TO AND COLLECTED BY THE DEPARTMENT. THE TAX SHALL BE IMPOSED IN THE SAME MANNER AS THE TAX DESCRIBED IN SECTION 39-28.5-102.

SECTION 10. 39-28.5-106 (2), Colorado Revised Statutes, is amended, and the said 39-28.5-106 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-28.5-106. Returns and remittance of tax. (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, 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.

(3) DISTRIBUTORS SHALL ELECTRONICALLY REMIT TAX PAYMENTS DUE PURSUANT TO THIS ARTICLE AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION TO THE DEPARTMENT. THE DEPARTMENT MAY REQUIRE DISTRIBUTORS TO FILE TAX RETURNS ELECTRONICALLY. THE DEPARTMENT SHALL PROMULGATE RULES GOVERNING ELECTRONIC PAYMENT AND FILING.

SECTION 11. 39-28.5-107 (2) (a), Colorado Revised Statutes, is amended to read:

39-28.5-107. When credit may be obtained for tax paid. (2) (a) Credit shall be given by the department to a distributor for all taxes LEVIED PURSUANT TO THIS ARTICLE AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION AND paid pursuant to the provisions of this article that are bad debts. Such credit shall offset taxes LEVIED PURSUANT TO THIS ARTICLE AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION AND paid pursuant to the provisions of this article only. No credit shall be given unless the bad debt has been charged off as uncollectible on the books of the distributor. Subsequent to receiving the credit, if the distributor receives a payment for the bad debt, the distributor shall be liable to the department for the

amount received and shall remit this amount in the next payment to the department under section 39-28.5-106.

SECTION 12. 39-28.5-108, Colorado Revised Statutes, is amended to read:

39-28.5-108. Distribution of tax collected. (1) All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees received under section 39-28.5-104 AND THE MONEYS 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.

(2) ALL MONEYS RECEIVED AND COLLECTED IN PAYMENT OF THE TAX IMPOSED PURSUANT TO SECTION 39-28.5-102.5 AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117, C.R.S.

SECTION 13. 39-21-102 (1), Colorado Revised Statutes, is amended to read:

39-21-102. Scope. (1) Unless otherwise indicated, the provisions of this article apply to the taxes and the charge on oil and gas production imposed by articles 22 to 29 of this title and article 60 of title 34, C.R.S., SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION, and article 3 of title 42, C.R.S.

SECTION 14. 24-35-101 (1) (a), Colorado Revised Statutes, is amended to read:

24-35-101. Functions of department of revenue. (1) There is hereby created the department of revenue, the functions of which are the collection of the following:

(a) Taxes levied and the license fees imposed by the provisions of articles 22 and 26 to ~~28~~ 29 of title 39, C.R.S., AND SECTION 21 OF ARTICLE X OF THE STATE CONSTITUTION, and the administration and enforcement of said provisions;

SECTION 15. Repeal. 24-75-1104.5 (1) (f), Colorado Revised Statutes, is repealed as follows:

24-75-1104.5. Use of settlement moneys - programs. (1) For the 2004-05 fiscal year and for each fiscal year thereafter, the following programs, services, or funds shall receive appropriations in the specified amounts from the settlement moneys annually received by the state:

(f) ~~The tobacco education, prevention, and cessation grant program created in part 8 of article 3.5 of title 25, C.R.S., shall receive five percent of the total amount of settlement moneys annually received by the state, not to exceed eight million dollars in any fiscal year.~~

SECTION 16. 25-3.5-804 (1), Colorado Revised Statutes, is amended to read:

25-3.5-804. Tobacco education, prevention, and cessation programs - grants. (1) There is hereby created the tobacco education, prevention, and cessation grant program to provide funding for community-based and statewide tobacco education

programs designed to reduce initiation of tobacco use by children and youth, promote cessation of tobacco use among youth and adults, and reduce exposure to second-hand smoke. Any such tobacco programs may be presented in combination with other substance abuse programs. The program shall be administered by the emergency medical services and prevention division within the department and coordinated with efforts pursuant to part 5 of article 35 of title 24, C.R.S. The state board shall award grants to selected entities from moneys appropriated to the ~~tobacco program fund created in section 25-3.5-807~~ DEPARTMENT FROM THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN SECTION 24-22-117, C.R.S.

SECTION 17. Repeal. 25-3.5-807, Colorado Revised Statutes, is repealed as follows:

25-3.5-807. Tobacco program fund - created. ~~(1) There is hereby created in the state treasury the tobacco program fund that shall consist of the moneys appropriated thereto pursuant to subsection (2) of this section. In addition, the state treasurer may credit to the fund any public or private gifts, grants, or donations received by the division for implementation of the program. The fund shall be subject to annual appropriation by the general assembly to the department for issuance of grants pursuant to this part 8. In addition, the department may retain up to five percent of the amount annually appropriated from the fund for the actual costs incurred by the division and the state board in implementing the provisions of this part 8. Notwithstanding the provisions of section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unencumbered moneys appropriated from moneys received by the state pursuant to the master settlement agreement remaining in the fund at the end of any fiscal year shall be transferred to the tobacco litigation settlement trust fund created in section 24-22-115.5, C.R.S.~~

~~(2) (a) Pursuant to section 24-75-1104.5 (1) (f), C.R.S., beginning in the 2004-05 fiscal year, and for fiscal years thereafter so long as the state receives moneys pursuant to the master settlement agreement, the general assembly shall annually appropriate to the fund five percent of the amount transmitted to the state treasurer pursuant to the provisions of the master settlement agreement, other than attorney fees and costs, during the preceding fiscal year; except that the amount so appropriated to the fund in any fiscal year shall not exceed eight million dollars. The general assembly shall appropriate the amount specified in this subsection (2) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.~~

~~(b) Repealed:~~

~~(3) It is the intent of the general assembly that general fund moneys not be appropriated to fund the program:~~

SECTION 18. Part 8 of article 3.5 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25-3.5-808. Tobacco education, prevention, and cessation programs - funding. THE PROGRAMS UNDER THIS PART 8 SHALL BE FUNDED BY MONEYS ANNUALLY APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DEPARTMENT FROM

THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN SECTION 24-22-117, C.R.S.

SECTION 19. Part XVI (10) (A) (5) of section 2 of chapter 427, Session Laws of Colorado 2004, as amended by section 1 of Senate Bill 05-123, enacted at the First Regular Session of the Sixty-fifth General Assembly, is amended to read:

Section 2. **Appropriation.**

ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM				
		GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
\$	\$	\$	\$	\$	\$	\$

PART XVI

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

(10) PREVENTION SERVICES DIVISION

(A) Prevention Programs

(5) Tobacco Education and Prevention

Personal Services	611,834				611,834 ^a	
					(3.0 FTE)	
Operating Expenses	44,998				44,998 ^a	
Tobacco Program Fund	13,099,471				13,099,471 ^b	
Tobacco Cessation and Prevention Grants	12,442,639				12,442,639 ^a	
American Legacy Foundation Tobacco Grant	<u>676,135</u>				676,135 ^c	
	26,875,077				(4.5 FTE)	

^a These amounts shall be from the Tobacco Program Fund created in Section 25-3.5-807, C.R.S.

^b ~~This amount~~ OF THIS AMOUNT, \$11,746,971 shall be from the Tobacco Litigation Settlement Cash Fund created in Section 24-22-115, C.R.S., pursuant to Section 24-75-1104 (1) (d), C.R.S. AND \$1,352,500 SHALL BE FROM THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN SECTION 24-22-117 (2) (c) (I), C.R.S. PURSUANT TO SECTION 24-22-117 (2) (c) (II), C.R.S.

^c This amount shall be from the American Legacy Foundation.

SECTION 20. Adjustments to the 2005 Long Bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2005, shall be adjusted as follows:

(1) The appropriation to the department of public health and environment, prevention services division, prevention programs, tobacco education and prevention, tobacco program fund, is decreased by four million four hundred thirty-eight thousand eight hundred ninety-three dollars (\$4,438,893). Said sum shall be from the tobacco litigation settlement cash fund created in section 24-22-115 (1), Colorado Revised Statutes.

(2) The appropriation to the department of public health and environment, prevention services division, prevention programs, tobacco education and prevention, tobacco program fund, is increased by four million four hundred thirty-eight thousand eight hundred ninety-three dollars (\$4,438,893). Said sum shall be from the tobacco education programs fund created in section 24-22-117 (2) (c) (I), Colorado Revised Statutes, pursuant to section 24-22-117 (2) (c) (II), Colorado Revised Statutes.

SECTION 21. Effective date - applicability. (1) Except as provided in subsection (2) of this section, this act shall take effect upon passage.

(2) Section 1 of this act shall take effect only if House Bill 05-1262 is not enacted at the First Regular Session of the Sixty-fifth General Assembly and does not become law.

(3) Sections 2 through 14 of this act shall apply to taxes levied and collected pursuant to section 21 of article X of the state constitution on and after January 1, 2005.

SECTION 22. 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.

Approved: June 2, 2005