

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

**INTRODUCED**

LLS NO. 19-0825.01 Ed DeCecco x4216

**HOUSE BILL 19-1333**

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**A BILL FOR AN ACT**

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

### 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.

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

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

4 **PART 4**

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

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

11 (2) AT THE ELECTION HELD ON NOVEMBER 5, 2019, THE  
12 SECRETARY OF STATE SHALL SUBMIT TO THE REGISTERED ELECTORS OF  
13 THE STATE FOR THEIR APPROVAL OR REJECTION THE FOLLOWING BALLOT  
14 ISSUE: "SHALL STATE TAXES BE INCREASED BY \$\_\_\_\_ ANNUALLY BY  
15 IMPOSING A TAX ON NICOTINE LIQUIDS USED IN E-CIGARETTES THAT IS  
16 EQUAL TO THE TOTAL STATE TAX ON TOBACCO PRODUCTS, INCREASING  
17 THE TOBACCO PRODUCTS TAX BY 22% OF THE MANUFACTURER'S LIST  
18 PRICE, AND INCREASING THE CIGARETTE TAX BY 8.75 CENTS PER  
19 CIGARETTE, AND USING THE REVENUE TO INVEST IN COLORADANS' HEALTH

1 AND EDUCATION, SPECIFICALLY PROGRAMS THAT REDUCE THE USE OF  
2 TOBACCO AND NICOTINE PRODUCTS, PROVIDE BEHAVIORAL HEALTH AND  
3 SUBSTANCE USE SERVICES FOR CHILDREN AND YOUTH, LOWER THE COST  
4 OF HEALTH CARE, ENHANCE THE VOLUNTARY COLORADO PRESCHOOL  
5 PROGRAM AND MAKE IT WIDELY AVAILABLE, PROVIDE EXPANDED  
6 LEARNING OPPORTUNITIES FOR COLORADO'S CHILDREN AND YOUTH, AND  
7 MAINTAIN THE FUNDING FOR PROGRAMS THAT CURRENTLY RECEIVE  
8 REVENUE FROM TOBACCO TAXES, WITH ANNUAL AUDITS ON THE USE OF  
9 THE NEW TAX REVENUE AND WITH THE STATE KEEPING AND SPENDING THE  
10 NEW TAX REVENUE NOTWITHSTANDING ANY LIMITATIONS PROVIDED BY  
11 LAW?"

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

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

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

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

23 **39-28-103. Tax levied.** (1) PRIOR TO JANUARY 1, 2020, there is  
24 levied and shall be collected and paid to the department a tax upon the  
25 sale of cigarettes by wholesalers of ten mills on each cigarette.

26 (2) ON AND AFTER JANUARY 1, 2020, A TAX OF NINE AND  
27 SEVENTY-FIVE ONE HUNDREDTHS CENTS PER CIGARETTE IS LEVIED ON THE

1 SALE OF CIGARETTES BY WHOLESALERS. THE WHOLESALER SHALL PAY THE  
2 TAX TO THE DEPARTMENT, WHICH SHALL COLLECT THE TAX.

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

5 **39-28-104. Evidence of payment of tax - credits - redemptions.**

6 (1) (a) Payment of the taxes imposed by ~~the provisions of this article~~  
7 ARTICLE 28 and section 21 of article X of the state constitution shall be  
8 evidenced by the affixing of stamps to, or by an imprint or impression by  
9 suitable metering machines approved by the department on, packages  
10 containing cigarettes. The department shall procure stamps of such design  
11 and legend as it deems necessary and suitable for the purpose. Except as  
12 provided in ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF  
13 THIS SECTION, the department shall sell such stamps for cash to licensed  
14 wholesalers at a discount of four percent of their face value for sales  
15 occurring ~~prior to July 1, 2003, or on or after July 1, 2005, and three~~  
16 ~~percent of their face value for sales occurring on or after July 1, 2003, but~~  
17 ~~before July 1, 2005~~ BUT BEFORE JANUARY 1, 2020, AND FOUR-TENTHS  
18 PERCENT OF THEIR FACE VALUE FOR SALES OCCURRING ON AND AFTER  
19 JANUARY 1, 2020, if payment is made on or before the tenth day of the  
20 month following the month in which the purchase is made to cover the  
21 licensed wholesaler's expense in the collection and remittance of such tax;  
22 but, if any licensed wholesaler is delinquent in remitting such payment,  
23 other than in unusual circumstances shown to the satisfaction of the  
24 executive director of the department, the licensed wholesaler shall not be  
25 allowed to retain any amounts to cover his or her expense in collecting  
26 and remitting said tax, and, in addition, the penalty imposed under section  
27 39-28-108 (2) shall apply. The department shall keep accurate records of

1 all stamps sold to each wholesaler. No wholesaler shall sell or transfer  
2 any stamps purchased pursuant to ~~the provisions of this article~~ ARTICLE  
3 28.

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

6 **39-28-107. Unstamped packages - tax collected - fines - subject**  
7 **to confiscation - tobacco tax enforcement cash fund - creation.**

8 (1) (b) There is hereby created in the state treasury the tobacco tax  
9 enforcement cash fund. The fund ~~shall consist of moneys~~ CONSISTS OF  
10 MONEY deposited therein pursuant to ~~paragraph (a) of this subsection (1)~~  
11 SUBSECTION (1)(a) OF THIS SECTION and ~~section 39-28.5-106 (4)~~ SECTIONS  
12 39-28.5-106 (4) AND 39-28.6-108 (4). The ~~moneys~~ MONEY in the fund  
13 ~~shall be~~ IS subject to annual appropriation by the general assembly to the  
14 department for the purpose of enforcing ~~the provisions of this article~~  
15 ARTICLE 28 and ~~article 28.5~~ ARTICLES 28.5 AND 28.6 of this ~~title~~ TITLE 39.  
16 Any ~~moneys~~ MONEY not appropriated by the general assembly ~~shall~~  
17 ~~remain~~ REMAINS in the fund and shall not be transferred or revert to the  
18 general fund at the end of any fiscal year.

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

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

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

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

20           **39-28-110.5. Revenue and spending limitations.**  
21 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR  
22 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE  
23 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE  
24 GENERATED BY THE EIGHT AND SEVENTY-FIVE ONE-HUNDREDTHS CENTS  
25 PER CIGARETTE TAX INCREASE SET FORTH IN SECTION 39-28-103 (2) AS  
26 APPROVED BY THE VOTERS' APPROVAL OF THE BALLOT ISSUE SET FORTH IN  
27 SECTION 39-28-401 AT THE STATEWIDE ELECTION IN NOVEMBER 2019 MAY



1 BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE.

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

4 **39-28.5-102. Tax levied.** (1) PRIOR TO JANUARY 1, 2020, there  
5 is levied and shall be collected a tax upon the sale, use, consumption,  
6 handling, or distribution of all tobacco products in this state at the rate of  
7 twenty percent of the manufacturer's list price of such tobacco products.  
8 ~~Such tax shall be~~ ON AND AFTER JANUARY 1, 2020, THERE IS LEVIED A  
9 TAX UPON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF  
10 ALL TOBACCO PRODUCTS IN THIS STATE AT THE RATE OF FORTY-TWO  
11 PERCENT OF THE MANUFACTURER'S LIST PRICE OF SUCH TOBACCO  
12 PRODUCTS. THE TAX IS COLLECTED BY THE DEPARTMENT AND IS imposed  
13 at the time the distributor:

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

16 **39-28.5-106. Returns and remittance of tax - civil penalty.**  
17 (2) Every distributor shall file a return with the department by the  
18 twentieth day of the month following the month reported and shall  
19 therewith remit the amount of tax due, less three and one-third percent of  
20 any sum so remitted that consists of tax collected ~~before July 1, 2003, or~~  
21 ~~on or after July 1, 2005, and less two and one-third percent of any sum so~~  
22 ~~remitted that consists of tax collected on or after July 1, 2003, but before~~  
23 ~~July 1, 2005~~ BUT BEFORE JANUARY 1, 2020, AND LESS ONE AND  
24 SIX-TENTHS PERCENT OF ANY SUM SO REMITTED THAT CONSISTS OF TAX  
25 COLLECTED ON OR AFTER JANUARY 1, 2020, to cover the distributor's  
26 expense in the collection and remittance of said tax; except that no part  
27 of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of

1 article X of the state constitution shall be subject to the discount provided  
2 for in this subsection (2). If any distributor is delinquent in remitting said  
3 tax, other than in unusual circumstances shown to the satisfaction of the  
4 executive director of the department, the distributor shall not be allowed  
5 to retain any amounts to cover his or her expense in collecting and  
6 remitting said tax, and in addition the penalty imposed under section  
7 39-28.5-110 (2)(b) shall apply.

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

10 **39-28.5-108. Distribution of tax collected.** (1) (a) All ~~sums of~~  
11 money received and collected in payment of the tax imposed by ~~the~~  
12 ~~provisions of this article~~ ARTICLE 28.5, except license fees received under  
13 section 39-28.5-104 and the ~~moneys~~ MONEY collected pursuant to section  
14 39-28.5-102.5, shall be transmitted to the state treasurer, who shall  
15 distribute such money as follows: Fifteen percent to the general fund and  
16 eighty-five percent to the old age pension fund.

17 (b) THE NET REVENUE THAT IS CREDITED TO THE OLD AGE PENSION  
18 FUND CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE  
19 CONSTITUTION IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION  
20 AND SECTION 2 (a) OF ARTICLE XXIV OF THE STATE CONSTITUTION IS  
21 TRANSFERRED TO THE GENERAL FUND IN ACCORDANCE WITH SECTION 7 (c)  
22 OF ARTICLE XXIV OF THE STATE CONSTITUTION. OF THIS MONEY OR THE  
23 FIFTEEN PERCENT THAT IS DIRECTLY CREDITED TO THE GENERAL FUND,  
24 THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE  
25 TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX INCREASE SET FORTH  
26 IN SECTION 39-28.5-102 (1) AS APPROVED BY THE VOTERS' APPROVAL OF  
27 THE BALLOT ISSUE SET FORTH IN SECTION 39-28-401 AT THE STATEWIDE

1 ELECTION IN NOVEMBER 2019 TO THE BEHAVIORAL HEALTH AND HEALTH  
2 CARE AFFORDABILITY AND ACCESSIBILITY CASH FUND AND THE  
3 PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 24-22-118 AND  
4 THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND  
5 CREATED IN SECTION 22-86.5-106(1), AS REQUIRED BY SECTION 24-22-118  
6 (2).

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

9 **39-28.5-108.5. Revenue and spending limitations.**  
10 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR  
11 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE  
12 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE  
13 GENERATED BY THE TWENTY-TWO PERCENT TAX INCREASE IMPOSED  
14 UNDER THIS ARTICLE 28.5 AS APPROVED BY THE VOTERS' APPROVAL OF  
15 THE BALLOT ISSUE SET FORTH IN SECTION 39-28-401 AT THE STATEWIDE  
16 ELECTION IN NOVEMBER 2019 MAY BE COLLECTED AND SPENT AS A  
17 VOTER-APPROVED REVENUE CHANGE.

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

20 **ARTICLE 28.6**

21 **Nicotine Products Tax**

22 **39-28.6-101. Legislative declaration.** (1) THE GENERAL  
23 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

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

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

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

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

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

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

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

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

23 **39-28.6-102. Definitions.** AS USED IN THIS ARTICLE 28.6, UNLESS  
24 THE CONTEXT OTHERWISE REQUIRES:

25 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

26 (2) "DISTRIBUTOR" MEANS EVERY PERSON WHO FIRST RECEIVES  
27 NICOTINE PRODUCTS IN THIS STATE, EVERY PERSON WHO SELLS NICOTINE

1 PRODUCTS IN THIS STATE WHO IS PRIMARILY LIABLE FOR THE NICOTINE  
2 PRODUCTS TAX ON THE NICOTINE PRODUCTS, AND EVERY PERSON WHO  
3 FIRST SELLS OR OFFERS FOR SALE IN THIS STATE NICOTINE PRODUCTS  
4 IMPORTED INTO THIS STATE FROM ANY OTHER STATE OR COUNTRY.

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

8 (4) "NICOTINE PRODUCT" MEANS A PRODUCT THAT CONTAINS  
9 NICOTINE INGESTED INTO THE BODY, WHETHER BY VAPORIZING, CHEWING,  
10 SMOKING, ABSORBING, DISSOLVING, INHALING, SNORTING, SNIFFING,  
11 AEROSOLIZING, OR BY ANY OTHER MEANS, AND THAT IS NOT:

12 (a) A CIGARETTE;

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

14 OR

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

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

25 **39-28.6-103. Tax levied.** (1) ON AND AFTER JANUARY 1, 2020,  
26 THERE IS LEVIED A TAX UPON THE SALE, USE, CONSUMPTION, HANDLING,  
27 OR DISTRIBUTION OF ALL NICOTINE PRODUCTS IN THIS STATE AT THE RATE

1 OF SIXTY-TWO PERCENT OF THE MANUFACTURER'S LIST PRICE OF THE  
2 NICOTINE PRODUCTS. THE TAX IS COLLECTED BY THE DEPARTMENT AND IS  
3 IMPOSED AT THE TIME THE DISTRIBUTOR:

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

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

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

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

16 **39-28.6-105. Licensing required - rules - fines.** BEGINNING  
17 MARCH 1, 2020, IT IS UNLAWFUL FOR ANY PERSON TO ENGAGE IN THE  
18 BUSINESS OF A DISTRIBUTOR OF NICOTINE PRODUCTS AT ANY PLACE OF  
19 BUSINESS WITHOUT FIRST OBTAINING A LICENSE GRANTED AND ISSUED BY  
20 THE DEPARTMENT, WHICH LICENSE IS IN EFFECT UNTIL JUNE 30 FOLLOWING  
21 THE DATE OF ISSUE, UNLESS SOONER REVOKED. THE DEPARTMENT SHALL  
22 GRANT A LICENSE ONLY TO A PERSON WHO OWNS OR OPERATES THE PLACE  
23 FROM WHICH THE PERSON ENGAGES IN THE BUSINESS OF A DISTRIBUTOR OF  
24 NICOTINE PRODUCTS, AND, IF THE BUSINESS IS OPERATED IN TWO OR MORE  
25 SEPARATE PLACES BY THE PERSON, A SEPARATE LICENSE FOR EACH PLACE  
26 OF BUSINESS IS REQUIRED. A LICENSE MAY BE RENEWED ONLY UPON  
27 TIMELY APPLICATION AND PAYMENT OF THE REQUIRED FEE PRIOR TO

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

23 **39-28.6-106. Books and records to be preserved.** (1) EVERY  
24 DISTRIBUTOR SHALL KEEP AT EACH LICENSED PLACE OF BUSINESS  
25 COMPLETE AND ACCURATE RECORDS FOR THAT PLACE OF BUSINESS,  
26 INCLUDING ITEMIZED INVOICES OF NICOTINE PRODUCTS HELD, PURCHASED,  
27 MANUFACTURED, BROUGHT IN OR CAUSED TO BE BROUGHT IN FROM

1 WITHOUT THE STATE, OR SHIPPED OR TRANSPORTED TO RETAILERS IN THIS  
2 STATE, AND OF ALL SALES OF NICOTINE PRODUCTS MADE, EXCEPT SALES TO  
3 THE ULTIMATE CONSUMER.

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

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

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

25 (b) THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEY FOR ANY  
26 EXPENSES INCURRED BY THE DEPARTMENT RELATED TO ENFORCING  
27 SUBSECTION (4)(a) OF THIS SECTION FROM THE TOBACCO TAX



1 ENFORCEMENT CASH FUND CREATED IN SECTION 39-28-107 (1)(b).

2 **39-28.6-107. Returns and remittance of tax - civil penalty -**

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

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

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

25 (4) (a) ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,  
26 PARTNERSHIP, OR CORPORATION, OTHER THAN A DISTRIBUTOR, IN  
27 POSSESSION OF NICOTINE PRODUCTS FOR WHICH TAXES HAVE NOT

1 OTHERWISE BEEN REMITTED PURSUANT TO THIS SECTION IS LIABLE AND  
2 RESPONSIBLE FOR THE UNCOLLECTED TAX THAT IS LEVIED PURSUANT TO  
3 SECTION 39-28.6-103 ON BEHALF OF THE DISTRIBUTOR WHO FAILED TO PAY  
4 THE TAX. THE PERSON OR ENTITY SHALL MAKE THE PAYMENT TO THE  
5 DEPARTMENT WITHIN THIRTY DAYS OF FIRST TAKING POSSESSION OF THE  
6 NICOTINE PRODUCT. THE DEPARTMENT SHALL ESTABLISH A FORM TO BE  
7 USED FOR REMITTANCE OF THE PAYMENT. THE DEPARTMENT SHALL REMIT  
8 THE PROCEEDS IT RECEIVES PURSUANT TO THIS SUBSECTION (4)(a) TO THE  
9 STATE TREASURER, AND THE STATE TREASURER SHALL CREDIT FIFTEEN  
10 PERCENT OF THE PROCEEDS TO THE TOBACCO TAX ENFORCEMENT CASH  
11 FUND CREATED IN SECTION 39-28-107 (1)(b) AND EIGHTY-FIVE PERCENT  
12 TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF ARTICLE XXIV  
13 OF THE STATE CONSTITUTION.

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

26 **39-28.6-108. When credit may be obtained for tax paid.**  
27 WHERE NICOTINE PRODUCTS, UPON WHICH THE TAX IMPOSED BY THIS

1 ARTICLE 28.6 HAS BEEN REPORTED AND PAID, ARE SHIPPED OR  
2 TRANSPORTED BY THE DISTRIBUTOR TO RETAILERS WITHOUT THE STATE TO  
3 BE SOLD BY THOSE RETAILERS OR ARE RETURNED TO THE MANUFACTURER  
4 BY THE DISTRIBUTOR OR DESTROYED BY THE DISTRIBUTOR, CREDIT OF  
5 SUCH TAX MAY BE MADE TO THE DISTRIBUTOR IN ACCORDANCE WITH  
6 REGULATIONS PRESCRIBED BY THE DEPARTMENT.

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

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

22 **39-28.6-110. Taxation by cities and towns.** NO PROVISION OF  
23 THIS ARTICLE 28.6 PREVENTS A CITY OR TOWN FROM THE IMPOSING,  
24 LEVYING, AND COLLECTING OF ANY TAX UPON SALES OF NICOTINE  
25 PRODUCTS OR UPON THE OCCUPATION OR PRIVILEGE OF SELLING NICOTINE  
26 PRODUCTS, OR AFFECTS ANY EXISTING AUTHORITY OF LOCAL  
27 MUNICIPALITIES TO IMPOSE A TAX ON NICOTINE PRODUCTS TO BE USED FOR

1 LOCAL AND MUNICIPAL PURPOSES.

2 **39-28.6-111. Prohibited acts - penalties.** (1) BEGINNING MARCH  
3 1, 2020, IT IS UNLAWFUL FOR ANY DISTRIBUTOR TO SELL AND DISTRIBUTE  
4 ANY NICOTINE PRODUCTS IN THIS STATE WITHOUT A LICENSE AS REQUIRED  
5 IN SECTION 39-28.6-105, OR TO WILLFULLY MAKE ANY FALSE OR  
6 FRAUDULENT RETURN OR FALSE STATEMENT ON ANY RETURN, OR TO  
7 WILLFULLY EVADE THE PAYMENT OF THE TAX, OR ANY PART THEREOF, AS  
8 IMPOSED BY THIS ARTICLE 28.6. ANY DISTRIBUTOR OR AGENT THEREOF  
9 WHO WILLFULLY VIOLATES ANY PROVISION OF THIS ARTICLE 28.6 IS  
10 SUBJECT TO PUNISHMENT AS PROVIDED BY SECTION 39-21-118.

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

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

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

26 **39-28.6-112. Revenue and spending limitations.**  
27 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR

1 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE  
2 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUE  
3 GENERATED BY THE TAX IMPOSED BY THIS ARTICLE 28.6 AS APPROVED BY  
4 THE VOTERS' APPROVAL OF THE BALLOT ISSUE SET FORTH IN SECTION  
5 39-28-401 AT THE STATEWIDE ELECTION IN NOVEMBER 2019 MAY BE  
6 COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE.

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

9 **24-1-115. Department of education - creation.** (17) THE  
10 DEPARTMENT OF EDUCATION INCLUDES THE COLORADO EXPANDED  
11 LEARNING OPPORTUNITIES AGENCY ESTABLISHED IN SECTION 22-86.5-104,  
12 AND ITS POWERS, DUTIES, AND FUNCTIONS, AS IF THE AGENCY WERE  
13 TRANSFERRED BY A **TYPE 1** TRANSFER TO THE DEPARTMENT OF  
14 EDUCATION.

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

17 **ARTICLE 86.5**

18 **Colorado Expanded Learning**

19 **Opportunities Program**

20 **22-86.5-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 86.5  
21 IS THE "COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM  
22 ACT".

23 **22-86.5-102. Legislative declaration.** (1) THE GENERAL  
24 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

25 (a) EXPANDED LEARNING OPPORTUNITIES ARE CRITICAL FOR ALL  
26 CHILDREN AND YOUTH BECAUSE THESE OPPORTUNITIES, WHICH OCCUR  
27 OUTSIDE OF THEIR REGULAR SCHOOL SCHEDULES, PROVIDE ESSENTIAL

1 ACADEMIC AND LIFE SKILLS FOR CHILDREN AND YOUTH TO THRIVE IN  
2 SCHOOL AND LIFE;

3 (b) THESE OPPORTUNITIES ALLOW CHILDREN AND YOUTH TO LEARN  
4 NEW SKILLS, PARTICIPATE IN OUTDOOR ACTIVITIES, BE EXPOSED TO  
5 DIFFERENT AND CHALLENGING REAL WORLD EXPERIENCES, AND RECEIVE  
6 EXPOSURE TO MUSIC, DANCE, ARTS, AND CAREER AND TECHNICAL  
7 EDUCATION PROGRAMS;

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

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

12 **22-86.5-103. Definitions.** AS USED IN THIS ARTICLE 86.5, UNLESS  
13 THE CONTEXT OTHERWISE REQUIRES:

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

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

21 (3) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE COLORADO  
22 EXPANDED LEARNING OPPORTUNITIES AGENCY CREATED IN SECTION  
23 22-86.5-104 (2).

24 (4) "ELIGIBLE STUDENT" MEANS A PERSON WHO IS AT LEAST FIVE  
25 YEARS OLD BUT LESS THAN TWENTY-ONE YEARS OLD AND WHO IS ELIGIBLE  
26 FOR ADMISSION TO PUBLIC SCHOOL WITHIN THE STATE OR ANY THREE OR  
27 FOUR YEAR OLD WHO RESIDES IN THE STATE.

1           (5) "LOCAL EDUCATION PROVIDER" MEANS A SCHOOL DISTRICT, A  
2 CHARTER SCHOOL AUTHORIZED BY A SCHOOL DISTRICT PURSUANT TO PART  
3 1 OF ARTICLE 30.5 OF THIS TITLE 22, A CHARTER SCHOOL AUTHORIZED BY  
4 THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE  
5 30.5 OF THIS TITLE 22, OR A BOARD OF COOPERATIVE SERVICES CREATED  
6 AND OPERATING PURSUANT TO ARTICLE 5 OF THIS TITLE 22 THAT  
7 OPERATES ONE OR MORE PUBLIC SCHOOLS.

8           (6) (a) "OUT-OF-SCHOOL LEARNING EXPERIENCE" MEANS ANY  
9 PROGRAM, SERVICE, OR ACTIVITY THAT PROVIDES SUPPLEMENTAL  
10 EDUCATIONAL OR DEVELOPMENTAL SUPPORT TO ELIGIBLE STUDENTS  
11 OUTSIDE OF NORMAL SCHOOL OPERATIONS. "OUT-OF-SCHOOL LEARNING  
12 EXPERIENCE" INCLUDES TUTORING AND SUPPLEMENTAL ACADEMIC  
13 INSTRUCTION INCLUDING READING, MATHEMATICS, SCIENCE, AND  
14 WRITING; TARGETED SUPPORT FOR SPECIAL NEEDS AND LEARNING  
15 DISABILITIES OR ENGLISH LANGUAGE OR FOREIGN LANGUAGE  
16 ACQUISITION; IN-DEPTH PROGRAMS THAT TEACH CHILDREN AND YOUTH  
17 NEW SKILLS IN THE CONTEXT OF OUTDOOR ACTIVITIES; CHALLENGING REAL  
18 WORLD EXPERIENCES THAT BUILD ESSENTIAL SKILL SETS; AND PROGRAMS  
19 THAT PROVIDE MUSIC, DANCE, ARTS, OR CAREER AND TECHNICAL  
20 EDUCATION TRAINING.

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

22           (I) INSTRUCTION, SERVICES, MATERIALS, CURRICULA, OR  
23 PROGRAMS PROVIDED AS PART OF A NORMAL COURSE OF STUDY  
24 CONDUCTED IN ACCORDANCE WITH A STUDENT ATTENDING A  
25 KINDERGARTEN-THROUGH-TWELFTH PUBLIC OR PRIVATE SCHOOL OR A  
26 HOME SCHOOL;

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

1 SCHOOL;

2 (III) ANY FORM OF RELIGIOUS INSTRUCTION;

3 (IV) MATERIALS THAT MAY BE USED AT HOME WITHOUT ANY

4 FURTHER INTERACTION WITH A PROVIDER, EXCEPT AS OTHERWISE

5 PROVIDED IN SECTION 22-86.5-105 (8); OR

6 (V) CHILDCARE PROVIDED DURING NORMAL SCHOOL HOURS OR

7 PRESCHOOL.

8 (7) "PARENT" MEANS A PARENT OR LEGAL GUARDIAN OF AN

9 ELIGIBLE STUDENT.

10 (8) "PROGRAM" MEANS THE COLORADO EXPANDED LEARNING

11 OPPORTUNITIES PROGRAM CREATED AND ADMINISTERED UNDER THIS

12 ARTICLE 86.5.

13 (9) "PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES AN

14 OUT-OF-SCHOOL LEARNING EXPERIENCE.

15 **22-86.5-104. Colorado expanded learning opportunities**

16 **agency - board - created - rules.** (1) THE COLORADO EXPANDED

17 LEARNING OPPORTUNITIES AGENCY IS ESTABLISHED AS AN INDEPENDENT

18 AGENCY IN THE DEPARTMENT OF EDUCATION. THE AGENCY EXERCISES ITS

19 POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS AS IF IT WERE

20 TRANSFERRED TO THE DEPARTMENT BY A **TYPE 1** TRANSFER UNDER THE

21 PROVISIONS OF THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968",

22 ARTICLE 1 OF TITLE 24.

23 (2)(a) THE AGENCY IS GOVERNED AND ADMINISTERED BY A BOARD

24 OF DIRECTORS. THE BOARD CONSISTS OF EIGHT MEMBERS, WITH THE

25 GOVERNOR AND EITHER THE SPEAKER OR MINORITY LEADER OF THE HOUSE

26 OF REPRESENTATIVES, WHOMEVER IS NOT AFFILIATED WITH THE SAME

27 POLITICAL PARTY AS THE GOVERNOR, EACH APPOINTING FOUR MEMBERS.



1     EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (2)(a), LEGISLATIVE  
2     APPOINTMENTS ARE GOVERNED BY SECTION 2-2-325. MEMBERS  
3     APPOINTED BY THE GOVERNOR SERVE FOR TWO-YEAR TERMS AND AT THE  
4     PLEASURE OF THE GOVERNOR. THE LEGISLATIVE APPOINTING AUTHORITY  
5     AND THE GOVERNOR SHALL COORDINATE THEIR SELECTIONS SO THAT AT  
6     LEAST TWO MEMBERS OF THE BOARD ARE FROM THE WESTERN SLOPE AND  
7     TWO MEMBERS ARE FROM THE EASTERN SLOPE OUTSIDE OF THE FRONT  
8     RANGE. INITIAL APPOINTMENTS MUST BE MADE BY FEBRUARY 1, 2020.  
9     BOARD MEMBERS MAY SERVE UP TO THREE CONSECUTIVE TERMS; EXCEPT  
10    THAT THE INITIAL LEGISLATIVE APPOINTMENTS WHOSE TERM EXPIRES  
11    UPON THE COMMENCEMENT OF THE SEVENTY-THIRD GENERAL ASSEMBLY  
12    MAY SERVE UP TO FOUR CONSECUTIVE TERMS.

13           (b) BOARD MEMBERS ARE NOT ENTITLED TO COMPENSATION BUT  
14    ARE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY  
15    EXPENSES INCURRED IN THE PERFORMANCE OF THEIR BOARD DUTIES.  
16    DURING THEIR TERMS OF SERVICE, BOARD MEMBERS SHALL NOT BE  
17    EMPLOYED BY, CONTRACT WITH, OR BE BOARD MEMBERS OF  
18    ORGANIZATIONS, PUBLIC AGENCIES, OR INDIVIDUALS THAT PROVIDE OR  
19    OFFER TO PROVIDE OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE  
20    PROGRAM.

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

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

25           (b) DEVELOP CRITERIA THAT THE ADMINISTERING NONPROFIT  
26    ORGANIZATION USE TO DETERMINE WHICH PROVIDERS ARE CERTIFIED TO  
27    RECEIVE A PAYMENT UNDER THE PROGRAM;

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

4 (d) ANALYZE THE EXPENSE FOR AND QUALITY OF PROGRAMS,  
5 SERVICES, OR ACTIVITIES OFFERED BY PROVIDERS THAT ARE ENGAGED IN  
6 THE CERTIFICATION PROCESS AND USE SUCH ANALYSIS TO INFORM THE  
7 PROVIDER CERTIFICATION PROCESS;

8 (e) DETERMINE THE AMOUNT OF MONEY THAT THE ADMINISTERING  
9 NONPROFIT ORGANIZATION IS PERMITTED TO RETAIN AND SPEND ON  
10 ADMINISTRATIVE EXPENSES;

11 (f) ADOPT STANDARDS TO ENSURE THE SAFETY OF ELIGIBLE  
12 STUDENTS, INCLUDING BACKGROUND CHECKS FOR PROVIDERS WHO COME  
13 IN CONTACT WITH STUDENTS;

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

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

19 (i) ADOPT STANDARDS TO ENSURE THAT AN ELIGIBLE STUDENT IS  
20 PARTICIPATING IN AN OUT-OF-SCHOOL LEARNING EXPERIENCE THROUGH  
21 THE PROGRAM THAT IS NOT PART OF A NONPUBLIC HOME-BASED  
22 EDUCATIONAL PROGRAM.

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

25 (I) MAXIMIZE THE NUMBER AND DIVERSITY OF PROVIDERS THAT  
26 PARENTS CAN CHOOSE AND ENSURE THAT SMALL COMMUNITY-BASED  
27 PROVIDERS ARE ABLE TO PARTICIPATE IN THE PROGRAM;

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

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

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

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

22           (6) THE BOARD SHALL ADOPT SUCH RULES AS MAY BE NECESSARY  
23 TO ADMINISTER THE PROVISIONS OF THIS ARTICLE 86.5.

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

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

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

12 (2) THE AGENCY SHALL SELECT OR CREATE A NONPROFIT  
13 ORGANIZATION TO ADMINISTER THE PROGRAM NO LATER THAN AUGUST 1,  
14 2020. THE DUTIES OF THE ADMINISTERING NONPROFIT ORGANIZATION  
15 INCLUDE:

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

19 (b) ENTERING INTO AGREEMENTS WITH APPROVED PROVIDERS;

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

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

25 (e) COMPENSATING PROVIDERS FOR PARTICIPATING ELIGIBLE  
26 STUDENTS, WHICH COMPENSATION MAY INCLUDE EXPENSES FOR  
27 TRANSPORTATION OF AN ELIGIBLE STUDENT TO AND FROM THE

1 OUT-OF-SCHOOL LEARNING EXPERIENCE; AND

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

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

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

24 (4) THE ADMINISTERING NONPROFIT ORGANIZATION SHALL  
25 COMPLY WITH ANY REQUIREMENTS ESTABLISHED BY THE BOARD BY RULE  
26 OR OTHERWISE.

27 (5) THE ADMINISTERING NONPROFIT ORGANIZATION SHALL NOT

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

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

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

24 (8) BASED ON INFORMATION FROM THE ADMINISTERING NONPROFIT  
25 ORGANIZATION THAT A PARTICULAR AREA HAS AN INSUFFICIENT NUMBER  
26 OF CERTIFIED PROVIDERS, THE AGENCY MAY DESIGNATE ELIGIBLE  
27 STUDENTS IN THE AREA TO RECEIVE A WAIVER FOR THE ORGANIZATION TO

1 PAY A CERTIFIED PROVIDER FOR OUT-OF-SCHOOL LEARNING EXPERIENCES  
2 THAT ARE COLLABORATIVE MATERIALS THAT MAY BE DONE IN THE  
3 ELIGIBLE STUDENT'S HOME WITHOUT INTERACTION WITH THE PROVIDER.

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

12 **22-86.5-106. Colorado expanded learning opportunities cash**  
13 **fund - created.** (1) THE COLORADO EXPANDED LEARNING OPPORTUNITIES  
14 CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS HEREBY  
15 CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY  
16 CREDITED TO THE FUND PURSUANT TO SECTION 24-22-118 (2)(a). THE  
17 STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED  
18 FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE COLORADO  
19 EXPANDED LEARNING OPPORTUNITIES CASH FUND TO THE FUND.

20 (2) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE  
21 AGENCY TO GRANT TO THE ADMINISTERING NONPROFIT ORGANIZATION FOR  
22 OPERATION OF THE PROGRAM AND FOR THE AGENCY'S DIRECT AND  
23 INDIRECT EXPENSES INCURRED IN THE ADMINISTRATION OF THIS ARTICLE  
24 86.5, WHICH EXPENSES INCLUDE THE COSTS OF THE REPORT REQUIRED  
25 UNDER SECTION 22-86.5-106 (9). FOR THE 2019-20 AND 2020-21 FISCAL  
26 YEARS, THE AGENCY'S ADMINISTRATIVE EXPENSES FOR THE PROGRAM IN  
27 A FISCAL YEAR SHALL NOT EXCEED THREE PERCENT OF THE MONEY

1 TRANSFERRED TO THE FUND IN THE FISCAL YEAR. FOR FISCAL YEARS  
2 COMMENCING ON OR AFTER JULY 1, 2021, THE AGENCY'S ADMINISTRATIVE  
3 EXPENSES SHALL NOT EXCEED THREE PERCENT OF THE MONEY  
4 TRANSFERRED TO THE FUND IN THE 2020-21 FISCAL YEAR.

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

8 **22-86.5-107. Annual audits.** THE ADMINISTERING NONPROFIT  
9 ORGANIZATION SHALL CONTRACT WITH A THIRD PARTY TO PREPARE AN  
10 INDEPENDENT FINANCIAL AUDIT OF THE ADMINISTERING NONPROFIT  
11 ORGANIZATION. THE ORGANIZATION SHALL FILE THE AUDIT WITH THE  
12 AGENCY NO LATER THAN JULY 1 OF EACH YEAR FOR THE PREVIOUS  
13 CALENDAR YEAR. THE AGENCY SHALL MAKE THE AUDIT PUBLICLY  
14 AVAILABLE, BUT BEFORE DOING SO, THE AGENCY SHALL REDACT ANY  
15 PRIVATE INFORMATION.

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

18 **24-22-117. Tobacco tax cash fund - accounts - creation -**  
19 **legislative declaration.** (1) (a) There is hereby created in the state  
20 treasury the tobacco tax cash fund, which fund is referred to in this  
21 section as the "cash fund". The cash fund ~~shall consist~~ CONSISTS of  
22 ~~moneys~~ MONEY collected from the cigarette and tobacco taxes imposed  
23 pursuant to section 21 of article X of the state constitution AND MONEY  
24 TRANSFERRED IN ACCORDANCE WITH SECTION 24-22-118 (3)(c)(II). All  
25 interest and income derived from the deposit and investment of moneys  
26 in the cash fund shall be credited to the cash fund; except that all interest  
27 and income derived from the deposit and investment of moneys in the



1 cash fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal  
2 years shall be credited to the general fund. Any unexpended and  
3 unencumbered moneys remaining in the cash fund at the end of a fiscal  
4 year shall remain in the cash fund and shall not be credited or transferred  
5 to the general fund or any other fund, except as otherwise provided in this  
6 section.

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

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

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

3           **24-22-118. Revenue from nicotine products and additional**  
4 **tobacco tax - behavioral health and health care affordability and**  
5 **accessibility cash fund - preschool programs cash fund - distribution**  
6 **to Colorado expanded learning opportunities cash fund - creation -**  
7 **definitions.** (1) AS USED IN THIS SECTION:

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

12           (b) "CHILDREN AND YOUTH" MEANS ANY PERSON WHO IS  
13 TWENTY-SIX YEARS OF AGE OR YOUNGER.

14           (c) "COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND"  
15 MEANS THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND  
16 CREATED IN SECTION 22-86.5-106 (1).

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

19           (2) THE STATE TREASURER SHALL TRANSFER FROM THE GENERAL  
20 FUND AN AMOUNT EQUAL TO THE TOTAL REVENUE FROM THE TAXES ON  
21 CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS AS  
22 DESCRIBED IN SECTIONS 39-28-110 (1)(b), 39-28.5-108 (1)(b), AND  
23 39-28.6-109 (2) AS FOLLOWS:

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

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

27           (A) THIRTY-FIVE PERCENT OF THE AMOUNT TO THE PRESCHOOL

1 PROGRAMS CASH FUND; AND

2 (B) FIFTEEN PERCENT OF THE AMOUNT TO THE COLORADO

3 EXPANDED LEARNING OPPORTUNITIES CASH FUND;

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

5 (A) THIRTY PERCENT OF THE AMOUNT TO THE PRESCHOOL

6 PROGRAMS CASH FUND; AND

7 (B) TWENTY PERCENT OF THE AMOUNT TO THE COLORADO

8 EXPANDED LEARNING OPPORTUNITIES CASH FUND; AND

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

10 THEREAFTER:

11 (A) TWENTY-SEVEN AND ONE-HALF PERCENT OF THE AMOUNT TO

12 THE PRESCHOOL PROGRAMS CASH FUND; AND

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

14 THE COLORADO EXPANDED LEARNING OPPORTUNITIES CASH FUND.

15 (3) (a) THE BEHAVIORAL HEALTH AND HEALTH CARE

16 AFFORDABILITY AND ACCESSIBILITY CASH FUND IS HEREBY CREATED IN

17 THE STATE TREASURY. THE FUND CONSISTS OF MONEY CREDITED TO THE

18 FUND PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION. THE STATE

19 TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE

20 DEPOSIT AND INVESTMENT OF MONEY IN THE BEHAVIORAL HEALTH AND

21 HEALTH CARE AFFORDABILITY AND ACCESSIBILITY CASH FUND TO THE

22 FUND.

23 (b) THE DEPARTMENTS OF PUBLIC HEALTH AND ENVIRONMENT,

24 HUMAN SERVICES, HEALTH CARE POLICY AND FINANCING, AND EDUCATION

25 SHALL ADMINISTER THE BEHAVIORAL HEALTH AND HEALTH CARE

26 AFFORDABILITY AND ACCESSIBILITY CASH FUND.

27 (c) THE STATE TREASURER SHALL ANNUALLY TRANSFER MONEY

1 FROM THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY AND  
2 ACCESSIBILITY CASH FUND AS FOLLOWS:

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

7 (II) NINE AND ONE-HALF PERCENT TO OFFSET THE DECREASE IN  
8 THE EXISTING REVENUE DISTRIBUTION FROM THE CIGARETTE AND  
9 TOBACCO PRODUCTS TAXES THAT RESULTS FROM THE INCREASE IN THOSE  
10 TAXES APPROVED BY VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER  
11 2019. OF THIS ALLOCATION, THE STATE TREASURER SHALL TRANSFER  
12 SEVENTY-THREE PERCENT TO THE TOBACCO TAX CASH FUND CREATED IN  
13 SECTION 24-22-117 (1) AND TWENTY-SEVEN PERCENT TO THE GENERAL  
14 FUND; EXCEPT THAT THE TOTAL TRANSFERRED UNDER THIS SUBSECTION  
15 (3)(c)(II) SHALL NOT EXCEED FIFTEEN MILLION DOLLARS IN A FISCAL YEAR.

16 (d) (I) FOR ANY FISCAL YEAR THAT COMMENCES PRIOR TO JULY 1,  
17 2023, THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE THE NET  
18 AMOUNT IN THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY  
19 AND ACCESSIBILITY CASH FUND, WHICH IS THE AMOUNT AFTER THE  
20 TRANSFERS REQUIRED BY SUBSECTION (2)(c) OF THIS SECTION, AS  
21 FOLLOWS:

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

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

1           (II) FOR ANY FISCAL YEAR THAT COMMENCES ON OR AFTER JULY  
2   1, 2023, THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE MONEY  
3   FROM THE BEHAVIORAL HEALTH AND HEALTH CARE AFFORDABILITY AND  
4   ACCESSIBILITY CASH FUND FOR ANY OF THE PURPOSES SET FORTH IN  
5   SUBSECTIONS (4) AND (5) OF THIS SECTION, WITH AT LEAST TWENTY  
6   PERCENT OF THE NET AMOUNT APPROPRIATED UNDER EACH SUBSECTION.

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

11          (b) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL  
12   ASSEMBLY, A DEPARTMENT MAY EXPEND MONEY FROM THE BEHAVIORAL  
13   HEALTH AND HEALTH CARE AFFORDABILITY AND ACCESSIBILITY CASH  
14   FUND:

15          (I) TO INCREASE ACCESS TO CARE;

16          (II) FOR HEALTH CARE WORKFORCE DEVELOPMENT;

17          (III) FOR PROGRAMS THAT REDUCE THE COST OF HEALTH CARE,  
18   INCLUDING LOWER PREMIUMS AND REDUCED OUT-OF-POCKET COSTS FOR  
19   CONSUMERS;

20          (IV) TO INCREASE STATE FUNDING FOR THE CHILDREN'S BASIC  
21   HEALTH PLAN CREATED IN ARTICLE 8 OF TITLE 25.5; OR

22          (V) FOR ANY OTHER USE THAT IS CONSISTENT WITH THE PURPOSE  
23   SPECIFIED IN SUBSECTION (4)(a) OF THIS SECTION.

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

1           (b) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL  
2 ASSEMBLY, A DEPARTMENT MAY EXPEND MONEY FROM THE FUND FOR:

3           (I) SUICIDE PREVENTION SERVICES;

4           (II) SCHOOL-BASED PROGRAMS AND SERVICES TO PROVIDE  
5 BEHAVIORAL HEALTH SERVICES;

6           (III) CRISIS RESPONSE SERVICES;

7           (IV) INTENSIVE CARE PLANNING AND CASE MANAGEMENT FOR  
8 CHILDREN AND YOUTH WITH SERIOUS BEHAVIORAL NEEDS;

9           (V) BEHAVIORAL HEALTH WORKFORCE DEVELOPMENT;

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

11          (VII) ANY OTHER USE THAT IS CONSISTENT WITH THE PURPOSE  
12 SPECIFIED IN SUBSECTION (5)(a) OF THIS SECTION.

13          (6) (a) THE PRESCHOOL PROGRAMS CASH FUND IS HEREBY  
14 CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY  
15 CREDITED TO THE FUND PURSUANT TO SUBSECTION (2)(b) OF THIS  
16 SECTION. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND  
17 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE  
18 PRESCHOOL PROGRAMS CASH FUND TO THE FUND.

19          (b) THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF  
20 HUMAN SERVICES SHALL ADMINISTER THE PRESCHOOL PROGRAMS CASH  
21 FUND.

22          (c) IT IS THE GENERAL ASSEMBLY'S INTENT THAT THE MONEY IN  
23 THE PRESCHOOL PROGRAMS CASH FUND BE USED TO EXPAND AND  
24 ENHANCE THE COLORADO PRESCHOOL PROGRAM IN ORDER TO IMPROVE  
25 THE AVAILABILITY, AFFORDABILITY, AND QUALITY OF VOLUNTARY EARLY  
26 CHILDHOOD EDUCATION WITH A GOAL, OVER TIME AND SUBJECT TO  
27 ADEQUATE REVENUE, OF SERVING ALL OF COLORADO'S YOUNG CHILDREN

1       WHOSE FAMILIES CHOOSE IT.

2               (d)   SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL  
3       ASSEMBLY, THE DEPARTMENT MAY EXPEND MONEY FROM THE PRESCHOOL  
4       PROGRAMS CASH FUND TO:

5               (I)   PROVIDE FINANCIAL ASSISTANCE TO HELP FAMILIES AFFORD  
6       EARLY CHILDHOOD EDUCATION;

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

9               (III) PROVIDE FOR MIXED-DELIVERY OPTIONS TO SUPPORT PARENT  
10      CHOICE OF EITHER SCHOOL-BASED OR COMMUNITY-BASED EARLY  
11      CHILDHOOD EDUCATION OPTIONS;

12              (IV) IMPROVE THE AFFORDABILITY AND AVAILABILITY OF QUALITY  
13      EARLY CHILDHOOD EDUCATION PROGRAMS AND FACILITIES, INCLUDING  
14      OFFERING VOLUNTARY PRESCHOOL PROGRAMS THAT MATCH PARENTS' AND  
15      CHILDREN'S NEEDS FOR LENGTH OF DAY AND LENGTH OF YEAR SO  
16      CHILDREN ARE READY FOR SCHOOL;

17              (V)  INCREASE THE CAPACITY OF LICENSED EARLY CHILDHOOD  
18      CARE PROGRAMS SO FAMILIES THAT NEED EARLY CHILDHOOD EDUCATION  
19      AND EDUCATION HAVE ACCESS;

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

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

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

27              (IX)  STRENGTHEN COORDINATION WITH EXISTING EARLY

1 CHILDHOOD SYSTEMS AND INITIATIVES AND ADVANCE ALIGNMENT WITH  
2 KINDERGARTEN THROUGH TWELFTH GRADE SYSTEMS TO SUPPORT  
3 CHILDREN'S TRANSITIONS TO SCHOOL;

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

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

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

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

14 **25-3.5-810. Nicotine products education, prevention, and**  
15 **cessation programs.** THE EDUCATION, PREVENTION, AND CESSATION  
16 PROGRAMS THAT ARE FUNDED WITH MONEY TRANSFERRED TO THE  
17 TOBACCO EDUCATION PROGRAMS FUND IN ACCORDANCE WITH SECTION  
18 24-22-118 (3)(c)(I) MAY ALSO APPLY TO NICOTINE PRODUCTS.

19 **SECTION 17. Effective date.** (1) Except as otherwise provided  
20 in subsection (2) of this section, this act takes effect upon passage.

21 (2) Sections 2 to 16 of this act take effect only if, at the November  
22 2019 statewide election, a majority of voters approve the ballot issue  
23 referred in accordance with section 39-28-401, Colorado Revised  
24 Statutes, created in section 1 of this act. If the voters approve the ballot  
25 issue, then sections 2 to 16 of this act take effect on the date of the  
26 governor's proclamation or January 1, 2020, whichever is later.



1           **SECTION 18. Safety clause.** The general assembly hereby finds,  
2       determines, and declares that this act is necessary for the immediate  
3       preservation of the public peace, health, and safety.