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#289 - DRAFT

*Be it enacted by the People of the State of Colorado:*

Colorado Secretary of State

SECTION 1. In Colorado Revised Statutes, 39-28-103, **amend** as follows:

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

(2) ON AND AFTER JANUARY 1, 2021, AN ADDITIONAL TAX OF TEN CENTS PER CIGARETTE (\$2.00 PER PACK OF TWENTY) IS LEVIED ON THE SALE OF CIGARETTES BY WHOLESALERS. THE WHOLESALER SHALL PAY THE TAX TO THE DEPARTMENT, WHICH SHALL COLLECT THE TAX.

SECTION 2. In Colorado Revised Statutes, 39-28-104, **amend** (1)(a) as follows:

**39-28-104. Evidence of payment of tax – credits – redemptions.** (1) (a) Payment of the taxes imposed by the provisions of ~~this article 10~~ ARTICLE 28 and section 21 of article X of the state constitution shall be 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~~ 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.

SECTION 3. In Colorado Revised Statutes, 39-28-110, **amend** (1) as follows:

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

(b) THE NET REVENUE THAT IS CREDITED TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE CONSTITUTION IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION AND SECTION 2 (a) OF ARTICLE XXIV OF THE STATE CONSTITUTION IS TRANSFERRED TO THE GENERAL FUND IN ACCORDANCE WITH SECTION 7 (c) OF ARTICLE XXIV OF THE STATE

CONSTITUTION. OF THIS MONEY OR THE FIFTEEN PERCENT THAT IS DIRECTLY CREDITED TO THE GENERAL FUND, THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX INCREASE SET FORTH IN SECTION 39-28-103(2) AND ANY ADJUSTMENTS FOR INFLATION AS SET FORTH IN SECTION 39-21-123(1), AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2020, TO THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 24-22-118, THE TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117, AND THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN SECTION 24-22-117 (2)(c)(I).

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

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

(1) (b) There is hereby created in the state treasury the tobacco tax enforcement cash fund. The fund shall consist of moneys deposited therein pursuant to paragraph (a) of this subsection (1) and section 39-28.5-106 (4), 39-28.6-107(4), AND OTHER FUNDS AS APPROPRIATED BY THE GENERAL ASSEMBLY PURSUANT TO SECTION 24-22-118(1)(c). The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the purpose of enforcing the provisions of this article and article ARTICLES 28.5 AND 28.6 of this title.

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

**39-28.5-102. Tax levied.** (1) PRIOR TO JANUARY 1, 2021, there is levied and shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of twenty percent of the manufacturer's list price of such tobacco products. ON AND AFTER JANUARY 1, 2021, THERE IS LEVIED A TAX UPON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF ALL TOBACCO PRODUCTS IN THIS STATE AT THE RATE OF FORTY-TWO PERCENT OF THE MANUFACTURER'S LIST PRICE OF SUCH TOBACCO PRODUCTS. THIS TAX SHALL BE COLLECTED BY THE DEPARTMENT AND IS imposed at the time the distributor:

- (a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;
  - (b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state;
- or
- (c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

SECTION 6. In Colorado Revised Statutes, 39-28.5-106, **amend** (2) as follows:

**39-28.5-106. Returns and remittance of tax - civil penalty.** (2) Every distributor shall file a return with the department by the twentieth day of the month following the month reported and shall therewith remit the amount of tax due. ~~less three and one third percent of any sum so remitted that consists of tax collected before July 1, 2003, or on or after July 1, 2005, and less two and one third percent of any sum so remitted that consists of tax collected on or after July 1,~~

2003, but before July 1, 2005 to cover the distributor's expense in the collection and remittance of said tax; except that no part of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of article X of the state constitution shall be subject to the discount provided for in this subsection (2). If any distributor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director of the department, the distributor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and in addition the penalty imposed under section 39-28.5-110 (2)(b) shall apply.

SECTION 7. In Colorado Revised Statutes, 39-28.5-108, **amend** (1) as follows:

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

(b) THE NET REVENUE THAT IS CREDITED TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE CONSTITUTION IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION AND SECTION 2 (a) OF ARTICLE XXIV OF THE STATE CONSTITUTION IS TRANSFERRED TO THE GENERAL FUND IN ACCORDANCE WITH SECTION 7 (c) OF ARTICLE XXIV OF THE STATE CONSTITUTION. OF THIS MONEY OR THE FIFTEEN PERCENT THAT IS DIRECTLY CREDITED TO THE GENERAL FUND, THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX INCREASE SET FORTH IN SECTION 39-28.5-102(1), AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2020, TO THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 24-22-118, THE TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117, AND THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN SECTION 24-22-117 (2)(c)(I).

SECTION 8. In Colorado Revised Statutes, **add** article 28.6 to title 39 as follows:

#### **ARTICLE 28.6**

##### **Taxes on Nicotine Products and Vaping Products**

**39-28.6-101. Legislative declaration.** (1) THE VOTERS OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

- (a) NICOTINE IS A HIGHLY ADDICTIVE AND TOXIC SUBSTANCE;
- (b) THERE HAS BEEN A SIGNIFICANT INCREASE IN THE USE OF VAPING PRODUCTS INCLUDING ELECTRONIC CIGARETTES, WHICH HEAT NICOTINE, FLAVORINGS, AND OTHER CHEMICALS TO CREATE AN AEROSOL THAT IS INHALED;
- (c) CHILDREN IN MIDDLE SCHOOL AND HIGH SCHOOL HAVE REPORTED USING ELECTRONIC CIGARETTES AT ALARMING RATES, AND STUDIES HAVE

LINKED ELECTRONIC CIGARETTE USE AMONG YOUTH TO NICOTINE ADDICTION, CIGARETTE SMOKING AND ILLNESS;

(d) THE LONG-TERM HEALTH RISKS OF THIS USE ARE ONLY NOW BECOMING KNOWN, INCLUDING THE FACT THAT ELECTRONIC CIGARETTE AEROSOL CAN CONTAIN HARMFUL AND POTENTIALLY HARMFUL SUBSTANCES INCLUDING NICOTINE, CANCER-CAUSING CHEMICALS, HEAVY METALS, FLAVORING CHEMICALS, ULTRAFINE PARTICLES, AND VOLATILE ORGANIC COMPOUNDS;

(e) THE SOCIAL AND ECONOMIC COSTS, IN ADDITION TO THE HEALTH RISKS, OF NICOTINE AND VAPING PRODUCTS ARE SIGNIFICANT, BUT THE STATE DOES NOT ADDRESS THESE IMPACTS THROUGH A TAX SIMILAR TO THE EXCISE TAX ON CIGARETTES AND TOBACCO PRODUCTS;

(f) TAXING NICOTINE PRODUCTS AND VAPING PRODUCTS MAY HELP TO DETER PURCHASES BY CHILDREN AND ADOLESCENTS, AMONG OTHER AT-RISK POPULATIONS, AND THUS HELP TO PREVENT AND REDUCE CONSUMPTION AS WELL AS THE DELETERIOUS EFFECTS OF NICOTINE AND VAPING PRODUCTS ON THESE GROUPS; AND

(g) REVENUE FROM A NEW TAX ON NICOTINE PRODUCTS AND VAPING PRODUCTS IS NEEDED TO PROMOTE POSITIVE OUTCOMES IN CHILDREN'S LIVES AND OTHER KEY HEALTH INITIATIVES.

(2) THEREFORE, THE VOTERS OF THE STATE OF COLORADO INTEND TO CREATE A TAX ON NICOTINE PRODUCTS AND VAPING PRODUCTS.

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

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

(2) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT.

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

(a) A CIGARETTE;

(b) A TOBACCO PRODUCT AS DEFINED IN SECTION 39-28.5-101(5);

(c) A VAPING PRODUCT; OR

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

(4) "PRESCHOOL PROGRAMS CASH FUND" MEANS THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 24-22-118.

(5) "SALE" MEANS ANY TRANSFER, EXCHANGE, OR BARTER, IN ANY MANNER OR BY ANY MEANS WHATSOEVER, FOR A CONSIDERATION, INCLUDING ALL SALES MADE BY ANY PERSON. THE TERM INCLUDES A GIFT BY A PERSON ENGAGED IN THE BUSINESS OF SELLING NICOTINE AND VAPING PRODUCTS FOR

ADVERTISING, AS A MEANS OF EVADING THE PROVISIONS OF THIS ARTICLE 28.6, OR FOR ANY OTHER PURPOSES WHATSOEVER.

(6) "VAPING PRODUCT" MEANS A PRODUCT THAT CONTAINS NICOTINE, DERIVED FROM TOBACCO OR CREATED SYNTHETICALLY, THAT IS INTENDED FOR HUMAN CONSUMPTION, WHETHER BY VAPORIZING, AEROSOLIZING, OR BY ANY COMPARABLE MEANS, AND THAT IS NOT:

- (a) A CIGARETTE;
- (b) A TOBACCO PRODUCT AS DEFINED IN SECTION 39-28.5-101(5);
- (c) A NICOTINE PRODUCT; OR
- (d) A DRUG, DEVICE, OR COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, AS THOSE TERMS ARE DEFINED IN THE "FEDERAL FOOD, DRUG, AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ.

**39-28.6-103. Tax levied.** (1) ON AND AFTER JULY 1, 2021, THERE IS LEVIED AND SHALL BE COLLECTED AND PAID A TAX AT THE RATE OF THIRTY-THREE PERCENT OF THE PURCHASE PRICE PAID OR CHARGED UPON ALL SALES AND PURCHASES OF NICOTINE OR VAPING PRODUCTS AT RETAIL.

(2)(a) THE TAX IMPOSED BY THIS SECTION IS IMPOSED UPON THE PURCHASER, AND EVERY RETAILER SHALL ADD THE TAX IMPOSED TO THE PURCHASE PRICE, SHOWING SUCH TAX AS A SEPARATE AND DISTINCT ITEM. WHEN ADDED, SUCH TAX SHALL CONSTITUTE A PART OF SUCH PURCHASE PRICE AND SHALL BE A DEBT FROM THE PURCHASER TO THE RETAILER UNTIL PAID AND SHALL BE RECOVERABLE AT LAW IN THE SAME MANNER AS OTHER DEBTS.

(b) EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SUBSECTION (2)(a) OF THIS SECTION, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO THIRTY-THREE PERCENT OF THE RETAILER'S GROSS TAXABLE SALES OF NICOTINE OR VAPING PRODUCTS, PLUS ANY AMOUNT COLLECTED AS A TAX IN EXCESS OF THAT AMOUNT.

(3) THE TAX IMPOSED BY THIS SECTION IS IN ADDITION TO ANY SALES TAX IMPOSED BY A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY.

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

**39-28.6-105. Administration – enforcement.** (1) THE TAX IMPOSED PURSUANT TO THIS PART 1 SHALL BE ADMINISTERED AND ENFORCED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 21 OF THIS TITLE AND PART 1 OF ARTICLE 26 OF THIS TITLE, INCLUDING, WITHOUT LIMITATION, ANY PENALTIES FOR FAILURE TO MAKE ANY RETURN OR COLLECT OR PAY ANY TAX; EXCEPT THAT IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS PART 1 AND

THE PROVISIONS OF ARTICLE 21 OF THIS TITLE AND PART 1 OF ARTICLE 26 OF THIS TITLE, THE PROVISIONS OF THIS PART 1 SHALL CONTROL.

(2) THE TAX IMPOSED BY THIS SECTION IS COMPUTED, REPORTED, AND PAID IN ACCORDANCE WITH SCHEDULES OR FORMS THAT ARE PRESCRIBED BY THE EXECUTIVE DIRECTOR.

(3) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES FOR IMPLEMENTATION AND ENFORCEMENT OF THIS PART 1 IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURES ACT", ARTICLE 4 OF TITLE 24.

(4) THE EXECUTIVE DIRECTOR MAY REQUIRE THE ELECTRONIC FILING OF RETURNS AND PAYMENT OF NICOTINE OR VAPING PRODUCTS TAXES DUE BY ELECTRONIC FUNDS TRANSFER.

**39-28.6-106. Distribution of nicotine and vaping taxes.** (1) (a) ALL MONEY RECEIVED AND COLLECTED IN PAYMENT OF THE TAX IMPOSED BY THE PROVISIONS OF THIS ARTICLE 28.6 SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL DISTRIBUTE SUCH MONEY AS FOLLOWS: FIFTEEN PERCENT TO THE GENERAL FUND AND EIGHTY-FIVE PERCENT TO THE OLD AGE PENSION FUND.

(b) THE NET REVENUE THAT IS CREDITED TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE CONSTITUTION IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION AND SECTION 2 (a) OF ARTICLE XXIV OF THE STATE CONSTITUTION IS TRANSFERRED TO THE GENERAL FUND IN ACCORDANCE WITH SECTION 7 (c) OF ARTICLE XXIV OF THE STATE CONSTITUTION. OF THIS MONEY OR THE FIFTEEN PERCENT THAT IS DIRECTLY CREDITED TO THE GENERAL FUND, THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE TOTAL REVENUE THAT IS ATTRIBUTABLE TO THE TAX INCREASE SET FORTH IN SECTION 39-28.6-103, AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2020, TO THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 24-22-118, THE TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117, AND THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN SECTION 24-22-117 (2)(c)(I).

SECTION 9. In Colorado Revised Statutes, 24-22-117, **amend** (1)(a) and (2)(c)(I) as follows:

**24-22-117. Tobacco tax cash fund - accounts - creation legislative declaration.**

(1) (a) There is hereby created in the state treasury the tobacco tax cash fund, which fund is referred to in this section as the "cash fund". The cash fund shall consist of ~~moneys~~ MONEY collected from the cigarette and tobacco taxes imposed pursuant to section 21 of article X of the state constitution AND MONEY TRANSFERRED IN ACCORDANCE WITH SECTION 24-22-118 (1). All interest and income derived from the deposit and investment of moneys in the cash fund shall be credited to the cash fund; except that all interest and income derived from the deposit and investment of moneys in the cash fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended and unencumbered moneys remaining in the cash fund at the end of a fiscal year shall remain in the cash fund and

shall not be credited or transferred to the general fund or any other fund, except as otherwise provided in this section.

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

(c) (I) The tobacco education programs fund to be administered by the department of public health and environment. The state treasurer and the controller shall transfer an amount equal to sixteen percent of the moneys deposited into the cash fund, plus sixteen percent of the interest and income earned on the deposit and investment of those moneys, IN ADDITION TO THE AMOUNTS SPECIFIED IN SECTION 24-22-118 (1), to the tobacco education programs fund; except that, for the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years, the state treasurer and the controller shall transfer to the tobacco education programs fund only an amount equal to sixteen percent of the moneys deposited into the cash fund. All interest and income derived from the deposit and investment of moneys in the tobacco education programs fund shall be credited to the tobacco education programs fund; except that all interest and income derived from the deposit and investment of moneys in the tobacco education programs fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended and unencumbered moneys remaining in the tobacco education programs fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

SECTION 10. In Colorado Revised Statutes, add 24-22-118 as follows

**24-22-118. Revenue from nicotine products and vaping products taxes and additional tobacco tax - preschool programs cash fund – creation – definitions.**

(1) BEGINNING JULY 1, 2021, THE STATE TREASURER SHALL TRANSFER FROM THE GENERAL FUND AN AMOUNT EQUAL TO THE TOTAL REVENUE FROM THE INCREASED TAXES ON CIGARETTES, INCLUDING ANY ADJUSTMENTS FOR INFLATION, THE INCREASED TAXES ON TOBACCO PRODUCTS, AND THE NEW TAX ON NICOTINE PRODUCTS AND ON VAPING PRODUCTS, ALL OF WHICH WERE APPROVED BY VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER, 2020, AS DESCRIBED IN SECTIONS 39-28-110 (1)(b), 39-28.5-108 (1)(b), AND 39-28.6-106 AS FOLLOWS:

(a) ANNUALLY, THIRTY-FIVE MILLION DOLLARS TO THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN SECTION 24-22-117 (2)(c)(I);

(b) ANNUALLY, FIFTEEN MILLION DOLLARS TO OFFSET THE DECREASE IN THE EXISTING REVENUE DISTRIBUTION FROM THE CIGARETTE AND TOBACCO PRODUCTS TAXES RESULTING FROM VOTER-APPROVED TAX INCREASES AT THE STATEWIDE ELECTION IN NOVEMBER, 2020. OF THIS ALLOCATION, THE STATE TREASURER SHALL TRANSFER SEVENTY-THREE PERCENT TO THE TOBACCO CASH FUND CREATED IN 24-22-117(1) AND TWENTY-SEVEN PERCENT TO THE GENERAL FUND; AND

(c) THE REMAINDER TO THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SUBSECTION (3)(a) OF THIS SECTION; EXCEPT THAT THE GENERAL ASSEMBLY MAY APPROPRIATE SUCH FUNDS AS ARE NECESSARY FOR THE DEPARTMENT'S COLLECTION OF THE NICOTINE PRODUCTS OR VAPING PRODUCTS TAXES SO LONG AS THE APPROPRIATIONS TO ADDRESS SUCH COSTS DO NOT EXCEED ONE PERCENT OF THE REVENUE FROM INCREASED CIGARETTE

AND TOBACCO TAXES AND NEW NICOTINE PRODUCTS OR VAPING PRODUCTS TAXES APPROVED BY VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER, 2020.

(2) FOR THE PERIOD OF JANUARY 1, 2021 THROUGH JUNE 30, 2021 ONLY, THE STATE TREASURER SHALL TRANSFER FROM THE GENERAL FUND AN AMOUNT EQUAL TO THE TOTAL REVENUE FROM THE INCREASED TAXES ON CIGARETTES AND THE INCREASED TAXES ON TOBACCO PRODUCTS, BOTH OF WHICH WERE APPROVED BY VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER, 2020, AS DESCRIBED IN SECTIONS 39-28-110 (1)(b), 39-28.5-108 (1)(b), AND 39-28.6-106 AS FOLLOWS:

(a) THE STATE TREASURER'S TRANSFER OF REVENUE TO THE TOBACCO EDUCATION PROGRAMS FUND CREATED IN SECTION 24-22-117 (2)(c)(I) SHALL BE FIFTEEN MILLION DOLLARS;

(b) THE STATE TREASURER'S TRANSFER OF REVENUE TO OFFSET THE DECREASE IN THE EXISTING REVENUE DISTRIBUTION FROM THE CIGARETTE AND TOBACCO PRODUCTS TAXES RESULTING FROM VOTER-APPROVED TAX INCREASES AT THE STATEWIDE ELECTION IN NOVEMBER, 2020 SHALL BE SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS. OF THIS ALLOCATION, THE STATE TREASURER SHALL TRANSFER SEVENTY-THREE PERCENT TO THE TOBACCO CASH FUND CREATED IN 24-22-117(1) AND TWENTY-SEVEN PERCENT TO THE GENERAL FUND; AND

(c) THE REMAINDER TO THE PRESCHOOL PROGRAMS CASH FUND; EXCEPT THAT THE GENERAL ASSEMBLY MAY APPROPRIATE SUCH FUNDS AS ARE NECESSARY FOR THE DEPARTMENT'S COLLECTION OF THE NICOTINE AND VAPING PRODUCTS TAXES SO LONG AS THE APPROPRIATIONS TO ADDRESS SUCH COSTS DO NOT EXCEED ONE PERCENT OF THE ADDITIONAL CIGARETTE, TOBACCO, NICOTINE PRODUCTS, AND VAPING PRODUCTS TAXES APPROVED BY VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER, 2020.

(3) (a) THE PRESCHOOL PROGRAMS CASH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY CREDITED TO THE FUND PURSUANT TO SUBSECTION (1)(c) OF THIS SECTION. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE PRESCHOOL PROGRAMS CASH FUND TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEY REMAINING IN THE PRESCHOOL PROGRAMS CASH 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) IN ORDER TO ADMINISTER THE PRESCHOOL PROGRAMS CASH FUND, THE GENERAL ASSEMBLY SHALL ENACT AUTHORIZING LEGISLATION TO ENABLE THE DEPARTMENT OF EDUCATION, OR SUCH OTHER DEPARTMENT OR DELEGATED ENTITY THAT IS DETERMINED BY THE GENERAL ASSEMBLY TO BE THE BEST QUALIFIED TO ADMINISTER THE PRESCHOOL PROGRAMS CASH FUND IN A MANNER THAT FOSTERS THE PROGRAMS' ADMINISTRATION, CONSISTENT WITH VOTER INTENT.

(c) THE ALLOCATION OF AVAILABLE REVENUE IN THE PRESCHOOL PROGRAMS CASH FUND MUST BE PRIORITIZED TO EXPAND AND ENHANCE THE



COLORADO PRESCHOOL PROGRAM OR ANY SUCCESSOR PROGRAM IN ORDER TO OFFER AT LEAST SIXTEEN HOURS PER WEEK OF VOLUNTARY PRESCHOOL, FREE OF TUITION, TO EVERY STUDENT IN HIS OR HER FINAL YEAR BEFORE ENTRY TO KINDERGARTEN.

(d) AVAILABLE REVENUE MAY BE EXPENDED FROM THE PRESCHOOL PROGRAMS CASH FUND TO EXPAND THE NUMBER OF CHILDREN SERVED THROUGH THE COLORADO PRESCHOOL PROGRAM OR ANY SUCCESSOR PRESCHOOL PROGRAM. THE DESIGNATED DEPARTMENT MUST USE THESE FUNDS TO FOSTER:

(I) PROGRAMMATIC ADMINISTRATION THAT ALLOWS FOR PARENT CHOICE, ENSURES SCHOOL-BASED AND COMMUNITY-BASED PROGRAMS THAT MEET QUALITY AND PROGRAM STANDARDS ARE ABLE TO PARTICIPATE, PRIORITIZES COMMUNITY NEEDS IN A MANNER THAT WILL SUPPORT AND STRENGTHEN THE DIVERSITY OF BIRTH TO KINDERGARTEN SERVICE PROVIDERS, AND HELPS TO ACHIEVE STATE AND LOCAL GOALS TO OFFER SCHOOL-BASED AND COMMUNITY-BASED PRESCHOOL;

(II) HIGH-QUALITY PROGRAMMING THAT HELPS PREPARE CHILDREN FOR KINDERGARTEN;

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

(IV) OPPORTUNITIES FOR EVIDENCE-BASED PARENT, FAMILY, AND COMMUNITY ENGAGEMENT; AND

(V) AN EVALUATION OF EARLY CHILDHOOD EDUCATION PROGRAM EFFECTIVENESS, INCLUDING THE IMPACT OF PRESCHOOL ON CHILD AND FAMILY OUTCOMES.

(e) IN ORDER TO MEET AN EXPANSION OF PRESCHOOL POPULATIONS, REVENUE IN THE FUND MAY ALSO BE USED TO ENSURE THE AVAILABILITY OF QUALITY, VOLUNTARY, SCHOOL-BASED AND COMMUNITY-BASED PRESCHOOL BY MEANS DEEMED APPROPRIATE INCLUDING:

(I) RECRUITING, TRAINING, AND RETAINING EARLY CHILDHOOD EDUCATION PROFESSIONALS;

(II) EXPANDING OR IMPROVING THE STAFF, FACILITIES, EQUIPMENT, TECHNOLOGY, AND PHYSICAL INFRASTRUCTURE OF PRESCHOOL PROGRAMS OFFERED BY LICENSED PROVIDERS SO AS TO INCREASE PRESCHOOL ACCESS;

(III) PARENT AND FAMILY OUTREACH TO FACILITATE TIMELY AND EFFECTIVE ENROLLMENT;

(IV) IMPROVING THE AVAILABILITY OF QUALITY PRESCHOOL FACILITIES; AND

(V) SUCH OTHER USES AS ARE CONSISTENT WITH AND FURTHER THE PURPOSE OF THIS SECTION. IF FUNDS ARE AVAILABLE IN EXCESS OF THOSE NEEDED TO PROVIDE SERVICES TO STUDENTS IN THEIR FINAL YEAR BEFORE ENTRY TO KINDERGARTEN, THOSE EXCESS FUNDS SHOULD BE DIRECTED TOWARD EXPANDING PRESCHOOL ENROLLMENT OPPORTUNITIES FOR YOUNGER CHILDREN FROM FAMILIES WITH THE GREATEST FINANCIAL NEED.

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

SECTION 11. In Colorado Revised Statutes, **add** 25-3.5-810 as follows:

**25-3.5-810. Nicotine and vaping products education, prevention, and cessation programs.** THE EDUCATION, PREVENTION, AND CESSATION PROGRAMS THAT ARE FUNDED WITH MONEY TRANSFERRED TO THE TOBACCO EDUCATION PROGRAMS FUND IN ACCORDANCE WITH SECTION 24-22-117 (2)(c)(I) MAY ALSO APPLY TO NICOTINE PRODUCTS AND VAPING PRODUCTS.

SECTION 12. In Colorado Revised Statutes, **add** 39-28.5-113 as follows:

**39-28.5-113. Collection of tobacco tax increases on tobacco products held in inventory.** FOR ANY CIGARETTES OR OTHER TOBACCO PRODUCTS ON WHICH A TAX PURSUANT TO ARTICLE 28 OR THIS ARTICLE HAS ALREADY BEEN PAID, THAT IS IN THE POSSESSION OR CONTROL OF A DISTRIBUTOR, WHOLESALER, RETAILER OR ANY OTHER PERSON IN THE BUSINESS OF DISTRIBUTING OR SELLING TOBACCO PRODUCTS ON THE EFFECTIVE DATE OF AN INCREASE IN THE TOBACCO TAX RATE ON THAT TOBACCO PRODUCT, THE DISTRIBUTOR, WHOLESALER, RETAILER OR OTHER PERSON SHALL, TO FULLY COMPLY WITH THE TAX RATE INCREASE, MAKE A TAX PAYMENT EQUAL TO THE NEW TAX RATE ON THE CIGARETTES OR OTHER TOBACCO PRODUCTS MINUS THE AMOUNT OF TAX ALREADY PAID ON THAT TOBACCO PRODUCT AND, FOR EACH SUCH TAX STAMP, SHALL MAKE A TAX PAYMENT EQUAL TO THE NEW PRICE OF A CIGARETTE TAX STAMP MINUS THE PRIOR PRICE OF A CIGARETTE TAX STAMP. THESE PAYMENTS SHALL BE MADE TO THE DEPARTMENT WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THE TAX RATE INCREASE AND SHALL BE SUBMITTED ALONG WITH A REPORT, IN SUCH FORM AS THE DEPARTMENT MAY PRESCRIBE, DESCRIBING ALL THE SUBJECT TOBACCO PRODUCTS IN THE POSSESSION OR CONTROL OF THE DISTRIBUTOR, WHOLESALER, RETAILER OR OTHER PERSON ON THE EFFECTIVE DATE OF THE TAX RATE INCREASE AND SHOWING THE RELATED TAX PAYMENTS DUE. ANY TAXPAYER MAKING TAX PAYMENTS PURSUANT TO THIS PARAGRAPH MADE LATER THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THE TAX RATE INCREASE SHALL ALSO PAY INTEREST AT THE RATE OF TWO PERCENT PER MONTH OR FRACTION OF A MONTH FROM THE DATE THE TAX PAYMENT WAS DUE UNTIL THE DATE THAT THE TAX PAYMENT IS RECEIVED BY THE DEPARTMENT. ANY TAX PAYMENTS PURSUANT TO THIS SECTION REMITTED BY THE TAXPAYER WITHIN 20 DAYS OF THE TAX RATE INCREASE MAY BE REDUCED BY ONE PERCENT.

SECTION 13. In Colorado Revised Statutes, **add** 39-28.5-114 as follows:

**39-28.5-114. Tobacco products; pricing for imposition of tax.**

(1) UNLESS ESTABLISHED BY COMPETENT EVIDENCE TO THE CONTRARY, ALL CHARGES INCLUDED ON AN INVOICE FROM A MANUFACTURER OR

SUPPLIER ARE FOR THE SALE OF TOBACCO PRODUCTS, EXCEPT FOR ANY SEPARATELY STATED CHARGES FOR NON-TOBACCO PRODUCTS. "NON-TOBACCO PRODUCTS" ARE ANY TANGIBLE PERSONAL PROPERTY THAT IS NOT A TOBACCO PRODUCT. IF SERVICES PROVIDED IN CONNECTION WITH THE PURCHASE OF TOBACCO PRODUCTS AND NON-TOBACCO PRODUCTS ARE AGGREGATED ON THE INVOICE, SUCH CHARGES ARE PRESUMED TO BE FOR THE SALE OF TOBACCO PRODUCTS AND INCLUDIBLE IN THE INVOICE PRICE THEREFOR.

(2) IN ORDER TO CALCULATE THE TAX DUE, THE MANUFACTURER'S LIST PRICE IS DETERMINED WITHOUT REGARD TO ANY DISCOUNTS OR OTHER PRICE REDUCTIONS ALLOWED BY THE MANUFACTURER OR SUPPLIER.

(3) AS USED IN THE DEFINITION OF "MANUFACTURER'S LIST PRICE" IN SECTION 39-28.5-101(3), C.R.S., "INVOICE PRICE" INCLUDES ALL CONSIDERATION THE MANUFACTURER OR SUPPLIER RECEIVES FROM THE DISTRIBUTOR IN WHATEVER FORM AND REGARDLESS OF THE TIME OF RECEIPT, AS WELL AS ALL CHARGES REFLECTED ON AN INVOICE FROM THE MANUFACTURER OR SUPPLIER TO THE DISTRIBUTOR, WHETHER SEPARATELY STATED OR NOT, INCLUDING, BUT NOT LIMITED TO, ANY FEDERAL EXCISE TAX AND ANY CHARGE FOR SHIPPING, TRANSPORTATION, AND STORAGE.

SECTION 14. In Colorado Revised Statutes, add 39-21-123 as follows:

**39-21-123. Periodic inflation adjustment – tax rates applied to cigarettes, tobacco products, nicotine products, and vaping products; revenue and spending limits inapplicable to increases approved by voters; taxation by local jurisdictions.**

(1) AS OF JANUARY 1 OF EACH FOURTH CALENDAR YEAR BEGINNING IN 2025, THE DEPARTMENT SHALL, BY RULE ADJUST FOR INFLATION THE TAX RATES IMPOSED ON CIGARETTES PURSUANT TO SECTION 39-28-103 UP TO A MAXIMUM OF TWO AND ONE-HALF PERCENT ANNUALLY.

(2) ALL REVENUES FROM THE TAX RATE INCREASES ON CIGARETTES AND TOBACCO PRODUCTS, ANY INFLATION ADJUSTMENT ON THE TAX RATE INCREASE ON CIGARETTES, AND THE NEW TAXES ON NICOTINE PRODUCTS AND VAPING PRODUCTS, APPROVED BY VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER, 2020, SHALL BE COLLECTED AND SPENT AS VOTER-APPROVED REVENUE CHANGES, PURSUANT TO SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION, FOR PURPOSES OF SPENDING LIMITS UPON STATE GOVERNMENT.

(3) AS USED IN THIS SECTION, "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKWOOD, ALL ITEMS, ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

(4) NO STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY IS PREVENTED FROM IMPOSING, LEVYING, AND COLLECTING ANY SPECIAL SALES TAX UPON SALES OF CIGARETTES, TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR VAPING PRODUCTS, AS THOSE TERMS ARE DEFINED IN SECTION 18-13-121 (5) AND SECTION 39-28.6-102(6), OR UPON THE OCCUPATION OR PRIVILEGE OF SELLING CIGARETTES, TOBACCO PRODUCTS, NICOTINE

PRODUCTS, OR VAPING PRODUCTS. THE IMPOSITION OF STATE TAXES ON CIGARETTES, TOBACCO PRODUCTS, NICOTINE PRODUCTS, AND VAPING PRODUCTS DOES NOT LIMIT THE AUTHORITY OF LOCAL GOVERNMENTS TO IMPOSE A SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR VAPING PRODUCTS TO BE USED FOR LOCAL AND GOVERNMENTAL PURPOSES.

SECTION 15. In Colorado Revised Statutes, **add** 39-21-124 as follows:

**39-21-124. Enforcement of cigarette, tobacco products, and nicotine and vaping products taxes - rules.** THE DEPARTMENT MAY DETERMINE, BY REGULATION, THE DESIGNS, CHARACTERISTICS, TECHNOLOGY, METER IMPRESSIONS, SPECIFICATIONS AND DENOMINATIONS OF STAMPS, OR OTHER TAX-PAYMENT INDICIA RELATING TO STATE TAXES ON CIGARETTES, TOBACCO PRODUCTS, NICOTINE PRODUCTS, AND VAPING PRODUCTS TO ENANCE VISIBILITY, FACILITATE TAX COLLECTION, IMPEDE CONTRABAND TRAFFICKING, LESSEN OPPORTUNITIES FOR CREATION OF COUNTERFEIT STAMPS OR METER IMPRESSIONS, AND FACILITATE ENFORCEMENT OF RELATED STATE LAWS.

SECTION 16. In Colorado Revised Statutes, **amend** 39-28-101 as follows:

**39-28-101. Definitions**

As used in this article, unless the context otherwise requires:

(1.5) "DELIVERY SALE" MEANS:

(A) A SALE OF CIGARETTES TO A CONSUMER OF THIS STATE WHEN:

(I) THE CONSUMER SUBMITS AN ORDER FOR CIGARETTES TO A DELIVERY SELLER FOR SALE BY MEANS OTHER THAN AN OVER THE COUNTER SALE ON THE DELIVERY SELLER'S PREMISES, INCLUDING BUT NOT LIMITED TO TELEPHONE OR OTHER VOICE TRANSMISSION, THE MAIL OR OTHER DELIVERY SERVICE, OR THE INTERNET OR OTHER ONLINE SERVICE; AND

(II) THE CIGARETTES ARE DELIVERED WHEN THE SELLER IS NOT IN THE PHYSICAL PRESENCE OF THE CONSUMER WHEN THE CONSUMER OBTAINS POSSESSION OF THE CIGARETTES INCLUDING WITHOUT LIMITATION BY USE OF A COMMON CARRIER, PRIVATE DELIVERY SERVICE, OR MAELS.

(1.7) "DELIVERY SELLER" MEANS A PERSON LOCATED OUTSIDE OF THIS STATE, WHO MAKES DELIVERY SALES.

(3) "Sale" or "resale" includes installment, credit, and conditional sales and means any exchange, barter, or transfer of title or possession, or both, for a consideration to any other person, firm, partnership, limited liability company, or corporation within this state. It includes a gift by a person engaged in the business of selling cigarettes for advertising as a means of evading provisions of this article or for any other purpose whatsoever AND ANY TRANSFER THAT QUALIFIES AS A "DELIVERY SALE."

(4) "Wholesaler" means any person, firm, limited liability company, partnership, or corporation who imports cigarettes into this state for sale or resale AND INCLUDES DELIVERY SELLERS.

**SECTION 17. Effective date.** This act takes effect on January 1, 2021.

