

Proposed Initiative 2019-2020 # \_\_\_\_\_



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

**SECTION 1.** In the Constitution of the State of Colorado **add** section 22 to article X as follows:

**SECTION 22. REVENUES FROM EXISTING TOBACCO TAXES TO FUND A COLORADO PRESCHOOL PROGRAM.** (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT SINCE 2005 THERE HAVE BEEN SIGNIFICANT IMPROVEMENTS IN THE REGULATION OF THE SALE AND USE OF CIGARETTES AND TOBACCO PRODUCTS WITH THE ADOPTION OF COMPREHENSIVE SMOKE-FREE POLICIES BY STATE AND LOCAL GOVERNMENTS, THE PASSAGE OF THE FEDERAL “FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT” IN 2009 AND ADOPTION OF 2019 AMENDMENTS TO THE FEDERAL “FOOD, DRUG AND COSMETIC ACT” TO RAISE THE MINIMUM AGE OF THE SALE OF TOBACCO AND NICOTINE PRODUCTS FROM 18 YEARS OF AGE TO 21 YEARS OF AGE.

(2) THE PEOPLE FIND AND DECLARE THAT THE UNITED STATES SURGEON GENERAL HAS STATED THAT TOBACCO SMOKING IN THE UNITED STATES IS NOW AT AN ALL-TIME LOW. THE COLORADO TOBACCO EDUCATION, PREVENTION, AND CESSATION GRANT PROGRAM REVIEW COMMITTEE HAS MADE SIMILAR FINDINGS OF REDUCED TOBACCO USAGE BY COLORADANS.

(3) FINALLY, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT EXISTING REVENUES FROM THE CIGARETTE AND TOBACCO TAXES IMPOSED BY SECTION 21 OF THIS ARTICLE X IN 2005 SHOULD BE REDISTRIBUTED TO CONTINUE TO FUND TOBACCO EDUCATION, CESSATION AND PREVENTION PROGRAMS WHERE NEEDED AND TO CONTINUE TO FUND HEALTH EDUCATION, RESEARCH AND TREATMENT PROGRAMS, BUT TO ALSO FUND A NEW PRESCHOOL PROGRAM FOR THE CHILDREN OF COLORADO AS SET FORTH HEREIN WITH NO NEW TAXES.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY SHALL ENACT AUTHORIZING LEGISLATION NO LATER THAN DECEMBER 31, 2021, TO ENABLE THE DEPARTMENT OF EDUCATION, OR SUCH OTHER DEPARTMENT OR DELEGATED ENTITY THAT IS DETERMINED BY THE GENERAL ASSEMBLY TO BE BEST QUALIFIED, TO CREATE AND ADMINISTER, USING EXISTING REVENUES, A NEW COLORADO PRESCHOOL PROGRAM IN A MANNER THAT FOSTERS THE PROGRAM’S ADMINISTRATION, CONSISTENT WITH VOTER INTENT. THE LEGISLATION SHALL CREATE THE PRESCHOOL CASH FUND IN THE STATE TREASURY. EVERY YEAR, BEGINNING WITH THE 2021-2022 FISCAL YEAR, THE SUM OF ONE HUNDRED MILLION DOLLARS FROM EXISTING TAX REVENUES COLLECTED PURSUANT TO SECTION 21, ARTICLE X MUST BE CREDITED TO THE PRESCHOOL CASH FUND, EXCEPT THAT THE PERCENTAGE OF SIXTEEN PERCENT OF REVENUES SHALL REMAIN APPROPRIATED FOR SCHOOL AND COMMUNITY BASED AND STATEWIDE TOBACCO PROGRAMS DESIGNED TO REDUCE INITIATION OF TOBACCO USE BY CHILDREN, PROMOTE CESSATION OF TOBACCO USE AMONG YOUTH AND ADULTS AND REDUCE EXPOSURE TO SECOND HAND SMOKE. SUCH REVENUES SHALL CONTINUE TO BE APPROPRIATED THROUGH THE “TOBACCO EDUCATION, PREVENTION AND CESSATION ACT” PART 8 OF ARTICLE 3.5 OF TITLE 25, COLORADO REVISED STATUTES, AND ANY SUCCESSOR ACT. NO LATER THAN DECEMBER 31, 2021, THE GENERAL ASSEMBLY SHALL ENACT LEGISLATION TO REALLOCATE THE PERCENTAGES SET FORTH IN SECTION 21 OF THIS ARTICLE X FOR THE PURPOSES SET FORTH

THEREIN AND IN THIS SECTION 22. THE PRESCHOOL CASH FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY SOLELY FOR THE DIRECT AND INDIRECT COSTS OF THE NEW COLORADO PRESCHOOL PROGRAM. THE NEW COLORADO PRESCHOOL PROGRAM AND ITS FUNDING AS PROVIDED BY THIS SUBSECTION (4) MUST SUPPLEMENT AND NOT SUPPLANT ANY EXISTING PROGRAMS AND FUNDING RELATING TO PRESCHOOL EDUCATION.

(5) ANY AUTHORIZING LEGISLATION FOR THE PRESCHOOL PROGRAM SHALL INCLUDE A MANDATE THAT, TO THE EXTENT PRACTICABLE, THE FUNDS BE USED TO FOSTER:

(I) PROGRAMMATIC ADMINISTRATION THAT ALLOWS FOR PARENT CHOICE, ENSURES SCHOOL-BASED AND COMMUNITY-BASED PROGRAMS THAT MEET QUALITY AND PROGRAM STANDARDS, 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 MIXED DELIVERY GOALS;

(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.

**SECTION 2.** In Colorado Revised Statutes, **amend** subsection (1.7) of section 24-75-1104.5 as follows:

(1.7) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT, FOR FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2022, THE SETTLEMENT MONEYS RECEIVED BY THE STATE IN THE PRECEDING FISCAL YEAR SHALL BE ALLOCATED AS FOLLOWS. Except as otherwise provided in subsections (1.3) and (5) of this section, and except that disputed payments received by the state in the 2015-16 fiscal year or in any year thereafter are excluded from the calculation of allocations under this subsection (1.7), for the 2016-17 fiscal year and for each fiscal year thereafter, the following programs, services, and funds shall receive the following specified percentages of the total amount of settlement moneys received by the state in the preceding fiscal year:

~~(a) The Colorado nurse home visitor program created in article 6.4 of title 26, C.R.S., shall receive twenty-six and seven-tenths percent of the settlement moneys;~~

~~(b)~~(a) The children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive eighteen percent of the settlement moneys;

~~(e)(b) The university of Colorado health sciences center shall receive a base amount of fifteen and one half percent of the settlement moneys and an additional amount of two percent of the settlement moneys, and the state treasurer shall credit both THE amounts to the tobacco litigation settlement moneys health education fund, which is hereby created in the state treasury. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. Any unexpended and unencumbered money in the fund at the end of any fiscal year remains in the fund and shall not be credited or transferred to the general fund or any other fund. All money in the fund is subject to annual appropriation by the general assembly to the health sciences center, but the health sciences center shall use the additional amount of settlement moneys credited to the fund only for tobacco-related in-state cancer research as authorized in section 24-75-1103 (7).~~

~~(d) The Fitzsimons trust fund created in section 23-20-136 (3), C.R.S., shall receive eight percent of the settlement moneys. Subject to annual appropriation by the general assembly, the settlement moneys shall be used as specified in section 23-20-136 (5); C.R.S.~~

~~(e) The Tony Grampsas youth services program created in article 6.8 of title 26, C.R.S., shall receive seven and one half percent of the total amount of settlement moneys, which the state treasurer shall transfer to the youth services program fund created in section 26-6.8-102 (2) (d), C.R.S.;~~

~~(f) The drug assistance program created in section 25-4-1401, C.R.S., shall receive five percent of the settlement moneys;~~

~~(g) The AIDS and HIV prevention fund created in section 25-4-1405, C.R.S., shall receive three and one half percent of the settlement moneys;~~

~~(h) The supplemental tobacco litigation settlement moneys account of the Colorado immunization fund created in section 25-4-2301, C.R.S., shall receive two and one half percent of the settlement moneys;~~

~~(i)(c) The tobacco settlement defense account of the tobacco litigation settlement cash fund created in section 24-22-115 (2) (a) shall receive two and one-half percent of the settlement moneys;~~

~~(j) The supplemental state contribution fund created in section 24-50-609 (5) shall receive two and three tenths percent of the settlement moneys, which, subject to annual appropriation by the general assembly, shall be used to pay the costs of increased nonsupplemental state contributions and to provide supplements to the state contribution for state employee group benefit plans for each eligible state employee as required by section 24-50-609.5;~~

~~(k) The Colorado autism treatment fund created pursuant to section 25.5-6-805, C.R.S., shall receive two percent of the settlement moneys to pay a portion of the~~

~~state's share of the annual funding required by the "Home and Community based Services for Children with Autism Act", part 8 of article 6 of title 25.5, C.R.S.;~~

~~(d) The Colorado state veterans trust fund created in section 28-5-709, C.R.S., shall receive one percent of the settlement moneys; AND~~

~~(m) The state dental loan repayment program created in article 23 of title 25, C.R.S., shall receive one percent of the settlement moneys; and~~

~~(n) The Colorado health service corps fund created in section 25-1.5-506, C.R.S., shall receive one percent of the settlement moneys.~~

(e) THE PRESCHOOL CASH FUND REFERENCED IN SECTION 22, ARTICLE X, OF THE COLORADO CONSTITUTION, AND CREATED BY IMPLEMENTING LEGISLATION, SHALL RECEIVE THE REMAINING PERCENTAGE OF THE SETTLEMENT MONEYS.

**SECTION 3.** In Colorado Revised Statutes, 39-22-623, **amend** (1)(a)(II)(A) as follows:

(1) The proceeds of all money collected under this article 22, less the reserve retained for refunds, shall be credited as follows:

(a) (II) (A) Effective July 1, 1987, an amount equal to twenty-seven percent of the gross state cigarette tax shall be apportioned to incorporated cities and incorporated towns that levy taxes and adopt formal budgets and to counties. For the purposes of this section, a city and county is considered a city. The city or town share shall be apportioned according to the percentage of state sales tax revenues collected by the department of revenue in an incorporated city or town as compared to the total state sales tax collections that may be allocated to all political subdivisions in the state; the county share shall be the same as that which the percentage of state sales tax revenues collected in the unincorporated area of the county bears to total state sales tax revenues that may be allocated to all political subdivisions in the state. The department of revenue shall certify to the state treasurer, at least annually, the percentage for allocation to each city, town, and county, and the department shall apply the percentage for allocation certified in all distributions to cities, towns, and counties until changed by certification to the state treasurer. In order to qualify for distributions of state income tax money, units of local government are prohibited from imposing taxes on any person as a condition for engaging in the business of selling cigarettes, OR ENACTING BANS OF TOBACCO AND NICOTINE PRODUCTS IN ANY FORM. For purposes of this subsection (1)(a)(II), the "gross state cigarette tax" means the total tax before the discount provided for in section 39-28-104 (1). For any city, town, or county that was previously disqualified from the apportionment set forth in this subsection (1)(a)(II)(A) by reason of imposing a fee or license related to the sale of cigarettes, the city, town, or county is eligible for any allocation of money that is based on an apportionment made on or after July 1, 2019, but not for an allocation of money that is based on an apportionment made before July 1, 2019. THE TOTAL AMOUNT THAT WOULD HAVE BEEN ALLOCATED TO CITIES, TOWNS AND COUNTIES IN EACH FISCAL YEAR BUT FOR THE ADOPTION OF A BAN ON OR AFTER DECEMBER 31, 2021, SHALL BE CERTIFIED TO

THE STATE TREASURER BY THE DEPARTMENT OF REVENUE AND SHALL BE CREDITED TO THE PRESCHOOL CASH FUND REFERENCED IN SECTION 22, ARTICLE X, OF THE COLORADO CONSTITUTION.

**SECTION 4.** In Colorado Revised Statutes, 39-26-123, **add** (1)(c) and (3)(c) as follows:

(1) As used in this section, unless the context otherwise requires:

(c) "TOBACCO AND NICOTINE PRODUCTS" DOES NOT INCLUDE ACCESSORIES SUCH AS ROLLING PAPERS, PIPES, AND VAPE PENS.

(3) For any state fiscal year commencing on or after July 1, 2013, the state treasurer shall credit eighty-five percent of all net revenue collected under this article 26 to the old age pension fund created in section 1 of article XXIV of the state constitution. The state treasurer shall credit to the general fund the remaining fifteen percent of the net revenue, less:

(c) ONE HUNDRED PERCENT OF ALL AVAILABLE NET REVENUE ATTRIBUTABLE TO RETAIL SALES OR USE OF TOBACCO AND NICOTINE PRODUCTS ON OR AFTER JANUARY 1, 2022, WHICH THE STATE TREASURER SHALL CREDIT TO THE PRESCHOOL CASH FUND CREATED PURSUANT TO SECTION 22, ARTICLE X OF THE COLORADO CONSTITUTION.

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

**(1) Distribution of Tax Collected.** All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees received under section 39-28-102 and the moneys collected pursuant to section 39-28-103.5, shall be transmitted to the state treasurer who shall distribute money as follows: Fifteen percent to the general fund, and eighty-five percent to the old age pension fund, EXCEPT THAT, ON AND AFTER JULY 1, 2021, THE STATE TREASURER SHALL CREDIT FIFTEEN PERCENT TO THE PRESCHOOL CASH FUND REFERENCED IN SECTION 22, ARTICLE X, OF THE STATE CONSTITUTION INSTEAD OF THE GENERAL FUND.

**SECTION 6.** In Colorado Revised Statutes, **amend** section 39-28.5-108 (1) as follows:

**(1) Distribution of Tax Collected.** All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees under section 39-28.5-104 and the moneys collected pursuant to 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 eight-five percent to the old age pension fund, EXCEPT THAT, ON AND AFTER JULY 1, 2021, THE STATE TREASURER SHALL CREDIT FIFTEEN PERCENT TO THE PRESCHOOL CASH FUND REFERENCED IN SECTION 22, ARTICLE X, OF THE STATE CONSTITUTION INSTEAD OF THE GENERAL FUND.

**SECTION 7.** In Colorado Revised statutes, **add** article 28.6 to title 39 as follows:

**Article 28.6**

### **Tobacco-derived Nicotine Vapor Product Tax**

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

(a) THERE HAS BEEN A SIGNIFICANT INCREASE IN THE USE OF ELECTRONIC CIGARETTES AND SIMILAR TOBACCO -DERIVED NICOTINE VAPOR PRODUCTS AMONG COLORADANS; AND

(b) SUCH PRODUCTS HAVE NOT YET BEEN SUBJECT TO A TAX AS WITH OTHER TOBACCO PRODUCTS PURCHASED AND SOLD IN THE STATE OF COLORADO.

(2) THE VOTERS OF THE STATE OF COLORADO AUTHORIZE A NEW TOBACCO-DERIVED NICOTINE VAPOR PRODUCT TAX IN ADDITION TO THE CURRENT STATE SALES TAX IMPOSED ON RETAIL SALES AND REQUIRE THAT THE GENERAL ASSEMBLY ADOPT A REGULATORY PROGRAM, INCLUDING LICENSING REQUIREMENTS, THAT FACILITATE THE IMPOSITION AND COLLECTION OF THE TAX.

**39-28.6-102. Definitions.** UNLESS THE CONTEXT OTHERWISE REQUIRES, ANY TERMS NOT DEFINED IN THIS ARTICLE 28.6 HAVE THE MEANINGS SET FORTH IN ARTICLE 26 OF THIS TITLE. AS USED IN THIS ARTICLE 28.6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) “TOBACCO-DERIVED NICOTINE VAPOR PRODUCT” MEANS A NONCOMBUSTIBLE PRODUCT THAT PRODUCES A VAPOR OR AEROSOL FOR INHALATION FROM THE APPLICATION OF A HEATING ELEMENT TO A LIQUID SUBSTANCE CONTAINING TOBACCO DERIVED NICOTINE

(2) “DEPARTMENT” MEANS THE DEPARTMENT OF REVENUE.

**39-28.6-103. Tax levied.** ON OR AFTER JULY 1, 2021, THERE IS HEREBY IMPOSED UPON ALL SALES OF A TOBACCO-DERIVED NICOTINE VAPOR PRODUCT A TAX AT THE RATE OF TEN PERCENT OF THE AMOUNT OF THE SALE IN ADDITION TO EXISTING STATE AND LOCAL SALES TAXES.

**39-28.6-104. Exempt sales.** THE TOBACCO-DERIVED NICOTINE VAPOR PRODUCT TAX IMPOSED BY SECTION 39-28.6-103 DOES NOT APPLY WITH RESPECT TO ANY TOBACCO-DERIVED NICOTINE VAPOR PRODUCTS THAT, UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, MAY NOT BE MADE SUBJECT TO TAXATION BY THIS STATE.

**39-28.6-105. Creation of tobacco-derived nicotine vapor product tax program.** NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY SHALL ENACT A REGULATORY STRUCTURE, INCLUDING LICENSING, TO FACILITATE THE COLLECTION OF THE TAX IMPOSED BY THIS ARTICLE 28.6 AND SHALL ADOPT CONFORMING AMENDMENTS TO THIS ARTICLE AS NECESSARY. THE GENERAL ASSEMBLY SHALL ACT NO LATER THAN DECEMBER 31, 2020. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THE TAX IMPOSED BY THIS ARTICLE 28.6.

**39-28.6-106. Distribution of tax collected.** (1) THE STATE TREASURER SHALL CREDIT THE REVENUE COLLECTED PURSUANT TO THE TAX IMPOSED BY THIS ARTICLE 28.6 TO THE

PRESCHOOL CASH FUND CREATED PURSUANT TO SECTION 22 OF ARTICLE X OF THE STATE CONSTITUTION.

(2) THE VOTERS HEREBY FIND AND DECLARE THAT BECAUSE THE SALES AND USE TAX REVENUE GENERATED BY THE SALES AND USE TAX LEVIES PURSUANT TO SECTION 39-26-106 AND 39-26-202 IS SUFFICIENT TO FUND THE OLD AGE PENSION FUND AS REQUIRED BY ARTICLE XXIV OF THE STATE CONSTITUTION, THE STATE MAY CONSTITUTIONALLY CREDIT ALL REVENUE GENERATED BY THE ADDITIONAL TAX LEVIED PURSUANT TO THIS ARTICLE TO THE PRESCHOOL CASH FUND AS SPECIFIED IN SUBSECTION ONE OF THE SECTION.

**SECTION 8.** THIS INITIATIVE SHALL BE EFFECTIVE UPON PROCLAMATION BY THE GOVERNOR.