

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Anna Haynes and James Garcia
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 22, 2020
SUBJECT: Proposed initiative measure 2019-2020 #236, concerning the creation of a nicotine products tax

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #224 to 241. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #224 to 235 or #237 to 241, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To increase the cigarette tax to six cents per cigarette;
2. To allow the cigarette tax to be adjusted for inflation;
3. To remove the discount on the sale of cigarette stamps;
4. To increase the tobacco products tax to forty-two percent of the manufacturer's list price;
5. To remove the tobacco products distributor tax reduction;
6. To create a tax on the sale, use, consumption, handling, or distribution of all nicotine products in Colorado at the rate of twenty-six percent of the retail sale price of such nicotine products and to collect such tax from the retailers of nicotine products;
7. To require that, if a distributor of nicotine products fails to pay the nicotine products tax, then any person or entity in possession of the nicotine products is liable for the tax;
8. To require distributors of nicotine products to obtain a license and file quarterly returns;
9. To create the preschool programs cash fund for expanding the number of children in preschool and to require the general assembly to enact legislation for the administration of the cash fund;
10. To allow the programs funded by the tobacco education programs fund to also apply to nicotine products;
11. To create a tobacco products inventory tax;
12. To create a presumption that all charges included on an invoice of a tobacco product manufacturer or supplies are for the sale of tobacco products;
13. To define "delivery sale" for purposes of the cigarette tax; and
14. To distribute the additional total revenue collected from the increased cigarette and tobacco products tax and the new nicotine products tax to the preschool programs cash fund, the tobacco tax cash fund, and the tobacco education programs fund.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. If the nicotine product tax in section 10 of the proposed initiative is levied beginning on July 1, 2021, will there be sufficient funds collected to begin distributing the funds on January 1, 2021 as required by proposed sections 24-22-118 (1) and (2)?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. In proposed section 39-28.6-103, the phrase "THERE IS LEVIED A TAX" is written twice. Please revise to use the phrase only once.