

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

**REVISED**

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 17-0941.01 Michael Dohr x4347

**SENATE BILL 17-192**

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**SENATE SPONSORSHIP**

**Neville T.**, Jahn, Priola, Williams A.

**HOUSE SPONSORSHIP**

**Melton and Singer,**

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**Senate Committees**

Business, Labor, & Technology  
Finance  
Appropriations

**House Committees**

Finance  
Appropriations

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**A BILL FOR AN ACT**

101      **CONCERNING PROVISIONS TO ALLOW MARIJUANA BUSINESSES TO**  
102                    **OPERATE MORE EFFICIENTLY, AND, IN CONNECTION THEREWITH,**  
103                    **MAKING AN APPROPRIATION.**

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**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 allows a medical marijuana center and a retail marijuana store to apply for an endorsement that allows the center or store to deliver marijuana. The centers and stores with the delivery endorsement may use an employee or contract with a medical or retail marijuana transporter to make the deliveries. The endorsements for medical marijuana begin

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

HOUSE  
Amended 2nd Reading  
May 5, 2017

SENATE  
3rd Reading Unamended  
April 12, 2017

SENATE  
Amended 2nd Reading  
April 11, 2017

January 2, 2018, and the endorsements for retail marijuana begin January 2, 2019.

The bill allows the state licensing authority to authorize single-instance transfers of retail marijuana or retail marijuana products from a retail marijuana licensee to a medical marijuana licensee based on a business need due to a change in local, state, or federal law or enforcement policy. If granted, the transfer must be completed within 6 months of the date the transfer was approved.

Under current law, the department of revenue determines the average market rate for purposes of excise tax collection on retail marijuana every 6 months. The bill gives the authority to calculate the average market rate to the marijuana state licensing authority and requires calculation on a quarterly basis. The average market rate cannot include taxes paid on sales or transfers. The bill requires a separate average market rate for unprocessed marijuana for extraction that is lower than the average market rate for unprocessed marijuana for direct sale. The bill states that the average market rate should be used to calculate the excise tax on affiliated transactions, and the contract price should be used to calculate the excise tax on unaffiliated transactions.

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

2 **SECTION 1. In Colorado Revised Statutes, 12-43.3-202, amend**

3 **(1)(a) as follows:**

4 **12-43.3-202. Powers and duties of state licensing authority -**

5 **rules. (1) The state licensing authority shall:**

6 **(a) Grant or refuse state licenses for the cultivation, manufacture,**

7 **distribution, and sale of medical marijuana as provided by law; suspend,**

8 **fine, restrict, or revoke such licenses, WHETHER ACTIVE, EXPIRED, OR**

9 **SURRENDERED, upon a violation of this ~~article~~ ARTICLE 43.3, or a rule**

10 **promulgated pursuant to this ~~article~~ ARTICLE 43.3; and impose any penalty**

11 **authorized by this ~~article~~ ARTICLE 43.3 or any rule promulgated pursuant**

12 **to this ~~article~~ ARTICLE 43.3. The state licensing authority may take any**

13 **action with respect to a registration pursuant to this ~~article~~ ARTICLE 43.3**

14 **as it may with respect to a license pursuant to this ~~article~~ ARTICLE 43.3.**

1 in accordance with the procedures established pursuant to this article  
2 ARTICLE 43.3.

3  
4 **SECTION 2.** In Colorado Revised Statutes, 12-43.4-202, amend  
5 (2)(a) and (3)(a)(IV)(C) as follows:

6 **12-43.4-202. Powers and duties of state licensing authority -**  
7 **rules.** (2) The state licensing authority has the authority to:

8 (a) Grant or refuse state licenses for the cultivation, manufacture,  
9 distribution, sale, and testing of retail marijuana and retail marijuana  
10 products as provided by law; suspend, fine, restrict, or revoke such  
11 licenses, WHETHER ACTIVE, EXPIRED, OR SURRENDERED, upon a violation  
12 of this article ARTICLE 43.4 or any rule promulgated pursuant to this  
13 article ARTICLE 43.4; and impose any penalty authorized by this article  
14 ARTICLE 43.4 or any rule promulgated pursuant to this article ARTICLE  
15 43.4. The state licensing authority may take any action with respect to a  
16 registration pursuant to this article ARTICLE 43.4 as it may with respect to  
17 a license pursuant to this article ARTICLE 43.4, in accordance with the  
18 procedures established pursuant to this article ARTICLE 43.4.

19 (3) (a) (IV) (C) In the event that test results indicate the presence  
20 of quantities of any substance determined to be injurious to health, the  
21 licensee shall immediately quarantine the products and notify the state  
22 licensing authority. The state licensing authority shall give the licensee an  
23 opportunity to RETEST THE PRODUCT AND IF THE SECOND TEST ALSO  
24 INDICATES THE PRESENCE OF QUANTITIES OF ANY SUBSTANCE DETERMINED  
25 TO BE INJURIOUS TO HEALTH THEN THE LICENSEE CAN remediate the  
26 product if the test indicated the presence of a microbial. IF TWO  
27 ADDITIONAL TESTS DO NOT INDICATE THE PRESENCE OF QUANTITIES OF

1 ANY SUBSTANCE DETERMINED TO BE INJURIOUS TO HEALTH, THE PRODUCT  
2 MAY BE USED OR SOLD BY THE LICENSEE. If the licensee is unable to  
3 remediate the product, the licensee shall document and properly destroy  
4 the adulterated product.

5 ■ ■ ■

6 **SECTION 3.** In Colorado Revised Statutes, 39-28.8-101, amend  
7 the introductory portion and (1); and add (1.5) and (2.5) as follows:

8 **39-28.8-101. Definitions.** Unless the context otherwise requires,  
9 any terms not defined in this article shall ARTICLE 28.8 have the meanings  
10 set forth in article 26 of this title TITLE 39. As used in this article ARTICLE  
11 28.8, unless the context otherwise requires:

12 (1) "Average market rate" means the average price, as determined  
13 by the department on a biannual basis in six-month intervals, of all  
14 unprocessed retail marijuana that is sold or transferred from retail  
15 marijuana cultivation facilities in the state to retail marijuana product  
16 manufacturing facilities, retail marijuana stores, or other retail marijuana  
17 cultivation facilities. An "average market rate" may be based on the  
18 purchaser or transferee of unprocessed retail marijuana or on the nature  
19 of the unprocessed retail marijuana that is sold or transferred "AFFILIATED  
20 MARIJUANA BUSINESS LICENSEES" MEANS MARIJUANA BUSINESS LICENSEES  
21 THAT ARE OWNED OR CONTROLLED BY THE SAME OR RELATED INTERESTS,  
22 WHERE "RELATED INTERESTS" INCLUDES INDIVIDUALS WHO ARE RELATED  
23 BY BLOOD OR MARRIAGE OR ENTITIES THAT ARE DIRECTLY OR INDIRECTLY  
24 CONTROLLED BY AN ENTITY OR INDIVIDUAL OR RELATED INDIVIDUALS.

25 (1.5) "AVERAGE MARKET RATE" MEANS THE AVERAGE PRICE, AS  
26 DETERMINED BY THE DEPARTMENT ON A QUARTERLY BASIS, OF ALL  
27 UNPROCESSED RETAIL MARIJUANA THAT IS SOLD OR TRANSFERRED FROM

1 RETAIL MARIJUANA CULTIVATION FACILITIES IN THE STATE TO RETAIL  
2 MARIJUANA PRODUCT MANUFACTURING FACILITIES OR RETAIL MARIJUANA  
3 STORES, LESS TAXES PAID ON THE SALES OR TRANSFERS. AN "AVERAGE  
4 MARKET RATE" MAY BE BASED ON THE PURCHASER OR TRANSFEREE OF  
5 UNPROCESSED RETAIL MARIJUANA OR ON THE NATURE OF THE  
6 UNPROCESSED RETAIL MARIJUANA THAT IS SOLD OR TRANSFERRED. THE  
7 "AVERAGE MARKET RATE" MUST INCLUDE ONE OR MORE RATES THAT  
8 COVER UNPROCESSED MARIJUANA THAT IS ALLOCATED TO EXTRACTIONS,  
9 AND THE INITIAL RATES FOR THESE PRODUCT TYPES MUST BE LOWER THAN  
10 THE RATE FOR UNPROCESSED MARIJUANA THAT IS ALLOCATED FOR DIRECT  
11 SALE TO CONSUMERS.

12 (2.5) "CONTRACT PRICE" MEANS THE INVOICE PRICE CHARGED BY  
13 A RETAIL MARIJUANA CULTIVATION FACILITY TO EACH LICENSED  
14 PURCHASER FOR EACH SALE OR TRANSFER OF UNPROCESSED RETAIL  
15 MARIJUANA, EXCLUSIVE OF ANY TAX THAT IS INCLUDED IN THE WRITTEN  
16 INVOICE PRICE, AND EXCLUSIVE OF ANY DISCOUNT OR OTHER REDUCTION.  
17 IN THE CASE OF MULTIPLE INVOICES REFLECTING MULTIPLE PRICES FOR THE  
18 SAME TRANSACTION, "CONTRACT PRICE" IS THE HIGHEST SUCH PRICE.

19 **SECTION 4.** In Colorado Revised Statutes, 39-28.8-302, **amend**  
20 **(1)(a)(I); and add (3) as follows:**

21 **39-28.8-302. Retail marijuana - excise tax levied at first**  
22 **transfer from retail marijuana cultivation facility - tax rate.**

23 (1) (a) (I) ~~Beginning January 1, 2014, Except as otherwise provided in~~  
24 ~~subparagraph (II) of this paragraph (a) and paragraph (b) of this~~  
25 ~~subsection (1)~~ SUBSECTION (1)(b) OF THIS SECTION, there is levied and  
26 shall be collected, in addition to the sales tax imposed pursuant to part 1  
27 of article 26 of this title TITLE 39 and part 2 of this article ARTICLE 28.8,

1 a tax on the first sale or transfer of unprocessed retail marijuana by a  
2 retail marijuana cultivation facility, at a rate of fifteen percent of the  
3 average market rate of the unprocessed retail marijuana IF THE  
4 TRANSACTION IS BETWEEN AFFILIATED RETAIL MARIJUANA BUSINESS  
5 LICENSEES. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF  
6 THIS SECTION, THERE IS LEVIED AND SHALL BE COLLECTED, IN ADDITION  
7 TO THE SALES TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS  
8 TITLE 39 AND PART 2 OF THIS ARTICLE 28.8, A TAX ON THE FIRST SALE OR  
9 TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA  
10 CULTIVATION FACILITY, AT A RATE OF FIFTEEN PERCENT OF THE CONTRACT  
11 PRICE FOR UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS  
12 BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES. The tax  
13 shall be imposed at the time when the retail marijuana cultivation facility  
14 first sells or transfers unprocessed retail marijuana from the retail  
15 marijuana cultivation facility to a retail marijuana product manufacturing  
16 facility OR a retail marijuana store. ~~or another retail marijuana cultivation~~  
17 facility.

18 (3) THE DEPARTMENT OF REVENUE SHALL PROVIDE LOCAL  
19 GOVERNMENTS WITH INFORMATION REGARDING THE TAX COLLECTED  
20 PURSUANT TO THIS SECTION UNDER A CONFIDENTIAL SHARED-USE  
21 AGREEMENT.

22 **SECTION 5.** In Colorado Revised Statutes, 29-2-114, amend  
23 (1)(a) and (2)(a) as follows:

24 **29-2-114. Retail marijuana excise tax - county - municipality**  
25 **- election.** (1)(a) In addition to any sales tax imposed pursuant to section  
26 29-2-103 and articles 26 and 28.8 of title 39, C.R.S., and in addition to  
27 the excise tax imposed pursuant to article 28.8 of title 39, C.R.S., each

1 county in the state is authorized to levy, collect, and enforce a county  
2 excise tax on the first sale or transfer of unprocessed retail marijuana by  
3 a retail marijuana cultivation facility authorized by the county; except that  
4 a county is not authorized to levy, collect, and enforce a county excise tax  
5 on the first sale or transfer of unprocessed retail marijuana by a retail  
6 marijuana cultivation facility pursuant to this subsection (1) within any  
7 municipality that levies such an excise tax pursuant to subsection (2) of  
8 this section. SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE  
9 AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. The  
10 tax shall be imposed at the time when the retail marijuana cultivation  
11 facility first sells or transfers unprocessed retail marijuana from the retail  
12 marijuana cultivation facility to a retail marijuana product manufacturing  
13 facility, a retail marijuana store, or another retail marijuana cultivation  
14 facility. The tax rate imposed pursuant to this paragraph (a) shall  
15 SUBSECTION (1)(a) MAY not exceed five percent of the average market  
16 rate, as determined by the department of revenue pursuant to section  
17 39-28.8-101 (1), C.R.S., of the unprocessed retail marijuana.

18 (2) (a) In addition to any sales tax imposed pursuant to section  
19 29-2-102 and articles 26 and 28.8 of title 39, C.R.S., and in addition to  
20 the excise tax imposed pursuant to article 28.8 of title 39, C.R.S., each  
21 municipality in the state is authorized to levy, collect, and enforce a  
22 municipal excise tax on the first sale or transfer of unprocessed retail  
23 marijuana by a retail marijuana cultivation facility. SUCH EXCISE TAX  
24 MUST BE CALCULATED BASED ON THE AVERAGE MARKET RATE OF THE  
25 UNPROCESSED RETAIL MARIJUANA. The tax shall be imposed at the time  
26 when the retail marijuana cultivation facility first sells or transfers  
27 unprocessed retail marijuana from the retail marijuana cultivation facility

1 to a retail marijuana product manufacturing facility, a retail marijuana  
2 store, or another retail marijuana cultivation facility. The tax rate imposed  
3 by any statutory municipality pursuant to this paragraph (a) shall  
4 SUBSECTION (2)(a) MAY not exceed five percent of the average market  
5 rate, as determined by the department of revenue pursuant to section  
6 39-28.8-101 (1), C.R.S., of the unprocessed retail marijuana.

7 **SECTION 6.** In Colorado Revised Statutes, 32-1-1004, amend  
8 (10)(a) and (10)(b) as follows:

9 **32-1-1004. Metropolitan districts - additional powers and**  
10 **duties.** (10) (a) In addition to the excise tax imposed pursuant to article  
11 28.8 of title 39, C.R.S., a metropolitan district with boundaries entirely  
12 within the unincorporated area of a county is authorized to levy, collect,  
13 and enforce a metropolitan district excise tax on the first sale or transfer  
14 of unprocessed retail marijuana by a retail marijuana cultivation facility.  
15 SUCHEXCISE TAX MUST BE CALCULATED BASED ON THE AVERAGE MARKET  
16 RATE OF THE UNPROCESSED RETAIL MARIJUANA. The tax shall be imposed  
17 at the time when the retail marijuana cultivation facility first sells or  
18 transfers unprocessed retail marijuana from the retail marijuana  
19 cultivation facility to a retail marijuana product manufacturing facility, a  
20 retail marijuana store, or another retail marijuana cultivation facility.

21 (b) If the boundaries of a metropolitan district are within a county  
22 that imposes an additional excise tax on the first sale or transfer of  
23 unprocessed retail marijuana by a retail marijuana cultivation facility  
24 pursuant to section 29-2-114, C.R.S., the excise tax rate imposed by the  
25 metropolitan district pursuant to this subsection (10) shall not exceed such  
26 tax rate imposed by the county. In no event shall the tax rate imposed  
27 pursuant to this subsection (10) exceed five percent of the average market



1 rate, as determined by the department of revenue pursuant to section  
2 39-28.8-101 (1), C.R.S., of the unprocessed retail marijuana.

3 **SECTION 7.** In Colorado Revised Statutes, 12-43.3-301, **amend**  
4 **(1)(d) and (1)(e); and add (1)(f) as follows:**

5 **12-43.3-301. Local licensing authority - applications - licenses.**

6 (1) A local licensing authority may issue only the following medical  
7 marijuana licenses upon payment of the fee and compliance with all local  
8 licensing requirements to be determined by the local licensing authority:

9 (d) A medical marijuana testing facility license; ~~and~~

10 (e) A medical marijuana transporter license; AND

11 (f) A MEDICAL MARIJUANA BUSINESS OPERATOR LICENSE.

12 **SECTION 8. Appropriation.** (1) For the 2017-18 state fiscal  
13 year, \$9,600 is appropriated to the department of revenue. This  
14 appropriation is from the general fund. To implement this act, the  
15 department may use this appropriation for tax administration IT system  
16 (GenTax) support.

17 (2) For the 2017-18 state fiscal year, \$59,458 is appropriated to  
18 the department of revenue. This appropriation is from the marijuana cash  
19 fund created in section 12-43.3-501 (1)(a), C.R.S. To implement this act,  
20 the department may use this appropriation for marijuana enforcement,  
21 which amount is based on the assumption that the department will require  
22 an additional 0.3 FTE.

23 **SECTION 9. Act subject to petition - effective date.** This act  
24 takes effect at 12:01 a.m. on the day following the expiration of the  
25 ninety-day period after final adjournment of the general assembly (August  
26 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a  
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act  
2 within such period, then the act, item, section, or part will not take effect  
3 unless approved by the people at the general election to be held in  
4 November 2018 and, in such case, will take effect on the date of the  
5 official declaration of the vote thereon by the governor.