A BILL FOR AN ACT

CONCERNING THE SALES TAX IMPOSED ON SALES OF RETAIL
MARIJUANA, AND, IN CONNECTION THERewith, REDUCING THE
RETAIL MARIJUANA SALES TAX RATE BY TWO AND NINE-TENTHS
PERCENT AND REPEALING THE GENERAL STATE SALES TAX
EXEMPTION FOR SALES OF RETAIL MARIJUANA.

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.)

On March 1, 2018, the bill repeals the general state sales tax exemption for sales of retail marijuana and reduces the retail marijuana sales tax rate by two and nine-tenths percent.
sales tax by 2.9% from 15% to 12.1%. With the repeal of the state exemption, sales of retail marijuana will automatically be subject to the sales tax levied by a limited purpose governmental entity whose sales tax authority is the same as the state.

Currently, statutory municipalities and counties are authorized to create an exemption for sales of retail marijuana that are exempt from the state general sales tax. Along with the repeal of the state exemption, this contingent authority is repealed.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) In enacting Senate Bill 17-267, the general assembly exempted retail marijuana sales from the general state sales tax and increased the rate of the retail marijuana sales tax so that only one state sales tax would be levied on such sales;

(b) In exempting retail marijuana sales from the general state sales tax, the general assembly inadvertently exempted such sales from the sales taxes imposed by certain limited purpose governmental entities that are authorized to levy sales tax upon all transactions or other incidents upon which the state levies the general state sales tax; and

(c) This unintentional change has weakened the limited purpose governmental entities' ability to provide services for their constituents and needs to be addressed.

(2) The general assembly further finds and declares that:

(a) The simultaneous repeal of the general state sales tax exemption for sales of retail marijuana and the decrease in the retail marijuana rate by two and nine-tenths percent are part of the same tax policy;

(b) This tax policy will not result in the state collecting any more
tax revenue from sales of retail marijuana and a taxpayer who purchases retail marijuana would pay exactly the same amount of total state sales tax before and after the change;

(c) Therefore, the state does not require prior voter approval before making this tax policy change;

(d) This act does not directly change the general scope of a limited purpose governmental entity's authority to impose a sales tax on certain items;

(e) Voters have given prior voter approval required by section 20 (4)(a) of article X of the state constitution for each of the limited purpose governmental entities to impose a sales tax upon all transactions or other incidents upon which the state levies the general state sales tax;

(f) If retail marijuana is included among the general category of items upon which the state levies the general state sales tax, then it is automatically included among the category of items for which the voters of the limited purpose governmental entities have given prior voter approval to tax under section 20 (4)(a) of article X of the state constitution; and

(g) Therefore, a limited purpose governmental entity has prior voter approval to impose its sales tax on sales of retail marijuana, and it is unnecessary to conduct another election on the issue.

SECTION 2. In Colorado Revised Statutes, repeal 39-26-729 as follows:

39-26-729. Retail sales of marijuana. On and after July 1, 2017, all retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 are exempt from taxation under part 1 of this article 26.
SECTION 3. In Colorado Revised Statutes, 39-28.8-202, amend (1)(a)(I); and add (1)(a)(I.5) as follows:

39-28.8-202. Retail marijuana sales tax. (1) (a) (I) In addition to the tax imposed pursuant to part 1 of article 26 of this title 39 and the sales tax imposed by a local government pursuant to title 29, 30, 31, or 32, but Except as otherwise set forth in subsections (1)(a)(II) and (1)(a)(III) of this section, beginning January 1, 2014, and through June 30, 2017, there is imposed upon all sales of retail marijuana and retail marijuana products by a retailer a tax at the rate of ten percent of the amount of the sale. Beginning July 1, 2017, AND THROUGH FEBRUARY 28, 2018, there is imposed upon all sales of retail marijuana and retail marijuana products by a retailer a tax at the rate of fifteen percent of the amount of the sale. BEGINNING MARCH 1, 2018, THERE IS IMPOSED UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY A RETAILER A TAX AT THE RATE OF TWELVE AND ONE-TENTHS PERCENT OF THE AMOUNT OF THE SALE. The tax imposed by this section is computed in accordance with schedules or forms prescribed by the executive director of the department; except that a retail marijuana store is not allowed to retain any portion of the retail marijuana sales tax collected pursuant to this part 2 to cover the expenses of collecting and remitting the tax and except that the department of revenue may require a retailer to make returns and remit the tax described in this part 2 by electronic funds transfers. The executive director may promulgate rules to implement this section.

(I.5) THE TAX IMPOSED PURSUANT TO SUBSECTION (1)(a)(I) OF THIS SECTION IS IN ADDITION TO THE TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE 39 AND THE SALES TAX IMPOSED BY ANY LOCAL
SECTION 4. In Colorado Revised Statutes, 29-2-105, repeal (1)(d)(I)(O) as follows:

29-2-105. Contents of sales tax ordinances and proposals - repeal. (1) The sales tax ordinance or proposal of any incorporated town, city, or county adopted pursuant to this article shall be imposed on the sale of tangible personal property at retail or the furnishing of services, as provided in subsection (1)(d) of this section. Any countywide or incorporated town or city sales tax ordinance or proposal shall include the following provisions:

(d) (I) A provision that the sale of tangible personal property and services taxable pursuant to this article shall be the same as the sale of tangible personal property and services taxable pursuant to section 39-26-104, except as otherwise provided in this subsection (1)(d). The sale of tangible personal property and services taxable pursuant to this article shall be subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39; except that the sale of the following may be exempted from a town, city, or county sales tax only by the express inclusion of the exemption either at the time of adoption of the initial sales tax ordinance or resolution or by amendment thereto:

(O) The exemption for retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 as specified in section 39-26-729.

SECTION 5. Effective date. This act takes effect upon passage; except that sections 2 and 4 of this act take effect March 1, 2018.

SECTION 6. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, and safety.