

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0369.01 Ed DeCecco x4216

HOUSE BILL 18-1062

HOUSE SPONSORSHIP

Lebsock,

SENATE SPONSORSHIP

(None),

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE SALES TAX IMPOSED ON SALES OF RETAIL
102 MARIJUANA, AND, IN CONNECTION THEREWITH, REDUCING THE
103 RETAIL MARIJUANA SALES TAX RATE BY TWO AND NINE-TENTHS
104 PERCENT AND REPEALING THE GENERAL STATE SALES TAX
105 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

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

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 Along with the repeal of the state exemption, this contingent authority is repealed.

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

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

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

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

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

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

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

21 (b) This tax policy will not result in the state collecting any more

1 tax revenue from sales of retail marijuana and a taxpayer who purchases
2 retail marijuana would pay exactly the same amount of total state sales tax
3 before and after the change;

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

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

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

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

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

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

24 **39-26-729. Retail sales of marijuana.** ~~On and after July 1, 2017,~~
25 ~~all retail sales of marijuana upon which the retail marijuana sales tax is~~
26 ~~imposed pursuant to section 39-28.8-202 are exempt from taxation under~~
27 ~~part 1 of this article 26.~~

1 **SECTION 3.** In Colorado Revised Statutes, 39-28.8-202, **amend**
2 (1)(a)(I); and **add** (1)(a)(I.5) as follows:

3 **39-28.8-202. Retail marijuana sales tax.** (1) (a) (I) ~~In addition~~
4 ~~to the tax imposed pursuant to part 1 of article 26 of this title 39 and the~~
5 ~~sales tax imposed by a local government pursuant to title 29, 30, 31, or~~
6 ~~32, but~~ Except as otherwise set forth in subsections (1)(a)(II) and
7 (1)(a)(III) of this section, beginning January 1, 2014, and through June
8 30, 2017, there is imposed upon all sales of retail marijuana and retail
9 marijuana products by a retailer a tax at the rate of ten percent of the
10 amount of the sale. Beginning July 1, 2017, AND THROUGH FEBRUARY 28,
11 2018, there is imposed upon all sales of retail marijuana and retail
12 marijuana products by a retailer a tax at the rate of fifteen percent of the
13 amount of the sale. BEGINNING MARCH 1, 2018, THERE IS IMPOSED UPON
14 ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY
15 A RETAILER A TAX AT THE RATE OF TWELVE AND ONE-TENTHS PERCENT OF
16 THE AMOUNT OF THE SALE. The tax imposed by this section is computed
17 in accordance with schedules or forms prescribed by the executive
18 director of the department; except that a retail marijuana store is not
19 allowed to retain any portion of the retail marijuana sales tax collected
20 pursuant to this part 2 to cover the expenses of collecting and remitting
21 the tax and except that the department of revenue may require a retailer
22 to make returns and remit the tax described in this part 2 by electronic
23 funds transfers. The executive director may promulgate rules to
24 implement this section.

25 (I.5) THE TAX IMPOSED PURSUANT TO SUBSECTION (1)(a)(I) OF THIS
26 SECTION IS IN ADDITION TO THE TAX IMPOSED PURSUANT TO PART 1 OF
27 ARTICLE 26 OF THIS TITLE 39 AND THE SALES TAX IMPOSED BY ANY LOCAL

1 GOVERNMENT.

2 **SECTION 4.** In Colorado Revised Statutes, 29-2-105, **repeal**
3 (1)(d)(I)(O) as follows:

4 **29-2-105. Contents of sales tax ordinances and proposals -**
5 **repeal.** (1) The sales tax ordinance or proposal of any incorporated town,
6 city, or county adopted pursuant to this article shall be imposed on the
7 sale of tangible personal property at retail or the furnishing of services,
8 as provided in subsection (1)(d) of this section. Any countywide or
9 incorporated town or city sales tax ordinance or proposal shall include the
10 following provisions:

11 (d) (I) A provision that the sale of tangible personal property and
12 services taxable pursuant to this article shall be the same as the sale of
13 tangible personal property and services taxable pursuant to section
14 39-26-104, except as otherwise provided in this subsection (1)(d). The
15 sale of tangible personal property and services taxable pursuant to this
16 article shall be subject to the same sales tax exemptions as those specified
17 in part 7 of article 26 of title 39; except that the sale of the following may
18 be exempted from a town, city, or county sales tax only by the express
19 inclusion of the exemption either at the time of adoption of the initial
20 sales tax ordinance or resolution or by amendment thereto:

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

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

26 **SECTION 6. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.