

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-1230.01 Jason Gelender x4330

SENATE BILL 18-259

SENATE SPONSORSHIP

Smallwood, Baumgardner, Marble, Neville T., Sonnenberg, Tate

HOUSE SPONSORSHIP

(None),

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE TAXATION OF RETAIL MARIJUANA BY LOCAL**
102 **GOVERNMENTS.**

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>.)

Section 1 of the bill:

! Allows a county or municipality that levies excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility to calculate the tax based on either the average market rate (the only method allowed under current law) or the actual sales price of the

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.

unprocessed retail marijuana; and

- ! If a municipality annexes an unincorporated area within which a county is levying an excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, allows the county to continue to levy the excise tax for 3 years following the date of the annexation and prohibits the municipality from levying an excise tax on such sales until the county's authority to levy an excise tax expires.

Section 2 eliminates the authority of a metropolitan district to levy general sales tax on retail sales of marijuana. **Section 3** expands the statutory definition of "unprocessed retail marijuana" to include marijuana at the time of the first transfer or sale from a retail marijuana cultivation facility to another retail marijuana cultivation facility. **Section 4** requires the state retail marijuana excise tax to be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to not only a retail marijuana product manufacturing facility or a retail marijuana store (as is the case under current law), but also to another retail marijuana cultivation facility.

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

2 **SECTION 1.** In Colorado Revised Statutes, 29-2-114, **amend**
3 (1)(a) and (2)(a); and **add** (7) as follows:

4 **29-2-114. Retail marijuana excise tax - county - municipality**
5 **- election.** (1) (a) In addition to any sales tax imposed pursuant to section
6 29-2-103 and articles 26 and 28.8 of title 39, and in addition to the excise
7 tax imposed pursuant to article 28.8 of title 39, each county in the state is
8 authorized to levy, collect, and enforce a county excise tax on the first
9 sale or transfer of unprocessed retail marijuana by a retail marijuana
10 cultivation facility authorized by the county AT A RATE OF UP TO FIVE
11 PERCENT OF THE AVERAGE MARKET RATE, AS DETERMINED BY THE
12 DEPARTMENT OF REVENUE PURSUANT TO SECTION 39-28.8-101 (1), OF THE
13 UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN
14 AFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES AND AT A RATE OF UP

1 TO FIVE PERCENT OF THE CONTRACT PRICE, AS DEFINED IN SECTION
2 39-28.8-101 (2.5), FOR UNPROCESSED RETAIL MARIJUANA IF THE
3 TRANSACTION IS BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESS
4 LICENSEES; except that a county is not authorized to levy, collect, and
5 enforce a county excise tax on the first sale or transfer of unprocessed
6 retail marijuana by a retail marijuana cultivation facility pursuant to this
7 subsection (1) within any municipality that levies such an excise tax
8 pursuant to subsection (2) of this section AND A COUNTY WHICH, BEFORE
9 NOVEMBER 1, 2018, OBTAINED THE APPROVAL OF THE ELIGIBLE ELECTORS
10 OF THE COUNTY AS REQUIRED BY SUBSECTION (1)(b) OF THIS SECTION TO
11 LEVY ONLY A COUNTY EXCISE TAX ON THE FIRST SALE OR TRANSFER OF
12 UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION
13 FACILITY THAT IS CALCULATED BASED UPON THE AVERAGE MARKET RATE
14 OF UNPROCESSED RETAIL MARIJUANA AND IN WHICH THE ELIGIBLE
15 ELECTORS THEREAFTER REJECTED A PROPOSED AMENDMENT TO ALLOW
16 THE TAX TO BE CALCULATED BASED ON THE CONTRACT PRICE FOR
17 TRANSACTIONS BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESSES
18 MAY CONTINUE TO COLLECT THE TAX ON SUCH TRANSACTIONS BASED ON
19 AN AVERAGE MARKET RATE CALCULATION UNTIL DECEMBER 31, 2020.
20 ~~Such excise tax must be calculated based on the average market rate of~~
21 ~~the unprocessed retail marijuana.~~ The tax shall be imposed at the time
22 when the retail marijuana cultivation facility first sells or transfers
23 unprocessed retail marijuana from the retail marijuana cultivation facility
24 to a retail marijuana product manufacturing facility, a retail marijuana
25 store, or another retail marijuana cultivation facility. ~~The tax rate imposed~~
26 ~~pursuant to this subsection (1)(a) may not exceed five percent of the~~
27 ~~average market rate, as determined by the department of revenue pursuant~~

1 ~~to section 39-28.8-101 (1), of the unprocessed retail marijuana.~~

2 (2) (a) In addition to any sales tax imposed pursuant to section
3 29-2-102 and articles 26 and 28.8 of title 39, and in addition to the excise
4 tax imposed pursuant to article 28.8 of title 39, each municipality in the
5 state is authorized to levy, collect, and enforce a municipal excise tax on
6 the first sale or transfer of unprocessed retail marijuana by a retail
7 marijuana cultivation facility AT A RATE OF UP TO FIVE PERCENT OF THE
8 AVERAGE MARKET RATE, AS DETERMINED BY THE DEPARTMENT OF
9 REVENUE PURSUANT TO SECTION 39-28.8-101 (1), OF THE UNPROCESSED
10 RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN AFFILIATED RETAIL
11 MARIJUANA BUSINESS LICENSEES AND AT A RATE OF UP TO FIVE PERCENT
12 OF THE CONTRACT PRICE, AS DEFINED IN SECTION 39-28.8-101 (2.5), FOR
13 UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN
14 UNAFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES; EXCEPT THAT A
15 MUNICIPALITY WHICH, BEFORE NOVEMBER 1, 2018, OBTAINED THE
16 APPROVAL OF THE ELIGIBLE ELECTORS OF THE MUNICIPALITY AS REQUIRED
17 BY SUBSECTION (2)(b) OF THIS SECTION TO LEVY ONLY A MUNICIPAL
18 EXCISE TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL
19 MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY THAT IS
20 CALCULATED BASED UPON THE AVERAGE MARKET RATE OF UNPROCESSED
21 RETAIL MARIJUANA AND IN WHICH THE ELIGIBLE ELECTORS THEREAFTER
22 REJECTED A PROPOSED AMENDMENT TO ALLOW THE TAX TO BE
23 CALCULATED BASED ON THE CONTRACT PRICE FOR TRANSACTIONS
24 BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESSES MAY CONTINUE
25 TO COLLECT THE TAX ON SUCH TRANSACTIONS BASED ON AN AVERAGE
26 MARKET RATE CALCULATION UNTIL DECEMBER 31, 2020. Such excise tax
27 must be calculated based on the average market rate of the unprocessed

1 retail marijuana. The tax shall be imposed at the time when the retail
2 marijuana cultivation facility first sells or transfers unprocessed retail
3 marijuana from the retail marijuana cultivation facility to a retail
4 marijuana product manufacturing facility, a retail marijuana store, or
5 another retail marijuana cultivation facility. The tax rate imposed by
6 any statutory municipality pursuant to this subsection (2)(a) may not
7 exceed five percent of the average market rate, as determined by the
8 department of revenue pursuant to section 39-28.8-101 (1), of the
9 unprocessed retail marijuana.

10 (7) IF A RETAIL MARIJUANA CULTIVATION FACILITY USES A RETAIL
11 MARIJUANA TRANSPORTER, AS DEFINED IN SECTION 12-43.4-103 (21.5), TO
12 TRANSPORT UNPROCESSED RETAIL MARIJUANA BEING SOLD OR
13 TRANSFERRED BY THE RETAIL MARIJUANA CULTIVATION FACILITY TO A
14 RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITY, A RETAIL
15 MARIJUANA STORE, OR ANOTHER RETAIL MARIJUANA CULTIVATION
16 FACILITY, THE TRANSPORTATION OF THE UNPROCESSED RETAIL MARIJUANA
17 BY THE RETAIL MARIJUANA TRANSPORTER IS NOT A TRANSFER OF
18 UNPROCESSED RETAIL MARIJUANA FOR THE PURPOSE OF LEVYING ANY
19 EXCISE TAX IMPOSED PURSUANT TO THIS SECTION.

20 **SECTION 2.** In Colorado Revised Statutes, 39-26-729, **amend**
21 **as added by Senate Bill 18-088** (1)(b) and (2) as follows:

22 **39-26-729. Retail sales of marijuana.** (1) (b) Any _____
23 metropolitan district that levies A GENERAL UNIFORM sales tax as
24 authorized by section 32-1-1106 (1), health assurance district that levies
25 A GENERAL UNIFORM sales tax as authorized by section 32-19-112 (1) or
26 health service district that levies A GENERAL UNIFORM sales tax as
27 authorized by section 32-19-112 (1) may levy ITS GENERAL UNIFORM sales

1 tax on retail sales of marijuana upon which the retail marijuana sales tax
2 is imposed pursuant to section 39-28.8-202 regardless of whether or not
3 the district was levying ANY sales tax on such sales before July 1, 2017.

4 (2) The governing body of any special district or limited purpose
5 governmental entity that was levying sales tax upon retail marijuana sales
6 before July 1, 2017, and the governing body of any metropolitan district,
7 health assurance district or health service district that is authorized by
8 subsection (1)(b) of this section to levy A GENERAL UNIFORM sales tax on
9 retail marijuana sales shall determine whether the levying of such sales
10 tax complies with the Colorado constitution and applicable decisions of
11 the Colorado supreme court and Colorado court of appeals and, if the
12 governing body of any such special district or limited purpose
13 governmental entity determines that additional voter approval is required
14 to levy sales tax upon retail sales of marijuana, the special district or
15 limited purpose governmental entity shall not resume levying sales tax
16 upon such sales until voter approval is obtained.

17
18 **SECTION 3.** In Colorado Revised Statutes, 39-28.8-302, **amend**
19 (1)(a)(I) as follows:

20 **39-28.8-302. Retail marijuana - excise tax levied at first**
21 **transfer from retail marijuana cultivation facility - tax rate.**

22 (1) (a) (I) Except as otherwise provided in subsection (1)(b) of this
23 section, there is levied and shall be collected, in addition to the sales tax
24 imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this
25 article 28.8, a tax on the first sale or transfer of unprocessed retail
26 marijuana by a retail marijuana cultivation facility, at a rate of fifteen
27 percent of the average market rate of the unprocessed retail marijuana if

1 the transaction is between affiliated retail marijuana business licensees.
2 Except as otherwise provided in subsection (1)(b) of this section, there is
3 levied and shall be collected, in addition to the sales tax imposed pursuant
4 to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax
5 on the first sale or transfer of unprocessed retail marijuana by a retail
6 marijuana cultivation facility, at a rate of fifteen percent of the contract
7 price for unprocessed retail marijuana if the transaction is between
8 unaffiliated retail marijuana business licensees. RETAIL MARIJUANA
9 EXCISE TAX SHALL ALSO BE CALCULATED AS FIFTEEN PERCENT OF THE
10 CONTRACT PRICE WHEN THE FIRST TRANSFER OF RETAIL MARIJUANA THAT
11 HAS BEEN HARVESTED FOR SALE AT A RETAIL MARIJUANA STORE OR
12 EXTRACTION BY A RETAIL MARIJUANA PRODUCT MANUFACTURING
13 FACILITY IS BETWEEN UNAFFILIATED RETAIL MARIJUANA CULTIVATION
14 FACILITIES. The tax shall be imposed at the time when the retail marijuana
15 cultivation facility first sells or transfers unprocessed retail marijuana
16 from the retail marijuana cultivation facility to a retail marijuana product
17 manufacturing facility or a retail marijuana store.

18 **SECTION 4. Act subject to petition - effective date.** This act
19 takes effect January 1, 2019; except that, if a referendum petition is filed
20 pursuant to section 1 (3) of article V of the state constitution against this
21 act or an item, section, or part of this act within the ninety-day period
22 after final adjournment of the general assembly, then the act, item,
23 section, or part will not take effect unless approved by the people at the
24 general election to be held in November 2018 and, in such case, will take
25 effect on January 1, 2019, or on the date of the official declaration of the
26 vote thereon by the governor, whichever is later.