

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. 17-0787.01 Nicole Myers x4326

HOUSE BILL 17-1203

HOUSE SPONSORSHIP

Lebsock,

SENATE SPONSORSHIP

Martinez Humenik and Crowder,

House Committees

Local Government

Senate Committees

Local Government

A BILL FOR AN ACT

101 CONCERNING THE AUTHORITY OF CERTAIN LOCAL GOVERNMENTS TO
102 LEVY A SPECIAL SALES TAX ON RETAIL MARIJUANA IN CERTAIN
103 CIRCUMSTANCES SUBJECT TO VOTER APPROVAL BY THE
104 ELIGIBLE ELECTORS OF THE LOCAL GOVERNMENT.

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 Colorado court of appeals has held that current law does not authorize counties to levy and collect a sales tax on retail marijuana and retail marijuana products in addition to any sales tax imposed by the state

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.

SENATE
Amended 2nd Reading
April 10, 2017

HOUSE
3rd Reading Unamended
March 24, 2017

HOUSE
Amended 2nd Reading
March 23, 2017

and the standard sales tax imposed by the county (special sales tax). Current law is also silent regarding the authority of a statutory municipality (municipality) to collect a special sales tax on retail marijuana and retail marijuana products. The bill authorizes counties and municipalities to levy, collect, and enforce a special sales tax on retail marijuana and retail marijuana products; except that a county may levy, collect, and enforce a special sales tax on retail marijuana and retail marijuana products only under the following circumstances:

- ! The county levies, collects, and enforces a special sales tax upon all sales of retail marijuana and retail marijuana products in the unincorporated areas of the county;
- ! The county levies, collects, and enforces a special sales tax upon all sales of retail marijuana and retail marijuana products in the municipalities within the county that do not levy a special sales tax on the sale of retail marijuana and retail marijuana products. The county special sales tax is authorized only until the municipality obtains voter approval for a special municipal tax on the sale of retail marijuana and retail marijuana products. After such time, any county special sales tax is invalid within the corporate boundaries of the municipality unless the county enters into an intergovernmental agreement with the municipality to allow the county to continue to levy, collect, and enforce the county's special sales tax.
- ! The governing body of any county and the governing body of any municipality within the boundaries of the county that levies a municipal special sales tax on the sale of retail marijuana and retail marijuana products enter into an intergovernmental agreement pertaining to the county's levy, collection, and enforcement of a special sales tax upon all sales of all retail marijuana and retail marijuana products. The intergovernmental agreement may include a provision for the apportionment of a specified percentage of the gross retail marijuana special sales tax revenue collected by the county to the municipality.

The bill specifies that a county or a municipality may not levy a special sales tax under any circumstance until the proposed tax has been referred to and approved by the eligible electors of the county or municipality, as applicable. A county or municipality must refer the proposed tax to the eligible electors only on the date of the state general election, on the first Tuesday in November of an odd-numbered year, or, in the case of a municipality, on the date of a municipal biennial election.

The bill specifies that if a county or municipality obtained voter approval prior to the effective date of the bill to levy, collect, and enforce a special sales tax upon the sale of retail marijuana and retail marijuana

products, the tax is valid; except that, for a county, the tax is valid only so long as the county complies with the conditions specified in the bill. If the county levies, collects, and enforces such tax in a municipality that has already obtained voter approval to levy a special sales tax on the sale of retail marijuana and retail marijuana products, the county's special sales tax is invalid unless the county enters into an intergovernmental agreement with the municipality.

Any special sales tax on retail marijuana and retail marijuana products shall not be collected, administered, or enforced by the department of revenue. Instead, such tax shall be collected, administered, and enforced by the county or municipality imposing the tax.

A county or municipality in which the eligible electors have approved a special sales tax on the sale of retail marijuana and retail marijuana products may credit the revenues collected from the tax to the general fund of the county or municipality or to any special fund created in the county or municipality's treasury. The governing body of a county or municipality may use the revenues collected from the tax for any purpose as determined by the governing body of the county or municipality.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 29-2-115 as
3 follows:

4 **29-2-115. Retail marijuana sales tax - county - municipality -**
5 **election - legislative declaration - definition.** (1) (a) THE GENERAL
6 ASSEMBLY HEREBY FINDS AND DECLARES THAT THE SPECIAL SALES TAX
7 RECOGNIZED IN THIS SECTION PERMITS COUNTIES AND STATUTORY
8 MUNICIPALITIES TO ENACT AN ADDITIONAL TAX SPECIFIC TO THE SALE OF
9 RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, SUBJECT TO
10 VOTER APPROVAL. THIS DISTINCT TAXING AUTHORITY IS IN ADDITION TO
11 THE STATUTORY AUTHORITY FOR COUNTIES AND STATUTORY
12 MUNICIPALITIES TO IMPOSE A GENERAL SALES TAX, WHILE HOME RULE
13 MUNICIPALITIES DERIVE ALL SALES TAXING AUTHORITY FROM THE HOME
14 RULE AUTHORITY GRANTED BY THE COLORADO CONSTITUTION.

1 (b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
2 ANY SPECIAL SALES TAX ON RETAIL MARIJUANA AND RETAIL MARIJUANA
3 PRODUCTS PROPOSED BY COUNTIES AND STATUTORY MUNICIPALITIES
4 SHOULD TAKE INTO ACCOUNT THE TOTAL TAX RATE THAT WOULD EXIST IF
5 THE TAX IS ADOPTED BY VOTERS. IT IS THEREFORE ALSO THE INTENT OF
6 THE GENERAL ASSEMBLY IN ENACTING THIS SECTION TO ENSURE THAT THE
7 IMPOSITION OF A COUNTY SPECIAL SALES TAX WITHIN A HOME RULE
8 MUNICIPALITY OR STATUTORY MUNICIPALITY OCCURS ONLY WHEN THE
9 MUNICIPALITY DOES NOT HAVE ITS OWN SPECIAL SALES TAX, AND
10 OTHERWISE ONLY AFTER AN INTERGOVERNMENTAL AGREEMENT WITH A
11 MUNICIPALITY THAT DOES IMPOSE, OR IMPOSES AT ANY TIME, ITS OWN
12 SPECIAL SALES TAX.

13 (2) FOR PURPOSES OF THIS SECTION, "SPECIAL SALES TAX" MEANS
14 A SALES TAX IMPOSED BY A LOCAL GOVERNMENT IN ADDITION TO THE
15 GENERAL SALES TAX IMPOSED PURSUANT TO SECTION 29-2-102 OR
16 SECTION 29-2-103, AS APPLICABLE, AND IN ADDITION TO THE TAXES
17 IMPOSED PURSUANT TO ARTICLES 26 AND 28.8 OF TITLE 39.

18 (3) (a) EACH COUNTY IN THE STATE IS AUTHORIZED TO LEVY,
19 COLLECT, AND ENFORCE A COUNTY SPECIAL SALES TAX UPON ALL SALES
20 OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, AS THOSE
21 TERMS ARE DEFINED IN SECTION 12-43.4-103, UNDER THE FOLLOWING
22 CIRCUMSTANCES:

23 (I) A COUNTY MAY LEVY, COLLECT, AND ENFORCE A COUNTY
24 SPECIAL SALES TAX UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL
25 MARIJUANA PRODUCTS PURSUANT TO THIS SUBSECTION (3) IN THE
26 UNINCORPORATED AREAS OF THE COUNTY;

27 (II) A COUNTY MAY LEVY, COLLECT, AND ENFORCE A COUNTY

1 SPECIAL SALES TAX UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL
2 MARIJUANA PRODUCTS PURSUANT TO THIS SUBSECTION (3) IN THE
3 MUNICIPALITIES WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR
4 IN PART, THAT DO NOT LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE
5 OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS. THE COUNTY
6 MAY LEVY A SPECIAL SALES TAX IN A MUNICIPALITY PURSUANT TO THIS
7 SUBSECTION (3)(a)(II) ONLY UNTIL THE MUNICIPALITY OBTAINS VOTER
8 APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON RETAIL
9 MARIJUANA AND RETAIL MARIJUANA PRODUCTS. IF THE MUNICIPALITY
10 OBTAINS SUCH VOTER APPROVAL, THE COUNTY SPECIAL SALES TAX
11 AUTHORIZED BY THIS SUBSECTION (3)(a)(II) IS INVALID WITHIN THE
12 CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS
13 INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY
14 PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION THAT AUTHORIZES
15 THE COUNTY TO CONTINUE TO LEVY, COLLECT, AND ENFORCE THE SPECIAL
16 SALES TAX ON RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS
17 WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

18 (III) A COUNTY MAY LEVY, COLLECT, AND ENFORCE A COUNTY
19 SPECIAL SALES TAX UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL
20 MARIJUANA PRODUCTS PURSUANT TO THIS SUBSECTION (3) IN EACH
21 MUNICIPALITY WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR IN
22 PART, THAT LEVIES A MUNICIPAL SPECIAL SALES TAX ON THE SALES OF
23 RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, IF THE GOVERNING
24 BODY OF THE COUNTY AND THE GOVERNING BODY OF THE MUNICIPALITY
25 ENTER INTO AN INTERGOVERNMENTAL AGREEMENT PERTAINING TO THE
26 COUNTY'S LEVY, COLLECTION, AND ENFORCEMENT OF A COUNTY SPECIAL
27 SALES TAX UPON ALL SALES OF ALL RETAIL MARIJUANA AND RETAIL

1 MARIJUANA PRODUCTS WITHIN THE CORPORATE LIMITS OF THE
2 MUNICIPALITY. AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO THIS
3 SUBSECTION (3)(a)(III) MAY INCLUDE A PROVISION FOR THE
4 APPORTIONMENT OF A SPECIFIED PERCENTAGE OF THE GROSS COUNTY
5 RETAIL MARIJUANA SPECIAL SALES TAX REVENUE COLLECTED BY THE
6 COUNTY TO THE MUNICIPALITY.

7 (b) NOTWITHSTANDING SECTION 29-2-103 (2), A COUNTY MAY
8 LEVY, COLLECT, AND ENFORCE A SPECIAL SALES TAX PURSUANT TO THIS
9 SUBSECTION (3) IN LESS THAN THE ENTIRE COUNTY WHEN THE COUNTY
10 SATISFIES ONE OR MORE OF THE CONDITIONS OF THIS SUBSECTION (3).

11 (c) NO SPECIAL SALES TAX SHALL BE LEVIED PURSUANT TO THIS
12 SUBSECTION (3) UNTIL THE PROPOSAL HAS BEEN REFERRED TO AND
13 APPROVED BY THE ELIGIBLE ELECTORS OF THE COUNTY IN ACCORDANCE
14 WITH THIS ARTICLE 2. ANY PROPOSAL FOR THE LEVY OF A SPECIAL SALES
15 TAX IN ACCORDANCE WITH THIS SUBSECTION (3) MAY BE SUBMITTED TO
16 THE ELIGIBLE ELECTORS OF THE COUNTY ONLY ON THE DATE OF THE STATE
17 GENERAL ELECTION OR ON THE FIRST TUESDAY IN NOVEMBER OF AN
18 ODD-NUMBERED YEAR. ANY ELECTION ON THE PROPOSAL MUST BE
19 CONDUCTED BY THE COUNTY CLERK AND RECORDER IN ACCORDANCE WITH
20 THE "UNIFORM ELECTION CODE OF 1992", ARTICLES 1 TO 13 OF TITLE 1.

21 (4)(a) EACH MUNICIPALITY IN THE STATE IS AUTHORIZED TO LEVY,
22 COLLECT, AND ENFORCE A MUNICIPAL SPECIAL SALES TAX UPON ALL SALES
23 OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, AS THOSE
24 TERMS ARE DEFINED IN SECTION 12-43.4-103.

25 (b) NO SPECIAL SALES TAX SHALL BE LEVIED PURSUANT TO
26 SUBSECTION (4)(a) OF THIS SECTION UNTIL THE PROPOSAL HAS BEEN
27 REFERRED TO AND APPROVED BY THE ELIGIBLE ELECTORS OF THE

1 MUNICIPALITY IN ACCORDANCE WITH ARTICLE 10 OF TITLE 31. ANY
2 PROPOSAL FOR THE LEVY OF A SPECIAL SALES TAX IN ACCORDANCE WITH
3 SUBSECTION (4)(a) OF THIS SECTION MUST BE SUBMITTED TO THE ELIGIBLE
4 ELECTORS OF THE MUNICIPALITY ON THE DATE OF THE STATE GENERAL
5 ELECTION, ON THE FIRST TUESDAY IN NOVEMBER OF AN ODD-NUMBERED
6 YEAR, OR ON THE DATE OF A MUNICIPAL BIENNIAL ELECTION. ANY
7 ELECTION ON THE PROPOSAL MUST BE CONDUCTED BY THE CLERK OF THE
8 MUNICIPALITY IN ACCORDANCE WITH THE "COLORADO MUNICIPAL
9 ELECTION CODE OF 1965", ARTICLE 10 OF TITLE 31.

10 (5) IF A COUNTY OR MUNICIPALITY OBTAINED APPROVAL FROM THE
11 ELIGIBLE ELECTORS OF THE COUNTY OR MUNICIPALITY PRIOR TO THE
12 EFFECTIVE DATE OF THIS SECTION TO LEVY, COLLECT, AND ENFORCE A
13 SPECIAL SALES TAX ON THE SALE OF RETAIL MARIJUANA AND RETAIL
14 MARIJUANA PRODUCTS, THE SPECIAL SALES TAX IS VALID AND THE COUNTY
15 OR MUNICIPALITY IS AUTHORIZED TO CONTINUE TO LEVY, COLLECT, AND
16 ENFORCE THE SPECIAL SALES TAX; EXCEPT THAT, IN THE CASE OF A
17 COUNTY, THE COUNTY IS AUTHORIZED TO CONTINUE TO LEVY, COLLECT,
18 AND ENFORCE THE SPECIAL SALES TAX SO LONG AS THE COUNTY COMPLIES
19 WITH SUBSECTION (3) OF THIS SECTION. IF A COUNTY LEVIES, COLLECTS,
20 AND ENFORCES A SPECIAL SALES TAX IN A MUNICIPALITY THAT HAS
21 ALREADY OBTAINED VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL
22 SALES TAX ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA
23 PRODUCTS, THE COUNTY SPECIAL SALES TAX IS INVALID WITHIN THE
24 CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS
25 INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY
26 PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION THAT AUTHORIZES
27 THE COUNTY TO CONTINUE TO LEVY, COLLECT, AND ENFORCE THE SPECIAL

1 SALES TAX ON RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS
2 WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

3 (6) (a) NOTWITHSTANDING THIS ARTICLE 2, ANY RETAIL
4 MARIJUANA SPECIAL SALES TAX IMPOSED BY A COUNTY OR MUNICIPALITY
5 PURSUANT TO THIS SECTION SHALL NOT BE COLLECTED, ADMINISTERED, OR
6 ENFORCED BY THE DEPARTMENT OF REVENUE, BUT SHALL INSTEAD BE
7 COLLECTED, ADMINISTERED, AND ENFORCED BY THE COUNTY OR
8 MUNICIPALITY IMPOSING THE SPECIAL SALES TAX.

9 (b) A COUNTY OR MUNICIPALITY IN WHICH A SPECIAL SALES TAX
10 IS IMPOSED PURSUANT TO THIS SECTION MAY AUTHORIZE A RETAIL
11 MARIJUANA STORE TO RETAIN A PERCENTAGE OF THE RETAIL MARIJUANA
12 SPECIAL SALES TAX COLLECTED PURSUANT TO THIS SECTION TO COVER THE
13 EXPENSES OF COLLECTING AND REMITTING THE SPECIAL SALES TAX TO THE
14 COUNTY OR MUNICIPALITY. THE COUNTY OR MUNICIPALITY SHALL
15 DETERMINE THE PERCENTAGE THAT A RETAIL MARIJUANA STORE MAY
16 RETAIN PURSUANT TO THIS SUBSECTION (6)(b).

17 (7) A COUNTY OR MUNICIPALITY IN WHICH THE ELIGIBLE ELECTORS
18 HAVE APPROVED A SPECIAL SALES TAX PURSUANT TO THIS SECTION MAY
19 CREDIT THE REVENUES COLLECTED FROM THE SPECIAL SALES TAX TO THE
20 GENERAL FUND OF THE COUNTY OR MUNICIPALITY OR TO ANY SPECIAL
21 FUND CREATED IN THE COUNTY OR MUNICIPALITY'S TREASURY. THE
22 GOVERNING BODY OF A COUNTY OR MUNICIPALITY MAY USE THE
23 REVENUES COLLECTED FROM THE SPECIAL SALES TAX IMPOSED PURSUANT
24 TO THIS SECTION FOR ANY PURPOSE AS DETERMINED BY THE GOVERNING
25 BODY OF THE COUNTY OR THE MUNICIPALITY.

26 **SECTION 2. 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.