

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 18-1230.01 Jason Gelender x4330

SENATE BILL 18-259

SENATE SPONSORSHIP

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

HOUSE SPONSORSHIP

Pabon,

Senate Committees

Finance
Appropriations

House Committees

Local Government
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE TAXATION OF RETAIL MARIJUANA BY LOCAL**
102 **GOVERNMENTS, AND, IN CONNECTION THEREWITH, MAKING AN**
103 **APPROPRIATION.**

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

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.*

HOUSE
3rd Reading Unamended
May 8, 2018

HOUSE
Amended 2nd Reading
May 7, 2018

SENATE
3rd Reading Unamended
April 30, 2018

SENATE
Amended 2nd Reading
April 27, 2018

allowed under current law) or the actual sales price of the 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), (8), and (9) 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

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

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

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

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

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

21 (8) A COUNTY THAT LEVIES TAX ON RETAIL MARIJUANA PURSUANT
22 TO THIS ARTICLE 2 MAY OPT OUT OF THE REGULATIONS OF THE STATE
23 LICENSING AUTHORITY, AS DEFINED IN SECTION 12-43.4-103 (24), ON
24 SECURITY FENCING FOR MARIJUANA ESTABLISHMENTS WITH OUTDOOR OR
25 GREENHOUSE CULTIVATIONS IF THE COUNTY REQUIRES THE
26 ESTABLISHMENTS TO ERECT AND MAINTAIN A CHAIN-LINK OR
27 SUBSTANTIALLY SIMILAR FENCE WITH A MINIMUM HEIGHT OF SIX FEET AND

1 USES COUNTY TAX REVENUE TO ENFORCE FENCE REGULATIONS.
2 (9) A COUNTY THAT LEVIES TAX ON RETAIL MARIJUANA PURSUANT
3 TO THIS ARTICLE 2 AND THAT HAS LAND USE REGULATIONS DESIGNED TO
4 MAINTAIN A RURAL AREA'S DARK-SKY CHARACTERISTICS BY LIMITING OR
5 PROHIBITING ARTIFICIAL LIGHTS AT NIGHT MAY OPT OUT OF INCONSISTENT
6 REGULATIONS PROMULGATED BY THE STATE LICENSING AUTHORITY, AS
7 DEFINED IN SECTION 12-43.4-103 (24), WITH RESPECT TO MARIJUANA
8 ESTABLISHMENTS SO LONG AS THE COUNTY USES COUNTY TAX REVENUE
9 TO ENFORCE SECURITY REGULATIONS AT OUTDOOR AND GREENHOUSE
10 CULTIVATIONS.

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

13 39-26-729. Retail sales of marijuana. (1) (b) Any _____
14 metropolitan district that levies A GENERAL UNIFORM sales tax as
15 authorized by section 32-1-1106 (1), health assurance district that levies
16 A GENERAL UNIFORM sales tax as authorized by section 32-19-112 (1) or
17 health service district that levies A GENERAL UNIFORM sales tax as
18 authorized by section 32-19-112 (1) may levy ITS GENERAL UNIFORM sales
19 tax on retail sales of marijuana upon which the retail marijuana sales tax
20 is imposed pursuant to section 39-28.8-202 regardless of whether or not
21 the district was levying ANY sales tax on such sales before July 1, 2017.

22 (2) The governing body of any special district or limited purpose
23 governmental entity that was levying sales tax upon retail marijuana sales
24 before July 1, 2017, and the governing body of any metropolitan district,
25 health assurance district or health service district that is authorized by
26 subsection (1)(b) of this section to levy A GENERAL UNIFORM sales tax on
27 retail marijuana sales shall determine whether the levying of such sales

1 tax complies with the Colorado constitution and applicable decisions of
2 the Colorado supreme court and Colorado court of appeals and, if the
3 governing body of any such special district or limited purpose
4 governmental entity determines that additional voter approval is required
5 to levy sales tax upon retail sales of marijuana, the special district or
6 limited purpose governmental entity shall not resume levying sales tax
7 upon such sales until voter approval is obtained.

8

9
10 **SECTION 3.** In Colorado Revised Statutes, 39-28.8-302, **amend**
11 (1)(a)(I) as follows:

12 **39-28.8-302. Retail marijuana - excise tax levied at first**
13 **transfer from retail marijuana cultivation facility - tax rate.**

14 (1) (a) (I) Except as otherwise provided in subsection (1)(b) of this
15 section, there is levied and shall be collected, in addition to the sales tax
16 imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this
17 article 28.8, a tax on the first sale or transfer of unprocessed retail
18 marijuana by a retail marijuana cultivation facility, at a rate of fifteen
19 percent of the average market rate of the unprocessed retail marijuana if
20 the transaction is between affiliated retail marijuana business licensees.
21 Except as otherwise provided in subsection (1)(b) of this section, there is
22 levied and shall be collected, in addition to the sales tax imposed pursuant
23 to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax
24 on the first sale or transfer of unprocessed retail marijuana by a retail
25 marijuana cultivation facility, at a rate of fifteen percent of the contract
26 price for unprocessed retail marijuana if the transaction is between
27 unaffiliated retail marijuana business licensees. RETAIL MARIJUANA
EXCISE TAX SHALL ALSO BE CALCULATED AS FIFTEEN PERCENT OF THE

1 CONTRACT PRICE WHEN THE FIRST TRANSFER OF RETAIL MARIJUANA THAT
2 HAS BEEN HARVESTED FOR SALE AT A RETAIL MARIJUANA STORE OR
3 EXTRACTION BY A RETAIL MARIJUANA PRODUCT MANUFACTURING
4 FACILITY IS BETWEEN UNAFFILIATED RETAIL MARIJUANA CULTIVATION
5 FACILITIES. The tax shall be imposed at the time when the retail marijuana
6 cultivation facility first sells or transfers unprocessed retail marijuana
7 from the retail marijuana cultivation facility to a retail marijuana product
8 manufacturing facility or a retail marijuana store.

9 **SECTION 4. Appropriation.** For the 2018-19 state fiscal year,
10 \$15,840 is appropriated to the department of revenue. This appropriation
11 is from the general fund. To implement this act, the department may use
12 this appropriation for tax administration IT system (GenTax) support.

13 **SECTION 5. Act subject to petition - effective date.** This act
14 takes effect January 1, 2019; except that, if a referendum petition is filed
15 pursuant to section 1 (3) of article V of the state constitution against this
16 act or an item, section, or part of this act within the ninety-day period
17 after final adjournment of the general assembly, then the act, item,
18 section, or part will not take effect unless approved by the people at the
19 general election to be held in November 2018 and, in such case, will take
20 effect on January 1, 2019, or on the date of the official declaration of the
21 vote thereon by the governor, whichever is later.