

CHAPTER 299

PROFESSIONS AND OCCUPATIONS

SENATE BILL 17-192

BY SENATOR(S) Neville T., Jahn, Priola, Williams A., Baumgardner, Hill, Holbert, Kerr, Marble, Sonnenberg, Tate, Todd;
also REPRESENTATIVE(S) Melton and Singer, Gray, Hansen, Jackson, Kraft-Tharp, Lebsock, Lontine, Pabon, Pettersen,
Van Winkle.

AN ACT

**CONCERNING PROVISIONS TO ALLOW MARIJUANA BUSINESSES TO OPERATE MORE EFFICIENTLY,
AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

SECTION 1. In Colorado Revised Statutes, 12-43.3-202, **amend** (1)(a) as follows:

12-43.3-202. Powers and duties of state licensing authority - rules. (1) The state licensing authority shall:

(a) Grant or refuse state licenses for the cultivation, manufacture, distribution, and sale of medical marijuana as provided by law; suspend, fine, restrict, or revoke such licenses, WHETHER ACTIVE, EXPIRED, OR SURRENDERED, upon a violation of this ~~article~~ ARTICLE 43.3, or a rule promulgated pursuant to this ~~article~~ ARTICLE 43.3; and impose any penalty authorized by this ~~article~~ ARTICLE 43.3 or any rule promulgated pursuant to this ~~article~~ ARTICLE 43.3. The state licensing authority may take any action with respect to a registration pursuant to this ~~article~~ ARTICLE 43.3 as it may with respect to a license pursuant to this ~~article~~ ARTICLE 43.3, in accordance with the procedures established pursuant to this ~~article~~ ARTICLE 43.3.

SECTION 2. In Colorado Revised Statutes, 12-43.4-202, **amend** (2)(a) and (3)(a)(IV)(C) as follows:

12-43.4-202. Powers and duties of state licensing authority - rules. (2) The state licensing authority has the authority to:

(a) Grant or refuse state licenses for the cultivation, manufacture, distribution,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

sale, and testing of retail marijuana and retail marijuana products as provided by law; suspend, fine, restrict, or revoke such licenses, WHETHER ACTIVE, EXPIRED, OR SURRENDERED, upon a violation of this ~~article~~ ARTICLE 43.4 or any rule promulgated pursuant to this ~~article~~ ARTICLE 43.4; and impose any penalty authorized by this ~~article~~ ARTICLE 43.4 or any rule promulgated pursuant to this ~~article~~ ARTICLE 43.4. The state licensing authority may take any action with respect to a registration pursuant to this ~~article~~ ARTICLE 43.4 as it may with respect to a license pursuant to this ~~article~~ ARTICLE 43.4, in accordance with the procedures established pursuant to this ~~article~~ ARTICLE 43.4.

(3) (a) (IV) (C) In the event that test results indicate the presence of quantities of any substance determined to be injurious to health, the licensee shall immediately quarantine the products and notify the state licensing authority. The state licensing authority shall give the licensee an opportunity to RETEST THE PRODUCT AND IF THE SECOND TEST ALSO INDICATES THE PRESENCE OF QUANTITIES OF ANY SUBSTANCE DETERMINED TO BE INJURIOUS TO HEALTH THEN THE LICENSEE CAN remediate the product if the test indicated the presence of a microbial. If TWO ADDITIONAL TESTS DO NOT INDICATE THE PRESENCE OF QUANTITIES OF ANY SUBSTANCE DETERMINED TO BE INJURIOUS TO HEALTH, THE PRODUCT MAY BE USED OR SOLD BY THE LICENSEE. If the licensee is unable to remediate the product, the licensee shall document and properly destroy the adulterated product.

SECTION 3. In Colorado Revised Statutes, 39-28.8-101, **amend** the introductory portion and (1); and **add** (1.5) and (2.5) as follows:

39-28.8-101. Definitions. Unless the context otherwise requires, any terms not defined in this ~~article~~ shall ARTICLE 28.8 have the meanings set forth in article 26 of this ~~title~~ TITLE 39. As used in this ~~article~~ ARTICLE 28.8, unless the context otherwise requires:

(1) "~~Average market rate~~" ~~means the average price, as determined by the department on a biannual basis in six-month intervals, of all unprocessed retail marijuana that is sold or transferred from retail marijuana cultivation facilities in the state to retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities. An "average market rate" may be based on the purchaser or transferee of unprocessed retail marijuana or on the nature of the unprocessed retail marijuana that is sold or transferred~~ "AFFILIATED MARIJUANA BUSINESS LICENSEES" MEANS MARIJUANA BUSINESS LICENSEES THAT ARE OWNED OR CONTROLLED BY THE SAME OR RELATED INTERESTS, WHERE "RELATED INTERESTS" INCLUDES INDIVIDUALS WHO ARE RELATED BY BLOOD OR MARRIAGE OR ENTITIES THAT ARE DIRECTLY OR INDIRECTLY CONTROLLED BY AN ENTITY OR INDIVIDUAL OR RELATED INDIVIDUALS.

(1.5) "AVERAGE MARKET RATE" MEANS THE AVERAGE PRICE, AS DETERMINED BY THE DEPARTMENT ON A QUARTERLY BASIS, OF ALL UNPROCESSED RETAIL MARIJUANA THAT IS SOLD OR TRANSFERRED FROM RETAIL MARIJUANA CULTIVATION FACILITIES IN THE STATE TO RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES OR RETAIL MARIJUANA STORES, LESS TAXES PAID ON THE SALES OR TRANSFERS. AN "AVERAGE MARKET RATE" MAY BE BASED ON THE PURCHASER OR TRANSFEREE OF UNPROCESSED RETAIL MARIJUANA OR ON THE NATURE OF THE UNPROCESSED RETAIL MARIJUANA THAT IS SOLD OR TRANSFERRED. THE "AVERAGE

MARKET RATE" MUST INCLUDE ONE OR MORE RATES THAT COVER UNPROCESSED MARIJUANA THAT IS ALLOCATED TO EXTRACTIONS, AND THE INITIAL RATES FOR THESE PRODUCT TYPES MUST BE LOWER THAN THE RATE FOR UNPROCESSED MARIJUANA THAT IS ALLOCATED FOR DIRECT SALE TO CONSUMERS.

(2.5) "CONTRACT PRICE" MEANS THE INVOICE PRICE CHARGED BY A RETAIL MARIJUANA CULTIVATION FACILITY TO EACH LICENSED PURCHASER FOR EACH SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA, EXCLUSIVE OF ANY TAX THAT IS INCLUDED IN THE WRITTEN INVOICE PRICE, AND EXCLUSIVE OF ANY DISCOUNT OR OTHER REDUCTION. IN THE CASE OF MULTIPLE INVOICES REFLECTING MULTIPLE PRICES FOR THE SAME TRANSACTION, "CONTRACT PRICE" IS THE HIGHEST SUCH PRICE.

SECTION 4. In Colorado Revised Statutes, 39-28.8-302, **amend** (1)(a)(I); and **add** (3) as follows:

39-28.8-302. Retail marijuana - excise tax levied at first transfer from retail marijuana cultivation facility - tax rate. (1) (a) (I) ~~Beginning January 1, 2014, Except as otherwise provided in subparagraph (II) of this paragraph (a) and paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF THIS SECTION, there is levied and shall be collected, in addition to the sales tax imposed pursuant to part 1 of article 26 of this title TITLE 39 and part 2 of this article ARTICLE 28.8, a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of fifteen percent of the average market rate of the unprocessed retail marijuana IF THE TRANSACTION IS BETWEEN AFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, THERE IS LEVIED AND SHALL BE COLLECTED, IN ADDITION TO THE SALES TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE 39 AND PART 2 OF THIS ARTICLE 28.8, A TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY, AT A RATE OF FIFTEEN PERCENT OF THE CONTRACT PRICE FOR UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES. The tax shall 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 a retail marijuana product manufacturing facility OR a retail marijuana store. ~~or another retail marijuana cultivation facility.~~

(3) THE DEPARTMENT OF REVENUE SHALL PROVIDE LOCAL GOVERNMENTS WITH INFORMATION REGARDING THE TAX COLLECTED PURSUANT TO THIS SECTION UNDER A CONFIDENTIAL SHARED-USE AGREEMENT.

SECTION 5. In Colorado Revised Statutes, 29-2-114, **amend** (1)(a) and (2)(a) as follows:

29-2-114. Retail marijuana excise tax - county - municipality - election. (1) (a) In addition to any sales tax imposed pursuant to section 29-2-103 and articles 26 and 28.8 of title 39, ~~C.R.S.~~; and in addition to the excise tax imposed pursuant to article 28.8 of title 39, ~~C.R.S.~~; each county in the state is authorized to levy, collect, and enforce a county excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility authorized by the county; except that a county is not authorized to levy, collect, and enforce a county excise tax on the first sale or transfer of unprocessed retail marijuana by a

retail marijuana cultivation facility pursuant to this subsection (1) within any municipality that levies such an excise tax pursuant to subsection (2) of this section. SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. The tax shall 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 a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility. The tax rate imposed pursuant to this ~~paragraph (a) shall~~ SUBSECTION (1)(a) MAY not exceed five percent of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101 (1), ~~C.R.S.~~, of the unprocessed retail marijuana.

(2) (a) In addition to any sales tax imposed pursuant to section 29-2-102 and articles 26 and 28.8 of title 39, ~~C.R.S.~~, and in addition to the excise tax imposed pursuant to article 28.8 of title 39, ~~C.R.S.~~, each municipality in the state is authorized to levy, collect, and enforce a municipal excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility. SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. The tax shall 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 a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility. The tax rate imposed by any statutory municipality pursuant to this ~~paragraph (a) shall~~ SUBSECTION (2)(a) MAY not exceed five percent of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101 (1), ~~C.R.S.~~, of the unprocessed retail marijuana.

SECTION 6. In Colorado Revised Statutes, 32-1-1004, **amend** (10)(a) and (10)(b) as follows:

32-1-1004. Metropolitan districts - additional powers and duties. (10) (a) In addition to the excise tax imposed pursuant to article 28.8 of title 39, ~~C.R.S.~~, a metropolitan district with boundaries entirely within the unincorporated area of a county is authorized to levy, collect, and enforce a metropolitan district excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility. SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. The tax shall 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 a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility.

(b) If the boundaries of a metropolitan district are within a county that imposes an additional excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility pursuant to section 29-2-114, ~~C.R.S.~~, the excise tax rate imposed by the metropolitan district pursuant to this subsection (10) shall not exceed such tax rate imposed by the county. In no event shall the tax rate imposed pursuant to this subsection (10) exceed five percent of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101 (1), ~~C.R.S.~~, of the unprocessed retail marijuana.

SECTION 7. In Colorado Revised Statutes, 12-43.3-301, **amend** (1)(d) and (1)(e); and **add** (1)(f) as follows:

12-43.3-301. Local licensing authority - applications - licenses. (1) A local licensing authority may issue only the following medical marijuana licenses upon payment of the fee and compliance with all local licensing requirements to be determined by the local licensing authority:

- (d) A medical marijuana testing facility license; ~~and~~
- (e) A medical marijuana transporter license; AND
- (f) A MEDICAL MARIJUANA BUSINESS OPERATOR LICENSE.

SECTION 8. Appropriation. (1) For the 2017-18 state fiscal year, \$9,600 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation for tax administration IT system (GenTax) support.

(2) For the 2017-18 state fiscal year, \$59,458 is appropriated to the department of revenue. This appropriation is from the marijuana cash fund created in section 12-43.3-501 (1)(a), C.R.S. To implement this act, the department may use this appropriation for marijuana enforcement, which amount is based on the assumption that the department will require an additional 0.3 FTE.

SECTION 9. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 2, 2017