

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

INTRODUCED

LLS NO. 18-0764.02 Jason Gelender x4330

SENATE BILL 18-088

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A BILL FOR AN ACT

101 **CONCERNING CLARIFICATION THAT RETAIL MARIJUANA SALES ARE**
102 **SUBJECT TO SALES TAXES LEVIED BY CERTAIN LIMITED PURPOSE**
103 **GOVERNMENTAL ENTITIES.**

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>.)

Before the enactment of Senate Bill 17-267, the state levied 2 sales taxes on retail marijuana sales: The 2.9% general state sales tax levied pursuant to article 26 of title 39, C.R.S., and the retail marijuana sales tax, a 10% special sales tax levied on retail marijuana sales only pursuant to article 28.8 of title 39, C.R.S. Senate Bill 17-267 increased the total rate

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.

of state sales tax levied on retail marijuana sales, as authorized by prior voter approval, by exempting retail marijuana sales from the 2.9% general state sales tax and increasing the rate of the retail marijuana sales tax from 10% to 15%, effective July 1, 2017.

Because enabling statutes specify that the regional transportation district (RTD), the scientific and cultural facilities district (SCFD), and health services districts (HSD) may levy sales tax only on transactions upon which the state levies sales tax "pursuant to the provisions of article 26 of title 29, C.R.S.," the exemption of retail marijuana sales from the general state sales tax had the unintended consequence of exempting such sales from RTD, SCFD, and HSD sales taxes even though the state continues to levy the retail marijuana sales tax pursuant to article 28.8 of title 39, C.R.S. In addition, other statutes that empower certain special districts and authorities to levy sales taxes only upon transactions upon which the state levies sales tax, but do not specifically reference article 26, are sufficiently ambiguous that they could be interpreted to no longer authorize those special districts to levy sales tax on retail marijuana sales.

The bill clarifies that:

- ! Retail marijuana sales remain subject to the sales taxes of the RTD, SCFD, and HSD and any other sales taxes that limited purpose governmental entities levied on retail marijuana sales before July 1, 2017; and
- ! A special district or other limited purpose governmental entity that was not levying sales tax on retail marijuana before July 1, 2017, may not levy sales tax on retail marijuana sales.

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 in 2017, the general assembly
5 exempted retail marijuana sales from the general state sales tax and
6 increased the rate of the retail marijuana sales tax so that, without
7 reducing total state sales tax revenue attributable to retail marijuana sales,
8 only one state sales tax would be levied on such sales;

9 (b) In exempting retail marijuana sales from the general state sales
10 tax, the general assembly inadvertently exempted such sales from regional

1 transportation district, scientific and cultural facilities district, and health
2 services district sales taxes and made it unclear whether certain other
3 limited purpose governmental entities that were levying sales taxes on
4 such sales before July 1, 2017, could continue to levy sales taxes on such
5 sales;

6 (c) The inadvertent and unintended exemption of retail marijuana
7 sales from certain special district and other governmental entity sales
8 taxes:

9 (I) Is inconsistent with prior voter approval to levy broad general
10 sales taxes obtained by the affected special districts and other
11 governmental entities; and

12 (II) Adversely impacts the ability of the affected special districts
13 and other governmental entities to provide the services, programs, and
14 facilities that they were organized to provide.

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

16 (a) Subject only to constitutional limitations, the general assembly
17 has plenary power to enact legislation, including the power to enact
18 retroactive curative and remedial legislation for the purpose of curing and
19 remedying past errors and omissions in previously enacted legislation;
20 and

21 (b) It is necessary to enact this act as retroactive curative and
22 remedial legislation to correct an oversight in Senate Bill 17-267 and
23 ensure that the original intent of the general assembly in enacting Senate
24 Bill 17-267 that the affected special districts and other governmental
25 entities be able to continue to levy sales taxes on retail marijuana sales on
26 and after July 1, 2017, is realized.

27 (3) The general assembly further finds and declares that it is

1 necessary, appropriate, in the best interest of the state, and consistent with
2 existing state tax policy and prior voter approval to levy broad general
3 sales taxes obtained by the affected special districts and other
4 governmental entities to clarify that retail marijuana sales remain subject
5 to sales taxes levied by the affected special districts and other
6 governmental entities so long as the continued levying and collection of
7 the taxes on such sales complies with the requirements of the Colorado
8 constitution and applicable decisions of the Colorado supreme court and
9 Colorado court of appeals.

10 **SECTION 2.** In Colorado Revised Statutes, **amend** 39-26-729 as
11 follows:

12 **39-26-729. Retail sales of marijuana.** (1) On and after July 1,
13 2017, all retail sales of marijuana upon which the retail marijuana sales
14 tax is imposed pursuant to section 39-28.8-202 are exempt from taxation
15 under part 1 of this article 26 BY THE STATE OR BY ANY SPECIAL DISTRICT
16 OR OTHER LIMITED PURPOSE GOVERNMENTAL ENTITY THAT WAS NOT
17 LEVYING SALES TAX ON RETAIL SALES OF MARIJUANA UNDER PART 1 OF
18 THIS ARTICLE 26 BEFORE JULY 1, 2017. NOTWITHSTANDING ANY OTHER
19 LAW TO THE CONTRARY, ANY SPECIAL DISTRICT OR OTHER LIMITED
20 PURPOSE GOVERNMENTAL ENTITY THAT WAS LEVYING SALES TAX ON
21 RETAIL SALES OF MARIJUANA UNDER PART 1 OF THIS ARTICLE 26 BEFORE
22 JULY 1, 2017, RETAINS ITS AUTHORITY TO CONTINUE LEVYING SALES TAX
23 UPON RETAIL SALES OF MARIJUANA UNDER THIS ARTICLE 26.

24 (2) THE GOVERNING BODY OF ANY SPECIAL DISTRICT OR LIMITED
25 PURPOSE GOVERNMENTAL ENTITY THAT WAS LEVYING SALES TAX UPON
26 RETAIL MARIJUANA SALES BEFORE JULY 1, 2017, SHALL DETERMINE
27 WHETHER THE LEVYING OF SUCH SALES TAX COMPLIES WITH THE

1 COLORADO CONSTITUTION AND APPLICABLE DECISIONS OF THE COLORADO
2 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
5 IS REQUIRED TO LEVY SALES TAX UPON RETAIL SALES OF MARIJUANA, THE
6 SPECIAL DISTRICT OR LIMITED PURPOSE GOVERNMENTAL ENTITY SHALL
7 NOT RESUME LEVYING SALES TAX UPON SUCH SALES UNTIL VOTER
8 APPROVAL IS OBTAINED.

9 **SECTION 3. Applicability.** This act applies to retail marijuana
10 sales occurring on and after July 1, 2017.

11 **SECTION 4. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.