

**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. 18-0764.02 Jason Gelender x4330

SENATE BILL 18-088

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Senate Committees
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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.*

SENATE
3rd Reading Unamended
January 30, 2018

SENATE
2nd Reading Unamended
January 29, 2018

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, but not retrospective, curative and remedial legislation for the
19 purpose of curing and remedying past errors and omissions in previously
20 enacted legislation; [REDACTED]

21 (b) It is necessary to enact this act as retroactive, but not
22 retrospective, curative and remedial legislation to correct an oversight in
23 Senate Bill 17-267 and ensure that the original intent of the general
24 assembly in enacting Senate Bill 17-267 that the affected special districts
25 and other governmental entities be able to continue to levy sales taxes on
26 retail marijuana sales on and after July 1, 2017, is realized; and

27 (c) While the retroactive, but not retrospective, curative, and

1 remedial operation of this act establishes that the existing tax policy of the
2 state authorizing the affected special districts and other governmental
3 entities to levy sales tax on retail marijuana sales never changed,
4 notwithstanding the inadvertent and unintended effect that the enactment
5 of Senate Bill 17-267 had on the collection of such taxes, it would be
6 unfair and burdensome to sellers and purchasers of retail marijuana and
7 administratively impractical or impossible to recover sales tax that was
8 authorized to be levied on but was not actually collected on retail
9 marijuana sales occurring on and after July 1, 2017, but before the
10 effective date of this act.

11 (3) The general assembly further finds and declares that it is
12 necessary, appropriate, in the best interest of the state, and consistent with
13 existing state tax policy and prior voter approval to levy broad general
14 sales taxes obtained by the affected special districts and other
15 governmental entities to clarify that retail marijuana sales remain subject
16 to sales taxes levied by the affected special districts and other
17 governmental entities so long as the continued levying and collection of
18 the taxes on such sales complies with the requirements of the Colorado
19 constitution and applicable decisions of the Colorado supreme court and
20 Colorado court of appeals.

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

23 **39-26-729. Retail sales of marijuana.** (1) (a) EXCEPT AS
24 OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, on and after
25 July 1, 2017, all retail sales of marijuana upon which the retail marijuana
26 sales tax is imposed pursuant to section 39-28.8-202 are exempt from
27 taxation under part 1 of this article 26 BY THE STATE OR BY ANY SPECIAL

1 DISTRICT OR OTHER LIMITED PURPOSE GOVERNMENTAL ENTITY THAT WAS
2 NOT LEVYING SALES TAX ON RETAIL SALES OF MARIJUANA UNDER PART 1
3 OF THIS ARTICLE 26 BEFORE JULY 1, 2017. NOTWITHSTANDING ANY OTHER
4 LAW TO THE CONTRARY, ANY SPECIAL DISTRICT OR OTHER LIMITED
5 PURPOSE GOVERNMENTAL ENTITY THAT WAS LEVYING SALES TAX ON
6 RETAIL SALES OF MARIJUANA UNDER PART 1 OF THIS ARTICLE 26 BEFORE
7 JULY 1, 2017, RETAINS ITS AUTHORITY TO CONTINUE LEVYING SALES TAX
8 UPON RETAIL SALES OF MARIJUANA UNDER THIS ARTICLE 26.

9 (b) ANY METROPOLITAN DISTRICT THAT LEVIES SALES TAX AS
10 AUTHORIZED BY SECTION 32-1-1106 (1), HEALTH ASSURANCE DISTRICT
11 THAT LEVIES SALES TAX AS AUTHORIZED BY SECTION 32-19-112 (1), OR
12 HEALTH SERVICE DISTRICT THAT LEVIES SALES TAX AS AUTHORIZED BY
13 SECTION 32-19-112 (1) MAY LEVY SALES TAX ON RETAIL SALES OF
14 MARIJUANA UPON WHICH THE RETAIL MARIJUANA SALES TAX IS IMPOSED
15 PURSUANT TO SECTION 39-28.8-202 REGARDLESS OF WHETHER OR NOT THE
16 DISTRICT WAS LEVYING SALES TAX ON SUCH SALES BEFORE JULY 1, 2017.

17 (2) THE GOVERNING BODY OF ANY SPECIAL DISTRICT OR LIMITED
18 PURPOSE GOVERNMENTAL ENTITY THAT WAS LEVYING SALES TAX UPON
19 RETAIL MARIJUANA SALES BEFORE JULY 1, 2017, AND THE GOVERNING
20 BODY OF ANY METROPOLITAN DISTRICT, HEALTH ASSURANCE DISTRICT, OR
21 HEALTH SERVICE DISTRICT THAT IS AUTHORIZED BY SUBSECTION (1)(b) OF
22 THIS SECTION TO LEVY SALES TAX ON RETAIL MARIJUANA SALES SHALL
23 DETERMINE WHETHER THE LEVYING OF SUCH SALES TAX COMPLIES WITH
24 THE COLORADO CONSTITUTION AND APPLICABLE DECISIONS OF THE
25 COLORADO SUPREME COURT AND COLORADO COURT OF APPEALS AND, IF
26 THE GOVERNING BODY OF ANY SUCH SPECIAL DISTRICT OR LIMITED
27 PURPOSE GOVERNMENTAL ENTITY DETERMINES THAT ADDITIONAL VOTER

1 APPROVAL IS REQUIRED TO LEVY SALES TAX UPON RETAIL SALES OF
2 MARIJUANA, THE SPECIAL DISTRICT OR LIMITED PURPOSE GOVERNMENTAL
3 ENTITY SHALL NOT RESUME LEVYING SALES TAX UPON SUCH SALES UNTIL
4 VOTER APPROVAL IS OBTAINED.

5 **SECTION 3. Applicability.** The provisions of this act that
6 authorize the continued levying of sales tax on retail sales of marijuana
7 apply retroactively, but not retrospectively, curatively, and remedially to
8 retail marijuana sales occurring on and after July 1, 2017, but,
9 notwithstanding that authorization, authorized sales taxes that were not
10 actually collected on retail sales of marijuana occurring on and after July
11 1, 2017, but before the effective date of this act shall not be collected.

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