

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. 18-1230.01 Jason Gelender x4330

**SENATE BILL 18-259**

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**SENATE SPONSORSHIP**

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

**HOUSE SPONSORSHIP**

(None),

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**Senate Committees**

Finance  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

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

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**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.

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.

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

23 **39-26-729. Retail sales of marijuana.** (1) (b) Any \_\_\_\_\_  
24 metropolitan district that levies A GENERAL UNIFORM sales tax as  
25 authorized by section 32-1-1106 (1), health assurance district that levies  
26 A GENERAL UNIFORM sales tax as authorized by section 32-19-112 (1) or  
27 health service district that levies A GENERAL UNIFORM sales tax as

1 authorized by section 32-19-112 (1) may levy ITS GENERAL UNIFORM sales  
2 tax on retail sales of marijuana upon which the retail marijuana sales tax  
3 is imposed pursuant to section 39-28.8-202 regardless of whether or not  
4 the district was levying ANY sales tax on such sales before July 1, 2017.

5 (2) The governing body of any special district or limited purpose  
6 governmental entity that was levying sales tax upon retail marijuana sales  
7 before July 1, 2017, and the governing body of any metropolitan district,  
8 health assurance district or health service district that is authorized by  
9 subsection (1)(b) of this section to levy A GENERAL UNIFORM sales tax on  
10 retail marijuana sales shall determine whether the levying of such sales  
11 tax complies with the Colorado constitution and applicable decisions of  
12 the Colorado supreme court and Colorado court of appeals and, if the  
13 governing body of any such special district or limited purpose  
14 governmental entity determines that additional voter approval is required  
15 to levy sales tax upon retail sales of marijuana, the special district or  
16 limited purpose governmental entity shall not resume levying sales tax  
17 upon such sales until voter approval is obtained.

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

21 **39-28.8-302. Retail marijuana - excise tax levied at first**  
22 **transfer from retail marijuana cultivation facility - tax rate.**

23 (1) (a) (I) Except as otherwise provided in subsection (1)(b) of this  
24 section, there is levied and shall be collected, in addition to the sales tax  
25 imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this  
26 article 28.8, a tax on the first sale or transfer of unprocessed retail  
27 marijuana by a retail marijuana cultivation facility, at a rate of fifteen

1 percent of the average market rate of the unprocessed retail marijuana if  
2 the transaction is between affiliated retail marijuana business licensees.  
3 Except as otherwise provided in subsection (1)(b) of this section, there is  
4 levied and shall be collected, in addition to the sales tax imposed pursuant  
5 to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax  
6 on the first sale or transfer of unprocessed retail marijuana by a retail  
7 marijuana cultivation facility, at a rate of fifteen percent of the contract  
8 price for unprocessed retail marijuana if the transaction is between  
9 unaffiliated retail marijuana business licensees. RETAIL MARIJUANA  
10 EXCISE TAX SHALL ALSO BE CALCULATED AS FIFTEEN PERCENT OF THE  
11 CONTRACT PRICE WHEN THE FIRST TRANSFER OF RETAIL MARIJUANA THAT  
12 HAS BEEN HARVESTED FOR SALE AT A RETAIL MARIJUANA STORE OR  
13 EXTRACTION BY A RETAIL MARIJUANA PRODUCT MANUFACTURING  
14 FACILITY IS BETWEEN UNAFFILIATED RETAIL MARIJUANA CULTIVATION  
15 FACILITIES. The tax shall be imposed at the time when the retail marijuana  
16 cultivation facility first sells or transfers unprocessed retail marijuana  
17 from the retail marijuana cultivation facility to a retail marijuana product  
18 manufacturing facility or a retail marijuana store.

19 **SECTION 4. Appropriation.** For the 2018-19 state fiscal year,  
20 \$15,840 is appropriated to the department of revenue. This appropriation  
21 is from the general fund. To implement this act, the department may use  
22 this appropriation for tax administration IT system (GenTax) support.

23 **SECTION 5. Act subject to petition - effective date.** This act  
24 takes effect January 1, 2019; except that, if a referendum petition is filed  
25 pursuant to section 1 (3) of article V of the state constitution against this  
26 act or an item, section, or part of this act within the ninety-day period  
27 after final adjournment of the general assembly, then the act, item,

1 section, or part will not take effect unless approved by the people at the  
2 general election to be held in November 2018 and, in such case, will take  
3 effect on January 1, 2019, or on the date of the official declaration of the  
4 vote thereon by the governor, whichever is later.