

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0941.01 Michael Dohr x4347

SENATE BILL 17-192

SENATE SPONSORSHIP

Neville T., Jahn, Priola, Williams A.

HOUSE SPONSORSHIP

Melton and Singer,

Senate Committees

Business, Labor, & Technology
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROVISIONS TO ALLOW MARIJUANA BUSINESSES TO**
102 **OPERATE MORE EFFICIENTLY, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN 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>.)

The bill allows a medical marijuana center and a retail marijuana store to apply for an endorsement that allows the center or store to deliver marijuana. The centers and stores with the delivery endorsement may use an employee or contract with a medical or retail marijuana transporter to make the deliveries. The endorsements for medical marijuana begin

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 11, 2017

January 2, 2018, and the endorsements for retail marijuana begin January 2, 2019.

The bill allows the state licensing authority to authorize single-instance transfers of retail marijuana or retail marijuana products from a retail marijuana licensee to a medical marijuana licensee based on a business need due to a change in local, state, or federal law or enforcement policy. If granted, the transfer must be completed within 6 months of the date the transfer was approved.

Under current law, the department of revenue determines the average market rate for purposes of excise tax collection on retail marijuana every 6 months. The bill gives the authority to calculate the average market rate to the marijuana state licensing authority and requires calculation on a quarterly basis. The average market rate cannot include taxes paid on sales or transfers. The bill requires a separate average market rate for unprocessed marijuana for extraction that is lower than the average market rate for unprocessed marijuana for direct sale. The bill states that the average market rate should be used to calculate the excise tax on affiliated transactions, and the contract price should be used to calculate the excise tax on unaffiliated transactions.

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

2 **SECTION 1. In Colorado Revised Statutes, 12-43.3-202, amend**

3 **(1)(a) as follows:**

4 **12-43.3-202. Powers and duties of state licensing authority -**

5 **rules. (1) The state licensing authority shall:**

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

7 **distribution, and sale of medical marijuana as provided by law; suspend,**

8 **fine, restrict, or revoke such licenses, WHETHER ACTIVE, EXPIRED, OR**

9 **SURRENDERED, upon a violation of this ~~article~~ ARTICLE 43.3, or a rule**

10 **promulgated pursuant to this ~~article~~ ARTICLE 43.3; and impose any penalty**

11 **authorized by this ~~article~~ ARTICLE 43.3 or any rule promulgated pursuant**

12 **to this ~~article~~ ARTICLE 43.3. The state licensing authority may take any**

13 **action with respect to a registration pursuant to this ~~article~~ ARTICLE 43.3**

14 **as it may with respect to a license pursuant to this ~~article~~ ARTICLE 43.3.**

1 in accordance with the procedures established pursuant to this article
2 ARTICLE 43.3.

3 **SECTION 2.** In Colorado Revised Statutes, 12-43.3-401, **add** (4)
4 as follows:

5 **12-43.3-401. Classes of licenses.** (4) A MEDICAL MARIJUANA
6 LICENSEE MAY ACCEPT A TRANSFER OF RETAIL MARIJUANA OR RETAIL
7 MARIJUANA PRODUCTS FROM A RETAIL MARIJUANA LICENSEE AUTHORIZED
8 PURSUANT TO THE AUTHORITY AND SUBJECT TO THE CONDITIONS IN
9 SECTION 12-43.4-401 (5).

10 **SECTION 3.** In Colorado Revised Statutes, 12-43.4-202, **amend**
11 (2)(a), (3)(a) introductory portion, and (3)(a)(XIX); and **add** (3)(a)(XXI)
12 as follows:

13 **12-43.4-202. Powers and duties of state licensing authority -**
14 **rules.** (2) The state licensing authority has the authority to:

15 (a) Grant or refuse state licenses for the cultivation, manufacture,
16 distribution, sale, and testing of retail marijuana and retail marijuana
17 products as provided by law; suspend, fine, restrict, or revoke such
18 licenses, WHETHER ACTIVE, EXPIRED, OR SURRENDERED, upon a violation
19 of this article ARTICLE 43.4 or any rule promulgated pursuant to this
20 article ARTICLE 43.4; and impose any penalty authorized by this article
21 ARTICLE 43.4 or any rule promulgated pursuant to this article ARTICLE
22 43.4. The state licensing authority may take any action with respect to a
23 registration pursuant to this article ARTICLE 43.4 as it may with respect to
24 a license pursuant to this article ARTICLE 43.4, in accordance with the
25 procedures established pursuant to this article ARTICLE 43.4.

26 (3) (a) Rules promulgated pursuant to ~~paragraph (b)~~ of subsection
27 (2) SUBSECTION (2)(b) of this section must include, but need not be

1 limited to, the following subjects:

2 (XIX) Nonescorted visitors in limited access areas; and

3 (XXI) ONE-TIME COMPLETE INVENTORY CONVERSION AND
4 LICENSE SURRENDER.

5 **SECTION 4.** In Colorado Revised Statutes, 12-43.4-401, **add** (5)
6 as follows:

7 **12-43.4-401. Classes of licenses.** (5) (a) A RETAIL MARIJUANA
8 STORE, RETAIL MARIJUANA CULTIVATION FACILITY, OR RETAIL MARIJUANA
9 PRODUCTS MANUFACTURER THAT LAWFULLY POSSESSES RETAIL
10 MARIJUANA OR RETAIL MARIJUANA PRODUCTS MAY ENGAGE IN A ONE-TIME
11 COMPLETE INVENTORY CONVERSION AND LICENSE SURRENDER UNDER THE
12 FOLLOWING CONDITIONS:

13 (I) (A) THE RETAIL MARIJUANA LICENSEE PROVIDES WRITTEN
14 NOTICE TO THE STATE LICENSING AUTHORITY ON A FORM APPROVED BY
15 AND IN A MANNER PRESCRIBED BY THE STATE LICENSING AUTHORITY. THE
16 NOTICE MUST IDENTIFY EACH MEDICAL MARIJUANA CENTER, MEDICAL
17 MARIJUANA-INFUSED PRODUCTS MANUFACTURER, OR MEDICAL
18 MARIJUANA OPTIONAL PREMISES CULTIVATION OPERATION THAT WILL
19 RECEIVE RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS AS A
20 RESULT OF THE INVENTORY CONVERSION AND SHALL IDENTIFY THE RETAIL
21 MARIJUANA OR RETAIL MARIJUANA PRODUCTS THAT WILL BE
22 TRANSFERRED AS A RESULT OF THE INVENTORY CONVERSION.

23 (B) THE WRITTEN NOTICE MUST INCLUDE EVIDENCE THAT ANY
24 APPLICABLE EXCISE TAX DUE PURSUANT TO ARTICLE 28.8 OF TITLE 39 HAS
25 BEEN PAID; EXCEPT THAT, IN THE CASE OF A RETAIL MARIJUANA
26 CULTIVATION FACILITY, ANY UNPAID APPLICABLE EXCISE TAX DUE
27 PURSUANT TO ARTICLE 28.8 OF TITLE 39 SHALL BE PAID AT THE TIME OF

1 TRANSFER FROM THE RETAIL MARIJUANA CULTIVATION FACILITY.

2 (II) THE RETAIL MARIJUANA LICENSEE SHALL HAVE THIRTY DAYS
3 AFTER PROVIDING THE WRITTEN NOTICE TO THE STATE LICENSING
4 AUTHORITY TO COMPLETE THE INVENTORY CONVERSION EITHER IN THE
5 SEED-TO-SALE TRACKING SYSTEM OR PHYSICALLY AND THEN IN THE
6 SEED-TO-SALE TRACKING SYSTEM, DEPENDING ON THE CIRCUMSTANCES.
7 ANY RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCT NOT
8 TRANSFERRED AS PART OF AN INVENTORY CONVERSION WITHIN THIRTY
9 DAYS FROM THE DATE OF THE WRITTEN NOTICE TO THE STATE LICENSING
10 AUTHORITY SHALL BE DESTROYED IN ACCORDANCE WITH THE STATE
11 LICENSING AUTHORITY'S RULES.

12 (III) THE RETAIL MARIJUANA LICENSEE'S LICENSE SHALL BE
13 DEEMED SURRENDERED THIRTY DAYS FROM THE DATE OF THE WRITTEN
14 NOTICE TO THE STATE LICENSING AUTHORITY.

15 (IV) UPON AN INVENTORY CONVERSION AND LICENSE SURRENDER
16 IN COMPLIANCE WITH THIS SUBSECTION (5), THE RETAIL MARIJUANA OR
17 RETAIL MARIJUANA PRODUCT TRANSFERRED SHALL BE DEEMED MEDICAL
18 MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCTS.

19 (V) A MEDICAL MARIJUANA CENTER, MEDICAL
20 MARIJUANA-INFUSED PRODUCTS MANUFACTURER, OR MEDICAL
21 MARIJUANA OPTIONAL PREMISES CULTIVATION OPERATION RECEIVING
22 RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCT PURSUANT TO THIS
23 SECTION THAT CAUSES THE MEDICAL MARIJUANA LICENSEE TO EXCEED
24 THE INVENTORY LIMITS PRESCRIBED BY ARTICLE 43.3 OF TITLE 12 SHALL
25 FULLY COMPLY WITH THE INVENTORY LIMITS WITHIN SIX MONTHS FROM
26 THE DATE THE INVENTORY CONVERSION IS COMPLETE.

27 (VI) A MEDICAL MARIJUANA CENTER, MEDICAL

1 MARIJUANA-INFUSED PRODUCTS MANUFACTURER, OR MEDICAL
2 MARIJUANA OPTIONAL PREMISES CULTIVATION OPERATION RECEIVING
3 RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCT PURSUANT TO THIS
4 SUBSECTION (5) MAY ONLY RECEIVE RETAIL MARIJUANA OR RETAIL
5 MARIJUANA PRODUCT IF IT IS LAWFUL FOR IT TO POSSESS THE
6 CORRESPONDING TYPE OF MEDICAL MARIJUANA OR MEDICAL
7 MARIJUANA-INFUSED PRODUCTS.

8 (b) (I) A RETAIL MARIJUANA STORE, RETAIL MARIJUANA
9 CULTIVATION FACILITY, OR RETAIL MARIJUANA PRODUCTS
10 MANUFACTURER LICENSE THAT IS SUBJECT TO A SUSPENSION IS NOT
11 ELIGIBLE FOR AN INVENTORY CONVERSION AND LICENSE SURRENDER
12 PURSUANT TO THIS SUBSECTION (5).

13 (II) RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCT SUBJECT
14 TO ADMINISTRATIVE HOLD SHALL NOT BE SUBJECT TO AN INVENTORY
15 CONVERSION.

16 **SECTION 5.** In Colorado Revised Statutes, 39-28.8-101, **amend**
17 **the introductory portion and (1); and add (1.5) and (2.5) as follows:**

18 **39-28.8-101. Definitions.** Unless the context otherwise requires,
19 **any terms not defined in this article shall ARTICLE 28.8 have the meanings**
20 **set forth in article 26 of this title TITLE 39. As used in this article ARTICLE**
21 **28.8, unless the context otherwise requires:**

22 **(1) "Average market rate" means the average price, as determined**
23 **by the department on a biannual basis in six-month intervals, of all**
24 **unprocessed retail marijuana that is sold or transferred from retail**
25 **marijuana cultivation facilities in the state to retail marijuana product**
26 **manufacturing facilities, retail marijuana stores, or other retail marijuana**
27 **cultivation facilities. An "average market rate" may be based on the**

1 purchaser or transferee of unprocessed retail marijuana or on the nature
2 of the unprocessed retail marijuana that is sold or transferred "AFFILIATED
3 MARIJUANA BUSINESS LICENSEES" MEANS MARIJUANA BUSINESS LICENSEES
4 THAT ARE OWNED OR CONTROLLED BY THE SAME OR RELATED INTERESTS,
5 WHERE "RELATED INTERESTS" INCLUDES INDIVIDUALS WHO ARE RELATED
6 BY BLOOD OR MARRIAGE OR ENTITIES THAT ARE DIRECTLY OR INDIRECTLY
7 CONTROLLED BY AN ENTITY OR INDIVIDUAL OR RELATED INDIVIDUALS.

8 (1.5) "AVERAGE MARKET RATE" MEANS THE AVERAGE PRICE, AS
9 DETERMINED BY THE DEPARTMENT ON A QUARTERLY BASIS, OF ALL
10 UNPROCESSED RETAIL MARIJUANA THAT IS SOLD OR TRANSFERRED FROM
11 RETAIL MARIJUANA CULTIVATION FACILITIES IN THE STATE TO RETAIL
12 MARIJUANA PRODUCT MANUFACTURING FACILITIES OR RETAIL MARIJUANA
13 STORES, LESS TAXES PAID ON THE SALES OR TRANSFERS. AN "AVERAGE
14 MARKET RATE" MAY BE BASED ON THE PURCHASER OR TRANSFEREE OF
15 UNPROCESSED RETAIL MARIJUANA OR ON THE NATURE OF THE
16 UNPROCESSED RETAIL MARIJUANA THAT IS SOLD OR TRANSFERRED. THE
17 "AVERAGE MARKET RATE" MUST INCLUDE ONE OR MORE RATES THAT
18 COVER UNPROCESSED MARIJUANA THAT IS ALLOCATED TO EXTRACTIONS,
19 AND THE INITIAL RATES FOR THESE PRODUCT TYPES MUST BE LOWER THAN
20 THE RATE FOR UNPROCESSED MARIJUANA THAT IS ALLOCATED FOR DIRECT
21 SALE TO CONSUMERS.

22 (2.5) "CONTRACT PRICE" MEANS THE INVOICE PRICE CHARGED BY
23 A RETAIL MARIJUANA CULTIVATION FACILITY TO EACH LICENSED
24 PURCHASER FOR EACH SALE OR TRANSFER OF UNPROCESSED RETAIL
25 MARIJUANA, EXCLUSIVE OF ANY TAX THAT IS INCLUDED IN THE WRITTEN
26 INVOICE PRICE, AND EXCLUSIVE OF ANY DISCOUNT OR OTHER REDUCTION.
27 IN THE CASE OF MULTIPLE INVOICES REFLECTING MULTIPLE PRICES FOR THE

1 SAME TRANSACTION, "CONTRACT PRICE" IS THE HIGHEST SUCH PRICE.

2 **SECTION 6.** In Colorado Revised Statutes, 39-28.8-302, **amend**
3 **(1)(a)(I); and add (3) as follows:**

4 **39-28.8-302. Retail marijuana - excise tax levied at first**
5 **transfer from retail marijuana cultivation facility - tax rate.**

6 (1) (a) (I) ~~Beginning January 1, 2014,~~ Except as otherwise provided in
7 subparagraph (H) of this paragraph (a) and paragraph (b) of this
8 subsection (1) SUBSECTION (1)(b) OF THIS SECTION, there is levied and
9 shall be collected, in addition to the sales tax imposed pursuant to part 1
10 of article 26 of this title TITLE 39 and part 2 of this article ARTICLE 28.8,
11 a tax on the first sale or transfer of unprocessed retail marijuana by a
12 retail marijuana cultivation facility, at a rate of fifteen percent of the
13 average market rate of the unprocessed retail marijuana IF THE
14 TRANSACTION IS BETWEEN AFFILIATED RETAIL MARIJUANA BUSINESS
15 LICENSEES. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF
16 THIS SECTION, THERE IS LEVIED AND SHALL BE COLLECTED, IN ADDITION
17 TO THE SALES TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS
18 TITLE 39 AND PART 2 OF THIS ARTICLE 28.8, A TAX ON THE FIRST SALE OR
19 TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA
20 CULTIVATION FACILITY, AT A RATE OF FIFTEEN PERCENT OF THE CONTRACT
21 PRICE FOR UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS
22 BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES. The tax
23 shall be imposed at the time when the retail marijuana cultivation facility
24 first sells or transfers unprocessed retail marijuana from the retail
25 marijuana cultivation facility to a retail marijuana product manufacturing
26 facility OR a retail marijuana store. ~~or another retail marijuana cultivation~~
27 facility.

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

5 **SECTION 7.** In Colorado Revised Statutes, 29-2-114, **amend**
6 (1)(a) and (2)(a) as follows:

7 **29-2-114. Retail marijuana excise tax - county - municipality**
8 **- election.** (1) (a) In addition to any sales tax imposed pursuant to section
9 29-2-103 and articles 26 and 28.8 of title 39, C.R.S., and in addition to
10 the excise tax imposed pursuant to article 28.8 of title 39, C.R.S., each
11 county in the state is authorized to levy, collect, and enforce a county
12 excise tax on the first sale or transfer of unprocessed retail marijuana by
13 a retail marijuana cultivation facility authorized by the county; except that
14 a county is not authorized to levy, collect, and enforce a county excise tax
15 on the first sale or transfer of unprocessed retail marijuana by a retail
16 marijuana cultivation facility pursuant to this subsection (1) within any
17 municipality that levies such an excise tax pursuant to subsection (2) of
18 this section. SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE
19 AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. The
20 tax shall be imposed at the time when the retail marijuana cultivation
21 facility first sells or transfers unprocessed retail marijuana from the retail
22 marijuana cultivation facility to a retail marijuana product manufacturing
23 facility OR a retail marijuana store. ~~or another retail marijuana cultivation~~
24 ~~facility.~~ The tax rate imposed pursuant to this ~~paragraph (a) shall~~
25 SUBSECTION (1)(a) MAY not exceed five percent of the average market
26 rate, as determined by the department of revenue pursuant to section
27 39-28.8-101 (1), C.R.S., of the unprocessed retail marijuana.

1 (2) (a) In addition to any sales tax imposed pursuant to section
2 29-2-102 and articles 26 and 28.8 of title 39, C.R.S., and in addition to
3 the excise tax imposed pursuant to article 28.8 of title 39, C.R.S., each
4 municipality in the state is authorized to levy, collect, and enforce a
5 municipal excise tax on the first sale or transfer of unprocessed retail
6 marijuana by a retail marijuana cultivation facility. SUCH EXCISE TAX
7 MUST BE CALCULATED BASED ON THE AVERAGE MARKET RATE OF THE
8 UNPROCESSED RETAIL MARIJUANA. The tax shall be imposed at the time
9 when the retail marijuana cultivation facility first sells or transfers
10 unprocessed retail marijuana from the retail marijuana cultivation facility
11 to a retail marijuana product manufacturing facility OR a retail marijuana
12 store. or another retail marijuana cultivation facility. The tax rate imposed
13 by any statutory municipality pursuant to this paragraph (a) shall
14 SUBSECTION (2)(a) MAY not exceed five percent of the average market
15 rate, as determined by the department of revenue pursuant to section
16 39-28.8-101 (1), C.R.S., of the unprocessed retail marijuana.

17 **SECTION 8.** In Colorado Revised Statutes, 32-1-1004, **amend**
18 (10)(a) and (10)(b) as follows:

19 **32-1-1004. Metropolitan districts - additional powers and**
20 **duties.** (10) (a) In addition to the excise tax imposed pursuant to article
21 28.8 of title 39, C.R.S., a metropolitan district with boundaries entirely
22 within the unincorporated area of a county is authorized to levy, collect,
23 and enforce a metropolitan district excise tax on the first sale or transfer
24 of unprocessed retail marijuana by a retail marijuana cultivation facility.
25 SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE AVERAGE MARKET
26 RATE OF THE UNPROCESSED RETAIL MARIJUANA. The tax shall be imposed
27 at the time when the retail marijuana cultivation facility first sells or

1 transfers unprocessed retail marijuana from the retail marijuana
2 cultivation facility to a retail marijuana product manufacturing facility OR
3 a retail marijuana store. or another retail marijuana cultivation facility.

4 (b) If the boundaries of a metropolitan district are within a county
5 that imposes an additional excise tax on the first sale or transfer of
6 unprocessed retail marijuana by a retail marijuana cultivation facility
7 pursuant to section 29-2-114, C.R.S., the excise tax rate imposed by the
8 metropolitan district pursuant to this subsection (10) shall not exceed such
9 tax rate imposed by the county. In no event shall the tax rate imposed
10 pursuant to this subsection (10) exceed five percent of the average market
11 rate, as determined by the department of revenue pursuant to section
12 39-28.8-101 (1), C.R.S., of the unprocessed retail marijuana.

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

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

24 **SECTION 10. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2018 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.