

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

Conference Committee

*This Unproved and Unofficial Version Includes All Amendments
Adopted in the First House, Second House, and the Conference Committee*

LLS NO. 18-1230.01 Jason Gelender x4330

SENATE BILL 18-259

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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.**

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.

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) and (8) 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 (8) (a) THE STATE LICENSING AUTHORITY, AS DEFINED IN
22 SECTION 12-43.4-103 (24), PURSUANT TO ITS EXISTING RULE-MAKING
23 AUTHORITY SPECIFIED IN SECTION 12-43.4-202 (3)(b)(V), SHALL
24 COMPLETE RULE MAKING, IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,
25 NO LATER THAN JANUARY 1, 2019, ON RULES RELATING TO FENCING AND
26 LIGHTING REQUIREMENTS FOR OUTDOOR MARIJUANA GROWS AND
27 GREENHOUSES.

1 (b) THIS SUBSECTION (8) IS REPEALED, EFFECTIVE JULY 1, 2019.

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

4 **39-26-729. Retail sales of marijuana.** (1) (b) Any
5 metropolitan district that levies A GENERAL UNIFORM sales tax as
6 authorized by section 32-1-1106 (1), health assurance district that levies
7 A GENERAL UNIFORM sales tax as authorized by section 32-19-112 (1) or
8 health service district that levies A GENERAL UNIFORM sales tax as
9 authorized by section 32-19-112 (1) may levy ITS GENERAL UNIFORM sales
10 tax on retail sales of marijuana upon which the retail marijuana sales tax
11 is imposed pursuant to section 39-28.8-202 regardless of whether or not
12 the district was levying ANY sales tax on such sales before July 1, 2017.

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

26

27 **SECTION 3.** In Colorado Revised Statutes, 39-28.8-302, **amend**

1 (1)(a)(I) as follows:

2 **39-28.8-302. Retail marijuana - excise tax levied at first**
3 **transfer from retail marijuana cultivation facility - tax rate.**

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

27 **SECTION 4. Appropriation.** For the 2018-19 state fiscal year,

1 \$15,840 is appropriated to the department of revenue. This appropriation
2 is from the general fund. To implement this act, the department may use
3 this appropriation for tax administration IT system (GenTax) support.

4 **SECTION 5. Act subject to petition - effective date.** This act
5 takes effect January 1, 2019; except that, if a referendum petition is filed
6 pursuant to section 1 (3) of article V of the state constitution against this
7 act or an item, section, or part of this act within the ninety-day period
8 after final adjournment of the general assembly, then the act, item,
9 section, or part will not take effect unless approved by the people at the
10 general election to be held in November 2018 and, in such case, will take
11 effect on January 1, 2019, or on the date of the official declaration of the
12 vote thereon by the governor, whichever is later.