

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0929.01 Nicole Myers x4326

HOUSE BILL 13-1318

HOUSE SPONSORSHIP

Singer,

SENATE SPONSORSHIP

(None),

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE RECOMMENDATIONS MADE IN THE PUBLIC PROCESS
102 FOR THE PURPOSE OF IMPLEMENTING CERTAIN STATE TAXES ON
103 RETAIL MARIJUANA LEGALIZED BY SECTION 16 OF ARTICLE
104 XVIII OF THE COLORADO CONSTITUTION.

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://www.leg.state.co.us/billsummaries>.)

Subject to voter approval at the statewide election in November 2013, the bill imposes a sales tax and an excise tax on the sale of retail

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.

marijuana, which was legalized by section 16 of article XVIII of the state constitution.

Sales tax: Beginning January 1, 2014, the bill imposes a tax of 15% on the sale of retail marijuana or retail marijuana products to a consumer by a retail marijuana store. The tax imposed is in addition to the 2.9% state sales tax and any local government sales tax that is imposed on the sale of all property and services pursuant to current law.

On or after January 1, 2014, the general assembly is authorized to establish a rate that is lower than 15% by a bill enacted by the general assembly and signed into law by the governor. After establishing a tax rate that is lower than 15% the general assembly may increase the rate by bill enacted by the general assembly and signed into law by the governor, so long as the rate does not exceed 15%. An increase in the rate does not require additional voter approval.

A retail marijuana store is required to add the tax imposed as a separate and distinct item, and when added, the tax constitutes a part of the total price of the retail marijuana or retail marijuana products purchased. A retail marijuana store is required to collect and remit the tax to the department in the same manner as the state sales tax is collected and remitted to the department pursuant to current law.

Of the revenues collected pursuant to the 15% sales tax, 10% will be distributed to each local government in the state that has one or more retail marijuana stores within its boundaries. Each local government's share of the revenues collected shall be apportioned according to the percentage of retail marijuana and retail marijuana products sales tax revenues collected by the department in the local government as compared to the total retail marijuana and retail marijuana products sales tax collections that may be allocated to all local governments in the state. The remaining revenues shall be deposited in the marijuana cash fund and appropriated as directed by the general assembly.

Excise tax: Beginning January 1, 2014, the bill imposes a tax on the sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility to a retail marijuana store, retail marijuana product manufacturing facility, or another retail marijuana cultivation facility. The amount of the tax is 15% of the average market rate of unprocessed retail marijuana statewide on the date that it is sold or transferred, as determined by the department, and the tax is imposed when a retail marijuana cultivation facility sells or transfers unprocessed retail marijuana to a retail marijuana store, a retail marijuana product manufacturing facility or another retail marijuana cultivation facility.

On or after January 1, 2014, the general assembly is authorized to establish a rate that is lower than 15% of the average market rate by a bill enacted by the general assembly and signed into law by the governor. After establishing a tax rate that is lower than 15% the general assembly may increase the rate by bill enacted by the general assembly and signed

into law by the governor, so long as the rate does not exceed 15%. An increase in the rate does not require additional voter approval.

The bill specifies that every retail marijuana cultivation facility is required to keep certain records regarding the sale or transfer of unprocessed retail marijuana and is required to collect and remit the tax to the department.

As required by section 16 of article XVIII of the state constitution, the bill specifies that the first \$40 million received and collected in payment of the excise tax on unprocessed retail marijuana shall be transferred to the public school capital construction assistance fund currently created in law. Any amount remaining after the transfer shall be transferred to the marijuana cash fund.

Revenue and spending limitations: The bill allows the state to collect and spend any revenues generated by the retail marijuana sales tax and retail marijuana excise tax as voter approved revenue changes.

Submission of ballot questions by the secretary of state: The bill requires the secretary of state to submit a ballot question at the statewide election to be held in November 2013 asking the voters to:

- ! Allow the general assembly to impose a retail marijuana sales tax at a rate not to exceed 15% of the sale of retail marijuana and retail marijuana products;
- ! Allow the general assembly to impose a retail excise tax at a rate not to exceed 15% of the average market rate of unprocessed retail marijuana on unprocessed retail marijuana at the time when a retail marijuana cultivation facility sells or transfers retail marijuana to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility;
- ! Allow the general assembly to decrease or increase the rate of either tax without further voter approval so long as the rate does not exceed 15% for either tax; and
- ! Allow any additional tax revenue to be collected and spent notwithstanding any limitations in TABOR or any other law.

Marijuana cash fund: The bill changes the name of the existing medical marijuana license cash fund to the marijuana cash fund.

The bill specifies that the sale of marijuana or marijuana products by a medical marijuana center to a consumer and the sale or transfer of unprocessed marijuana by a marijuana cultivation facility to a medical marijuana center are not subject to either tax. The department of revenue (department) is required to promulgate rules for the implementation of both taxes.

1 **SECTION 1.** In Colorado Revised Statutes, **add** article 28.8 to
2 title 39 as follows:

3 **ARTICLE 28.8**

4 **Taxes on Marijuana and Marijuana Products**

5 PART 1

6 DEFINITIONS

7 **39-28.8-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "RETAIL MARIJUANA" MEANS ALL PARTS OF THE PLANT OF THE
10 GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE
11 RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND,
12 MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE
13 PLANT, ITS SEEDS, OR ITS RESIN, INCLUDING MARIJUANA CONCENTRATE.

14 "RETAIL MARIJUANA" DOES NOT INCLUDE INDUSTRIAL HEMP, NOR DOES IT
15 INCLUDE FIBER PRODUCED FROM THE STALKS, OIL, CAKE MADE FROM THE
16 SEEDS OF THE PLANT, STERILIZED SEED OF THE PLANT THAT IS INCAPABLE
17 OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED
18 WITH MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD,
19 DRINK, OR OTHER PRODUCT.

20 (2) "RETAIL MARIJUANA CULTIVATION FACILITY" MEANS AN
21 ENTITY LICENSED TO CULTIVATE, PREPARE, AND PACKAGE RETAIL
22 MARIJUANA AND SELL RETAIL MARIJUANA TO RETAIL MARIJUANA STORES,
23 TO RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND TO
24 OTHER RETAIL MARIJUANA CULTIVATION FACILITIES, BUT NOT TO
25 CONSUMERS.

26 (3) "RETAIL MARIJUANA PRODUCTS" MEANS CONCENTRATED
27 RETAIL MARIJUANA PRODUCTS AND RETAIL MARIJUANA PRODUCTS THAT

1 ARE COMPRISED OF RETAIL MARIJUANA AND OTHER INGREDIENTS AND ARE
2 INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT NOT LIMITED TO,
3 EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

4 (4) "RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITY"
5 MEANS AN ENTITY LICENSED TO PURCHASE RETAIL MARIJUANA;
6 MANUFACTURE, PREPARE, AND PACKAGE RETAIL MARIJUANA PRODUCTS;
7 AND SELL RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS TO
8 OTHER RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO
9 RETAIL MARIJUANA STORES, BUT NOT TO CONSUMERS.

10 (5) "RETAIL MARIJUANA SALES TAX" MEANS THE SALES TAX
11 IMPOSED ON RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS
12 PURSUANT TO PART 2 OF THIS ARTICLE.

13 (6) "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED BY
14 THE DEPARTMENT TO PURCHASE RETAIL MARIJUANA FROM RETAIL
15 MARIJUANA CULTIVATION FACILITIES AND RETAIL MARIJUANA AND RETAIL
16 MARIJUANA PRODUCTS FROM RETAIL MARIJUANA PRODUCT
17 MANUFACTURING FACILITIES AND TO SELL RETAIL MARIJUANA AND RETAIL
18 MARIJUANA PRODUCTS TO CONSUMERS.

19 (7) "AVERAGE MARKET RATE" MEANS THE AVERAGE PRICE, AS
20 DETERMINED BY THE DEPARTMENT ON A BIENNIAL BASIS, OF ALL
21 UNPROCESSED RETAIL MARIJUANA THAT IS SOLD OR TRANSFERRED FROM
22 RETAIL MARIJUANA CULTIVATION FACILITIES IN THE STATE TO RETAIL
23 MARIJUANA PRODUCT MANUFACTURING FACILITIES, RETAIL MARIJUANA
24 STORES, OR OTHER RETAIL MARIJUANA CULTIVATION FACILITIES.

25 (8) "CONSUMER" MEANS A PERSON TWENTY-ONE YEARS OF AGE OR
26 OLDER WHO PURCHASES RETAIL MARIJUANA OR RETAIL MARIJUANA
27 PRODUCTS FOR PERSONAL USE BY PERSONS TWENTY-ONE YEARS OF AGE OR

1 OLDER BUT NOT FOR RESALE TO OTHERS.

2 (9) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

3 (10) "INDUSTRIAL HEMP" MEANS THE PLANT OF THE GENUS
4 CANNABIS AND ANY PART OF SUCH PLANT, WHETHER GROWING OR NOT,
5 WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION THAT DOES
6 NOT EXCEED THREE-TENTHS PERCENT ON A DRY WEIGHT BASIS.

7 (11) "LOCAL GOVERNMENT" MEANS A COUNTY, MUNICIPALITY, OR
8 CITY AND COUNTY.

9 (12) "MEDICAL MARIJUANA CENTER" MEANS AN ENTITY LICENSED
10 BY THE DEPARTMENT TO SELL MARIJUANA AND MARIJUANA PRODUCTS
11 PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION
12 AND THE "COLORADO MEDICAL MARIJUANA CODE", ARTICLE 43.3 OF
13 TITLE 12, C.R.S.

14 (13) "SALE" MEANS ANY TRANSFER, EXCHANGE, OR BARTER, IN
15 ANY MANNER OR BY ANY MEANS WHATSOEVER, FOR A CONSIDERATION.

16 (14) "UNPROCESSED RETAIL MARIJUANA" MEANS MARIJUANA AT
17 THE TIME OF THE FIRST TRANSFER OR SALE FROM A RETAIL MARIJUANA
18 CULTIVATION FACILITY TO A RETAIL MARIJUANA PRODUCT
19 MANUFACTURING FACILITY OR A RETAIL MARIJUANA STORE.

20 PART 2

21 RETAIL MARIJUANA SALES TAX

22 **39-28.8-201. Retail marijuana sales tax - administration -**
23 **enforcement.** THE TAX IMPOSED PURSUANT TO THIS PART 2 SHALL BE
24 ADMINISTERED AND ENFORCED IN ACCORDANCE WITH THE PROVISIONS OF
25 PART 1 OF ARTICLE 26 OF THIS TITLE; EXCEPT THAT, IN THE EVENT OF A
26 CONFLICT BETWEEN THE PROVISIONS OF THIS PART 2 AND THE PROVISIONS
27 OF PART 1 OF ARTICLE 26 OF THIS TITLE, THE PROVISIONS OF THIS PART 2

1 SHALL CONTROL.

2 **39-28.8-202. Retail marijuana sales tax.** (1) (a) IN ADDITION TO
3 THE TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE AND
4 THE SALES TAX IMPOSED BY A LOCAL GOVERNMENT PURSUANT TO TITLE
5 29, 30, 31, OR 32, BEGINNING JANUARY 1, 2014, THERE IS IMPOSED UPON
6 ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY
7 A RETAILER A TAX AT THE RATE OF FIFTEEN PERCENT OF THE AMOUNT OF
8 THE SALE, TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR FORMS
9 PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT; EXCEPT
10 THAT A RETAIL MARIJUANA STORE IS NOT ALLOWED TO RETAIN ANY
11 PORTION OF THE RETAIL MARIJUANA SALES TAX COLLECTED PURSUANT TO
12 THIS PART 2 TO COVER THE EXPENSES OF COLLECTING AND REMITTING THE
13 TAX.

14 (b) THE FIFTEEN PERCENT TAX RATE SPECIFIED IN PARAGRAPH (a)
15 OF THIS SUBSECTION (1) IS THE MAXIMUM TAX RATE THAT MAY BE
16 IMPOSED PURSUANT TO THIS SECTION. AT ANY TIME ON OR AFTER
17 JANUARY 1, 2014, THE GENERAL ASSEMBLY MAY, BY A BILL ENACTED BY
18 THE GENERAL ASSEMBLY AND SIGNED INTO LAW BY THE GOVERNOR:

19 (I) ESTABLISH A TAX RATE TO BE IMPOSED PURSUANT TO THIS
20 SUBSECTION (1) THAT IS LOWER THAN FIFTEEN PERCENT OF THE SALE OF
21 RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS; OR

22 (II) AFTER ESTABLISHING A TAX RATE THAT IS LOWER THAN
23 FIFTEEN PERCENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH
24 (b), INCREASE THE TAX RATE TO BE IMPOSED PURSUANT TO THIS
25 SUBSECTION (1); EXCEPT THAT, IN NO EVENT SHALL THE GENERAL
26 ASSEMBLY INCREASE THE TAX RATE ABOVE FIFTEEN PERCENT OF THE SALE
27 OF RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS.

1 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN INCREASE IN THE
2 TAX RATE PURSUANT TO THIS SUBPARAGRAPH (II) SHALL NOT REQUIRE
3 VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED
4 PURSUANT PART 4 OF THIS ARTICLE.

5 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPOSE A
6 TAX ON THE SALE OF MARIJUANA OR MARIJUANA PRODUCTS TO ANY
7 PERSON BY A MEDICAL MARIJUANA CENTER.

8 **39-28.8-203. Disposition of collections.** (1) THE PROCEEDS OF
9 ALL MONEYS COLLECTED FROM THE RETAIL MARIJUANA SALES TAX SHALL
10 BE CREDITED TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF
11 ARTICLE XXIV OF THE STATE CONSTITUTION IN ACCORDANCE WITH
12 PARAGRAPHS (a) AND (f) OF SECTION 2 OF ARTICLE XXIV OF THE STATE
13 CONSTITUTION. FOR EACH FISCAL YEAR IN WHICH A TAX IS COLLECTED
14 PURSUANT TO THIS PART 2, AN AMOUNT SHALL BE DISTRIBUTED FROM THE
15 GENERAL FUND AS FOLLOWS:

16 (a) (I) AN AMOUNT EQUAL TO TEN PERCENT OF THE GROSS RETAIL
17 MARIJUANA SALES TAX REVENUES COLLECTED BY THE DEPARTMENT SHALL
18 BE APPORTIONED TO LOCAL GOVERNMENTS. THE CITY OR TOWN SHARE
19 SHALL BE APPORTIONED ACCORDING TO THE PERCENTAGE THAT RETAIL
20 MARIJUANA SALES TAX REVENUES COLLECTED BY THE DEPARTMENT
21 WITHIN THE BOUNDARIES OF THE CITY OR TOWN BEARS TO THE TOTAL
22 RETAIL MARIJUANA SALES TAX REVENUES COLLECTED BY THE
23 DEPARTMENT THAT MAY BE APPORTIONED TO ALL LOCAL GOVERNMENTS
24 PURSUANT TO THIS PARAGRAPH (a). THE COUNTY SHARE SHALL BE
25 APPORTIONED ACCORDING TO THE PERCENTAGE THAT RETAIL MARIJUANA
26 SALES TAX REVENUES COLLECTED BY THE DEPARTMENT IN THE
27 UNINCORPORATED AREA OF THE COUNTY BEARS TO TOTAL RETAIL

1 MARIJUANA SALES TAX REVENUES COLLECTED BY THE DEPARTMENT THAT
2 MAY BE APPORTIONED TO ALL LOCAL GOVERNMENTS PURSUANT TO THIS
3 PARAGRAPH (a).

4 (II) THE DEPARTMENT OF REVENUE SHALL CERTIFY TO THE STATE
5 TREASURER, AT LEAST ANNUALLY, THE PERCENTAGE FOR APPORTIONMENT
6 TO EACH LOCAL GOVERNMENT, AND THE PERCENTAGE FOR
7 APPORTIONMENT SO CERTIFIED SHALL BE APPLIED BY SAID DEPARTMENT
8 IN ALL DISTRIBUTIONS TO LOCAL GOVERNMENTS UNTIL CHANGED BY
9 CERTIFICATION TO THE STATE TREASURER.

10 (III) DISTRIBUTION TO EACH LOCAL GOVERNMENT PURSUANT TO
11 THIS PARAGRAPH (a) SHALL BE MADE MONTHLY, NO LATER THAN THE
12 FIFTEENTH DAY OF THE SECOND SUCCESSIVE MONTH AFTER THE MONTH
13 FOR WHICH RETAIL MARIJUANA SALES TAX COLLECTIONS ARE MADE.

14 (IV) EACH LOCAL GOVERNMENT, UPON REQUEST AND DURING
15 ESTABLISHED BUSINESS HOURS, SHALL BE ENTITLED TO VERIFY WITH THE
16 EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S
17 DESIGNEE THE PROCEEDS TO WHICH THE LOCAL GOVERNMENT IS ENTITLED
18 PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (a).

19 (V) MONEYS APPORTIONED PURSUANT TO THIS PARAGRAPH (a)
20 SHALL BE INCLUDED FOR INFORMATIONAL PURPOSES IN THE GENERAL
21 APPROPRIATION BILL OR IN SUPPLEMENTAL APPROPRIATION BILLS FOR THE
22 PURPOSE OF COMPLYING WITH THE LIMITATION ON STATE FISCAL YEAR
23 SPENDING IMPOSED BY SECTION 20 OF ARTICLE X OF THE STATE
24 CONSTITUTION AND SECTION 24-77-103, C.R.S.

25 (VI) NOTHING IN THIS PARAGRAPH (a) SHALL BE CONSTRUED TO
26 PREVENT A LOCAL GOVERNMENT FROM IMPOSING, LEVYING, AND
27 COLLECTING ANY FEE OR ANY TAX UPON THE SALE OF RETAIL MARIJUANA

1 OR RETAIL MARIJUANA PRODUCTS OR UPON THE OCCUPATION OR PRIVILEGE
2 OF SELLING RETAILS MARIJUANA PRODUCTS, NOR SHALL THE PROVISIONS
3 OF THIS PARAGRAPH (a) BE INTERPRETED TO AFFECT ANY EXISTING
4 AUTHORITY OF A LOCAL GOVERNMENT TO IMPOSE A TAX ON RETAIL
5 MARIJUANA OR RETAIL MARIJUANA PRODUCTS TO BE USED FOR LOCAL AND
6 MUNICIPAL PURPOSES.

7 (b) FOLLOWING APPORTIONMENT OF LOCAL GOVERNMENT SHARES
8 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), AN AMOUNT EQUAL
9 TO ALL REMAINING REVENUES COLLECTED SHALL BE TRANSFERRED FROM
10 THE GENERAL FUND TO THE MARIJUANA CASH FUND CREATED IN SECTION
11 12-43.3-501, C.R.S., TO BE USED FOR THE PURPOSES OF THE FUND AS
12 DETERMINED BY THE GENERAL ASSEMBLY. THE GENERAL ASSEMBLY
13 SHALL MAKE APPROPRIATIONS FROM THE MARIJUANA CASH FUND FOR THE
14 EXPENSES OF THE ADMINISTRATION OF THIS SECTION.

15 **39-28.8-204. Revenue and spending limitations.**
16 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR
17 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE
18 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUES
19 GENERATED BY THE RETAIL MARIJUANA SALES TAX IMPOSED PURSUANT TO
20 THIS PART 2 AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION
21 IN NOVEMBER 2013, MAY BE COLLECTED AND SPENT AS VOTER-APPROVED
22 REVENUE CHANGES AND SHALL NOT REQUIRE VOTER APPROVAL
23 SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT TO PART 4 OF
24 THIS ARTICLE.

25 **39-28.8-205. Rules.** THE DEPARTMENT SHALL PROMULGATE RULES
26 FOR THE IMPLEMENTATION OF THIS PART 2 IN ACCORDANCE WITH THE
27 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,

1 C.R.S.

2

PART 3

3

RETAIL MARIJUANA EXCISE TAX

4

39-28.8-301. Retail marijuana excise tax - administration -

5

enforcement. THE TAX IMPOSED PURSUANT TO THIS PART 3 SHALL BE

6

ADMINISTERED AND ENFORCED IN ACCORDANCE WITH THE PROVISIONS OF

7

PART 1 OF ARTICLE 26 OF THIS TITLE; EXCEPT THAT, IN THE EVENT OF A

8

CONFLICT BETWEEN THE PROVISIONS OF THIS PART 3 AND THE PROVISIONS

9

OF PART 1 OF ARTICLE 26 OF THIS TITLE, THE PROVISIONS OF THIS PART 3

10

SHALL CONTROL.

11

39-28.8-302. Retail marijuana - excise tax levied at first

12

transfer from retail marijuana cultivation facility - tax rate.

13

(1) (a) BEGINNING JANUARY 1, 2014, EXCEPT AS OTHERWISE PROVIDED

14

IN PARAGRAPH (b) OF THIS SUBSECTION (1), THERE IS LEVIED AND SHALL

15

BE COLLECTED, IN ADDITION TO THE SALES TAX IMPOSED PURSUANT TO

16

PART 1 OF ARTICLE 26 OF THIS TITLE AND PART 2 OF THIS ARTICLE, A TAX

17

ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY

18

A RETAIL MARIJUANA CULTIVATION FACILITY, AT A RATE OF FIFTEEN

19

PERCENT OF THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL

20

MARIJUANA. THE TAX SHALL BE IMPOSED AT THE TIME WHEN THE RETAIL

21

MARIJUANA CULTIVATION FACILITY FIRST SELLS OR TRANSFERS

22

UNPROCESSED RETAIL MARIJUANA FROM THE RETAIL MARIJUANA

23

CULTIVATION FACILITY TO A RETAIL MARIJUANA PRODUCT

24

MANUFACTURING FACILITY, A RETAIL MARIJUANA STORE, OR ANOTHER

25

RETAIL MARIJUANA CULTIVATION FACILITY.

26

(b) THE FIFTEEN PERCENT TAX RATE SPECIFIED IN PARAGRAPH (a)

27

OF THIS SUBSECTION (1) IS THE MAXIMUM TAX RATE THAT MAY BE

1 IMPOSED PURSUANT TO THIS SECTION. AT ANY TIME ON OR AFTER
2 JANUARY 1, 2014, THE GENERAL ASSEMBLY MAY, BY A BILL ENACTED BY
3 THE GENERAL ASSEMBLY AND SIGNED INTO LAW BY THE GOVERNOR:

4 (I) ESTABLISH A TAX RATE TO BE IMPOSED PURSUANT TO THIS
5 SUBSECTION (1) THAT IS LOWER THAN FIFTEEN PERCENT OF THE AVERAGE
6 MARKET RATE OF UNPROCESSED RETAIL MARIJUANA AT THE TIME THAT IT
7 IS SOLD OR TRANSFERRED; OR

8 (II) AFTER ESTABLISHING A TAX RATE THAT IS LOWER THAN
9 FIFTEEN PERCENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH
10 (b), INCREASE THE TAX RATE TO BE IMPOSED PURSUANT TO THIS
11 SUBSECTION (1); EXCEPT THAT, IN NO EVENT SHALL THE GENERAL
12 ASSEMBLY INCREASE THE TAX RATE ABOVE FIFTEEN PERCENT OF THE
13 AVERAGE MARKET RATE OF UNPROCESSED RETAIL MARIJUANA AT THE
14 TIME THAT IT IS SOLD OR TRANSFERRED. NOTWITHSTANDING ANY OTHER
15 PROVISION OF LAW, AN INCREASE IN THE TAX RATE PURSUANT TO THIS
16 SUBPARAGRAPH (II) SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT
17 TO THE VOTER APPROVAL REQUIRED PURSUANT TO PART 4 OF THIS
18 ARTICLE.

19 (2) THE TAX IMPOSED PURSUANT TO SUBSECTION (1) OF THIS
20 SECTION SHALL NOT BE LEVIED ON THE SALE OR TRANSFER OF
21 UNPROCESSED MARIJUANA BY A MARIJUANA CULTIVATION FACILITY TO A
22 MEDICAL MARIJUANA CENTER.

23 **39-28.8-303. Books and records to be preserved.** (1) EVERY
24 RETAIL MARIJUANA CULTIVATION FACILITY SHALL KEEP AT EACH LICENSED
25 PLACE OF BUSINESS COMPLETE AND ACCURATE ELECTRONIC RECORDS FOR
26 THAT PLACE OF BUSINESS, INCLUDING ITEMIZED INVOICES OF ALL RETAIL
27 MARIJUANA GROWN, HELD, SHIPPED, OR OTHERWISE TRANSPORTED OR

1 SOLD TO RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES,
2 RETAIL MARIJUANA STORES, OR OTHER RETAIL MARIJUANA CULTIVATION
3 FACILITIES IN THIS STATE.

4 (2) THE RECORDS REQUIRED BY SUBSECTION (1) OF THIS SECTION
5 SHALL INCLUDE THE NAMES AND ADDRESSES OF RETAIL MARIJUANA
6 PRODUCT MANUFACTURING FACILITIES, RETAIL MARIJUANA STORES, OR
7 OTHER RETAIL MARIJUANA CULTIVATION FACILITIES TO WHICH
8 UNPROCESSED RETAIL MARIJUANA IS SOLD OR TRANSFERRED, THE
9 INVENTORY OF ALL UNPROCESSED RETAIL MARIJUANA ON HAND, AND
10 OTHER PERTINENT PAPERS AND DOCUMENTS RELATING TO THE SALE OR
11 TRANSFER OF UNPROCESSED RETAIL MARIJUANA.

12 (3) A RETAIL MARIJUANA CULTIVATION FACILITY SHALL KEEP
13 ITEMIZED INVOICES OF ALL UNPROCESSED MARIJUANA TRANSFERRED TO
14 RETAIL MARIJUANA STORES OWNED OR CONTROLLED BY THE OWNERS OF
15 THE RETAIL MARIJUANA CULTIVATION FACILITY.

16 (4) (a) EVERY RETAIL MARIJUANA STORE SHALL KEEP AT ITS PLACE
17 OF BUSINESS COMPLETE AND ACCURATE RECORDS TO SHOW THAT ALL
18 RETAIL MARIJUANA RECEIVED BY THE RETAIL MARIJUANA STORE WAS
19 PURCHASED FROM A RETAIL MARIJUANA CULTIVATION FACILITY. THE
20 RETAIL MARIJUANA STORE SHALL PROVIDE A COPY OF SUCH RECORDS TO
21 THE DEPARTMENT IF SO REQUESTED. THE DEPARTMENT MAY ESTABLISH
22 THE ACCEPTABLE FORM OF SUCH RECORDS.

23 (b) ANY EXPENSES INCURRED BY THE DEPARTMENT RELATED TO
24 ENFORCING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4)
25 SHALL BE PAID FROM THE MARIJUANA CASH FUND CREATED IN SECTION
26 12-43.3-501, C.R.S.

27 **39-28.8-304. Returns and remittance of tax - civil penalty.**

1 (1) EVERY RETAIL MARIJUANA CULTIVATION FACILITY SHALL FILE A
2 RETURN WITH THE DEPARTMENT EACH QUARTER. THE RETURN, WHICH
3 SHALL BE UPON FORMS PRESCRIBED AND FURNISHED BY THE DEPARTMENT,
4 SHALL CONTAIN, AMONG OTHER THINGS, THE TOTAL AMOUNT OF
5 UNPROCESSED RETAIL MARIJUANA SOLD OR TRANSFERRED DURING THE
6 PRECEDING QUARTER AND THE TAX DUE THEREON.

7 (2) EVERY RETAIL MARIJUANA CULTIVATION FACILITY SHALL FILE
8 A RETURN WITH THE DEPARTMENT BY THE TWENTIETH DAY OF THE MONTH
9 FOLLOWING THE MONTH REPORTED AND WITH THE REPORT SHALL REMIT
10 THE AMOUNT OF TAX DUE. IF ANY RETAIL MARIJUANA CULTIVATION
11 FACILITY IS DELINQUENT IN REMITTING THE TAX, OTHER THAN IN UNUSUAL
12 CIRCUMSTANCES SHOWN TO THE SATISFACTION OF THE EXECUTIVE
13 DIRECTOR OF THE DEPARTMENT, THE PENALTY IMPOSED UNDER SECTION
14 39-28.8-307 SHALL APPLY.

15 (3) THE DEPARTMENT MAY REQUIRE RETAIL MARIJUANA
16 CULTIVATION FACILITIES TO FILE TAX RETURNS AND REMIT PAYMENTS DUE
17 PURSUANT TO THIS PART 3 ELECTRONICALLY. THE DEPARTMENT SHALL
18 PROMULGATE RULES GOVERNING ELECTRONIC PAYMENT AND FILING.

19 **39-28.8-305. When credit may be obtained for tax paid.**

20 (1) (a) THE DEPARTMENT SHALL GIVE CREDIT TO A RETAIL MARIJUANA
21 CULTIVATION FACILITY FOR ALL TAXES LEVIED AND PAID PURSUANT TO
22 THIS PART 3 THAT ARE BAD DEBTS. SUCH CREDIT SHALL OFFSET TAXES
23 LEVIED PURSUANT TO THIS PART 3 ONLY. THE DEPARTMENT SHALL ONLY
24 GIVE CREDIT IF THE BAD DEBT HAS BEEN CHARGED OFF AS UNCOLLECTIBLE
25 ON THE BOOKS OF THE RETAIL MARIJUANA CULTIVATION FACILITY.
26 SUBSEQUENT TO RECEIVING THE CREDIT, IF THE RETAIL MARIJUANA
27 CULTIVATION FACILITY RECEIVES A PAYMENT FOR THE BAD DEBT, THE

1 RETAIL MARIJUANA CULTIVATION FACILITY SHALL BE LIABLE TO THE
2 DEPARTMENT FOR THE AMOUNT RECEIVED AND SHALL REMIT THIS AMOUNT
3 IN THE NEXT PAYMENT TO THE DEPARTMENT UNDER SECTION 39-28.8-304.

4 (b) ANY CLAIM FOR A BAD DEBT CREDIT UNDER THIS SUBSECTION
5 (1) SHALL BE SUPPORTED BY ALL OF THE FOLLOWING:

6 (I) A COPY OF THE ORIGINAL INVOICE ISSUED BY THE RETAIL
7 MARIJUANA CULTIVATION FACILITY;

8 (II) EVIDENCE THAT THE UNPROCESSED RETAIL MARIJUANA
9 DESCRIBED IN THE INVOICE WAS DELIVERED TO THE RETAIL MARIJUANA
10 PRODUCT MANUFACTURING FACILITY, RETAIL MARIJUANA STORE, OR
11 OTHER RETAIL MARIJUANA CULTIVATION FACILITY THAT ORDERED IT; AND

12 (III) EVIDENCE THAT THE RETAIL MARIJUANA PRODUCT
13 MANUFACTURING FACILITY, RETAIL MARIJUANA STORE, OR OTHER RETAIL
14 MARIJUANA CULTIVATION FACILITY THAT ORDERED AND RECEIVED THE
15 UNPROCESSED RETAIL MARIJUANA DID NOT PAY THE RETAIL MARIJUANA
16 CULTIVATION FACILITY FOR IT AND THAT THE RETAIL MARIJUANA
17 CULTIVATION FACILITY USED REASONABLE COLLECTION PRACTICES IN
18 ATTEMPTING TO COLLECT THE DEBT.

19 (c) IF THE DEPARTMENT GIVES CREDIT TO A RETAIL MARIJUANA
20 CULTIVATION FACILITY FOR A BAD DEBT, THE ENTITY THAT ORDERED AND
21 RECEIVED THE UNPROCESSED RETAIL MARIJUANA BUT DID NOT PAY THE
22 RETAIL MARIJUANA CULTIVATION FACILITY FOR IT SHALL BE LIABLE IN AN
23 AMOUNT EQUAL TO THE CREDIT FOR THE TAX IMPOSED IN THIS ARTICLE ON
24 THE UNPROCESSED RETAIL MARIJUANA. SUBSEQUENT TO RECEIVING THE
25 CREDIT, IF THE RETAIL MARIJUANA CULTIVATION FACILITY RECEIVES A
26 PAYMENT FOR THE BAD DEBT AND THE RETAIL MARIJUANA CULTIVATION
27 FACILITY MAKES A PAYMENT TO THE DEPARTMENT, THE AMOUNT OF TAXES

1 OWED SHALL BE REDUCED BY THE AMOUNT PAID TO THE DEPARTMENT.
2 (2) AS USED IN THIS SECTION, "BAD DEBT" MEANS THE TAXES
3 ATTRIBUTABLE TO ANY PORTION OF A DEBT THAT IS RELATED TO A SALE
4 OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA SUBJECT TO TAX
5 UNDER THIS PART 3, THAT IS NOT OTHERWISE DEDUCTIBLE OR
6 EXCLUDABLE, THAT HAS BECOME WORTHLESS OR UNCOLLECTIBLE IN THE
7 TIME AFTER THE TAX HAS BEEN PAID PURSUANT TO SECTION 39-28.8-304,
8 AND THAT IS ELIGIBLE TO BE CLAIMED AS A DEDUCTION PURSUANT TO
9 SECTION 166 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
10 AMENDED. A BAD DEBT SHALL NOT INCLUDE ANY INTEREST ON THE
11 WHOLESALE PRICE OF UNPROCESSED RETAIL MARIJUANA, UNCOLLECTIBLE
12 AMOUNTS ON PROPERTY THAT REMAIN IN THE POSSESSION OF THE RETAIL
13 MARIJUANA CULTIVATION FACILITY UNTIL THE FULL PURCHASE PRICE IS
14 PAID, EXPENSES INCURRED IN ATTEMPTING TO COLLECT ANY ACCOUNT
15 RECEIVABLE OR ANY PORTION OF THE DEBT RECOVERED, AN ACCOUNT
16 RECEIVABLE THAT HAS BEEN SOLD TO A THIRD PARTY FOR COLLECTION, OR
17 REPOSSESSED PROPERTY.

18 **39-28.8-306. Distribution of tax collected.** (1) ALL MONEYS
19 RECEIVED AND COLLECTED IN PAYMENT OF THE TAX IMPOSED BY THE
20 PROVISIONS OF THIS PART 3 SHALL BE TRANSMITTED TO THE STATE
21 TREASURER, WHO SHALL DISTRIBUTE THE MONEY AS FOLLOWS:

22 (a) THE FIRST FORTY MILLION DOLLARS RECEIVED AND COLLECTED
23 SHALL BE TRANSFERRED TO THE PUBLIC SCHOOL CAPITAL CONSTRUCTION
24 ASSISTANCE FUND CREATED BY ARTICLE 43.7 OF TITLE 22, C.R.S., OR TO
25 ANY SUCCESSOR FUND DEDICATED TO A SIMILAR PURPOSE; AND

26 (b) ANY AMOUNT REMAINING AFTER THE TRANSFER PURSUANT TO
27 PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE TRANSFERRED TO THE

1 MARIJUANA CASH FUND CREATED IN SECTION 12-43.3-501, C.R.S.

2 **39-28.8-307. Prohibited acts - penalties.** IT IS UNLAWFUL FOR
3 ANY RETAIL MARIJUANA CULTIVATION FACILITY TO SELL OR TRANSFER
4 RETAIL MARIJUANA WITHOUT A LICENSE AS REQUIRED BY LAW, OR TO
5 WILLFULLY MAKE ANY FALSE OR FRAUDULENT RETURN OR FALSE
6 STATEMENT ON ANY RETURN, OR TO WILLFULLY EVADE THE PAYMENT OF
7 THE TAX, OR ANY PART THEREOF, AS IMPOSED BY THIS PART 3. ANY RETAIL
8 MARIJUANA CULTIVATION FACILITY OR AGENT THEREOF WHO WILLFULLY
9 VIOLATES ANY PROVISION OF THIS PART 3 SHALL BE PUNISHED AS
10 PROVIDED BY SECTION 39-21-118.

11 **39-28.8-308. Revenue and spending limitations.**
12 NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR
13 APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE
14 CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUES
15 GENERATED BY THE RETAIL MARIJUANA EXCISE TAX IMPOSED PURSUANT
16 TO THIS PART 3 AS APPROVED BY THE VOTERS AT THE STATEWIDE
17 ELECTION IN NOVEMBER 2013 MAY BE COLLECTED AND SPENT AS
18 VOTER-APPROVED REVENUE CHANGES AND SHALL NOT REQUIRE VOTER
19 APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT
20 TO PART 4 OF THIS ARTICLE.

21 **39-28.8-309. Rules.** THE DEPARTMENT SHALL PROMULGATE RULES
22 FOR THE IMPLEMENTATION OF THIS PART 3 IN ACCORDANCE WITH THE
23 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,
24 C.R.S.

25 PART 4
26 SUBMISSION OF BALLOT QUESTIONS REGARDING
27 RETAIL MARIJUANA SALES AND EXCISE TAX

1 **39-28.8-401. Submission of ballot questions regarding**
2 **imposition of retail marijuana sales and excise tax.** (1) THE
3 SECRETARY OF STATE SHALL SUBMIT A BALLOT QUESTION TO A VOTE OF
4 THE REGISTERED ELECTORS OF THE STATE OF COLORADO AT THE
5 STATEWIDE ELECTION TO BE HELD IN NOVEMBER 2013, FOR THEIR
6 APPROVAL OR REJECTION. EACH ELECTOR VOTING AT SAID NOVEMBER
7 ELECTION SHALL CAST A VOTE AS PROVIDED BY LAW EITHER "YES/FOR" OR
8 "NO/AGAINST" ON THE PROPOSITION: "SHALL TAXES ON RETAIL
9 MARIJUANA BE INCREASED BY \$_____ ANNUALLY IN THE FIRST FULL
10 FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY
11 THEREAFTER BY AMENDMENTS TO THE COLORADO REVISED STATUTES,
12 AND, IN CONNECTION THEREWITH, IN ADDITION TO ANY STATE OR LOCAL
13 GOVERNMENT SALES TAX, IMPOSING A RETAIL MARIJUANA SALES TAX NOT
14 TO EXCEED 15% ON THE SALE OF RETAIL MARIJUANA AND RETAIL
15 MARIJUANA PRODUCTS, ALLOWING THE GENERAL ASSEMBLY TO DECREASE
16 OR INCREASE THE RATE OF THE RETAIL MARIJUANA SALES TAX WITHOUT
17 FURTHER VOTER APPROVAL SO LONG AS THE RATE DOES NOT EXCEED 15%,
18 IMPOSING A RETAIL MARIJUANA EXCISE TAX TO BE IMPOSED WHEN
19 UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A
20 RETAIL MARIJUANA CULTIVATION FACILITY TO A RETAIL MARIJUANA
21 PRODUCT MANUFACTURING FACILITY, RETAIL MARIJUANA STORE, OR
22 ANOTHER RETAIL MARIJUANA CULTIVATION FACILITY, ALLOWING THE
23 GENERAL ASSEMBLY TO DECREASE OR INCREASE THE RATE OF THE RETAIL
24 MARIJUANA EXCISE TAX WITHOUT FURTHER VOTER APPROVAL SO LONG AS
25 THE RATE DOES NOT EXCEED 15%, AND ALLOWING ANY ADDITIONAL TAX
26 REVENUE TO BE COLLECTED AND SPENT NOTWITHSTANDING ANY
27 LIMITATIONS PROVIDED BY LAW?"

1 (2) THE VOTES CAST FOR THE ADOPTION OR REJECTION OF THE
2 QUESTION SUBMITTED PURSUANT TO SUBSECTION (1) OF THIS SECTION
3 SHALL BE CANVASSED AND THE RESULT DETERMINED IN THE MANNER
4 PROVIDED BY LAW FOR THE CANVASSING OF VOTES FOR REPRESENTATIVES
5 IN CONGRESS.

6 **SECTION 2.** In Colorado Revised Statutes, 12-43.3-501, **amend**
7 (1) as follows:

8 **12-43.3-501. Marijuana cash fund.** (1) All moneys collected by
9 the state licensing authority pursuant to this article shall be transmitted to
10 the state treasurer, who shall credit the same to the ~~medical~~ marijuana
11 ~~license~~ cash fund, which fund is hereby created and referred to in this
12 section as the "fund". The moneys in the fund shall be subject to annual
13 appropriation by the general assembly to the department of revenue for
14 the direct and indirect costs associated with implementing this article.
15 Any moneys in the fund not expended for the purpose of this article may
16 be invested by the state treasurer as provided by law. All interest and
17 income derived from the investment and deposit of moneys in the fund
18 shall be credited to the fund. Any unexpended and unencumbered moneys
19 remaining in the fund at the end of a fiscal year shall remain in the fund
20 and shall not be credited or transferred to the general fund or another
21 fund.

22 **SECTION 3. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.