SENATE BILL 17-192

CONCERNING PROVISIONS TO ALLOW MARIJUANA BUSINESSES TO OPERATE MORE EFFICIENTLY, AND, IN CONNECTION THEREWITH, 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...

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.

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

SECTION 1. In Colorado Revised Statutes, 12-43.3-202, amend (1)(a) as follows:

12-43.3-202. Powers and duties of state licensing authority - rules. (1) The state licensing authority shall:

(a) Grant or refuse state licenses for the cultivation, manufacture, distribution, and sale of medical marijuana as provided by law; suspend, fine, restrict, or revoke such licenses, WHETHER ACTIVE, EXPIRED, OR SURRENDERED, upon a violation of this article ARTICLE 43.3, or a rule promulgated pursuant to this article ARTICLE 43.3; and impose any penalty authorized by this article ARTICLE 43.3 or any rule promulgated pursuant to this article ARTICLE 43.3. The state licensing authority may take any action with respect to a registration pursuant to this article ARTICLE 43.3 as it may with respect to a license pursuant to this article ARTICLE 43.3.
in accordance with the procedures established pursuant to this article ARTICLE 43.3.

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

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

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

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

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

(3) (a) Rules promulgated pursuant to paragraph (b) of subsection (2) SUBSECTION (2)(b) of this section must include, but need not be
limited to, the following subjects:

(XIX) Nonescorted visitors in limited access areas; and

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

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

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

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

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

(II) The retail marijuana licensee shall have thirty days after providing the written notice to the state licensing authority to complete the inventory conversion either in the seed-to-sale tracking system or physically and then in the seed-to-sale tracking system, depending on the circumstances. Any retail marijuana or retail marijuana product not transferred as part of an inventory conversion within thirty days from the date of the written notice to the state licensing authority shall be destroyed in accordance with the state licensing authority's rules.

(III) The retail marijuana licensee's license shall be deemed surrendered thirty days from the date of the written notice to the state licensing authority.

(IV) Upon an inventory conversion and license surrender in compliance with this subsection (5), the retail marijuana or retail marijuana product transferred shall be deemed medical marijuana or medical marijuana-infused products.

(V) A medical marijuana center, medical marijuana-infused products manufacturer, or medical marijuana optional premises cultivation operation receiving retail marijuana or retail marijuana product pursuant to this section that causes the medical marijuana licensee to exceed the inventory limits prescribed by article 43.3 of title 12 shall fully comply with the inventory limits within six months from the date the inventory conversion is complete.

(VI) A medical marijuana center, medical
MARIJUANA-INFUSED PRODUCTS MANUFACTURER, OR MEDICAL MARIJUANA OPTIONAL PREMISES CULTIVATION OPERATION RECEIVING RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCT PURSUANT TO THIS SUBSECTION (5) MAY ONLY RECEIVE RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCT IF IT IS LAWFUL FOR IT TO POSSESS THE CORRESPONDING TYPE OF MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCTS.

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

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

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

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

(1) "Average market rate" means the average price, as determined by the department on a biannual basis in six-month intervals, of all unprocessed retail marijuana that is sold or transferred from retail marijuana cultivation facilities in the state to retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities. An "average market rate" may be based on the
purchaser or transferee of unprocessed retail marijuana or on the nature
of the unprocessed retail marijuana that is sold or transferred. "AFFILIATED
MARIJUANA BUSINESS LICENSEES" MEANS MARIJUANA BUSINESS LICENSEES
THAT ARE OWNED OR CONTROLLED BY THE SAME OR RELATED INTERESTS,
WHERE "RELATED INTERESTS" INCLUDES INDIVIDUALS WHO ARE RELATED
BY BLOOD OR MARRIAGE OR ENTITIES THAT ARE DIRECTLY OR INDIRECTLY
CONTROLLED BY AN ENTITY OR INDIVIDUAL OR RELATED INDIVIDUALS.

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

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

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

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

(1) (a) (I) Beginning January 1, 2014; Except as otherwise provided in subparagraph (II) of this paragraph (a) and paragraph (b) of this subsection (1)(b) OF THIS SECTION, there is levied and shall be collected, in addition to the sales tax imposed pursuant to part 1 of article 26 of this title TITLE 39 and part 2 of this article ARTICLE 28.8, a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of fifteen percent of the average market rate of the unprocessed retail marijuana IF THE TRANSACTION IS BETWEEN AFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, THERE IS LEVIED AND SHALL BE COLLECTED, IN ADDITION TO THE SALES TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE 39 AND PART 2 OF THIS ARTICLE 28.8, A TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY, AT A RATE OF FIFTEEN PERCENT OF THE CONTRACT PRICE FOR UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES. The tax shall 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 a retail marijuana product manufacturing facility or a retail marijuana store, or another retail marijuana cultivation facility:
THE DEPARTMENT OF REVENUE SHALL PROVIDE LOCAL GOVERNMENTS WITH INFORMATION REGARDING THE TAX COLLECTED PURSUANT TO THIS SECTION UNDER A CONFIDENTIAL SHARED-USE AGREEMENT.

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

29-2-114. Retail marijuana excise tax - county - municipality - election. (1) (a) In addition to any sales tax imposed pursuant to section 29-2-103 and articles 26 and 28.8 of title 39, C.R.S., and in addition to the excise tax imposed pursuant to article 28.8 of title 39, C.R.S., each county in the state is authorized to levy, collect, and enforce a county excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility authorized by the county; except that a county is not authorized to levy, collect, and enforce a county excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility pursuant to this subsection (1) within any municipality that levies such an excise tax pursuant to subsection (2) of this section. SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. The tax shall 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 a retail marijuana product manufacturing facility or a retail marijuana store. or another retail marijuana cultivation facility. The tax rate imposed pursuant to this paragraph (a) shall SUBSECTION (1)(a) MAY not exceed five percent of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101 (1), C.R.S., of the unprocessed retail marijuana.
(2) (a) In addition to any sales tax imposed pursuant to section 29-2-102 and articles 26 and 28.8 of title 39, C.R.S., and in addition to the excise tax imposed pursuant to article 28.8 of title 39, C.R.S., each municipality in the state is authorized to levy, collect, and enforce a municipal excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility. SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. The tax shall 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 a retail marijuana product manufacturing facility or a retail marijuana store, or another retail marijuana cultivation facility. The tax rate imposed by any statutory municipality pursuant to this paragraph (a) shall not exceed five percent of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101 (1), C.R.S., of the unprocessed retail marijuana.

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

32-1-1004. Metropolitan districts - additional powers and duties. (10) (a) In addition to the excise tax imposed pursuant to article 28.8 of title 39, C.R.S., a metropolitan district with boundaries entirely within the unincorporated area of a county is authorized to levy, collect, and enforce a metropolitan district excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility. SUCH EXCISE TAX MUST BE CALCULATED BASED ON THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. The tax shall 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 a retail marijuana product manufacturing facility OR
a retail marijuana store, or another retail marijuana cultivation facility.

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

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

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

SECTION 10. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.