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November 22, 2013

Honorable Elisabeth A. Shumaker
Clerk, U.S. Court of Appeals for the 10th Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257

RE: Governor's Second Citation of Supplemental Authorities,
Fed. R. App. P. 28(j)
Kerr et al., v. Hickenlooper, No. 12-1445

Dear Madam Clerk:

The Governor respectfully brings to the Court's attention a tax increase passed by Colorado's legislature and approved by the electorate earlier this month. This enactment should remove any lingering misimpression about the legislature's continuing ability to vote and legislate on tax and revenue matters under TABOR.

The General Assembly approved and referred to the voters for approval Proposition AA (attached hereto), a new tax on retail marijuana. This referendum is an example of the legislature's continuing authority and ability, under TABOR, to operate in the area of taxation, when it so chooses. And because it succeeded, it cannot serve as the basis for standing in this case.¹ *Cf. Raines v. Byrd*, 521 U.S. 811, 824 (1997) (Legislators do not have standing where "[t]hey have not alleged that they voted for a specific bill, that there were sufficient votes to pass the bill, and that the bill was nonetheless deemed defeated.").

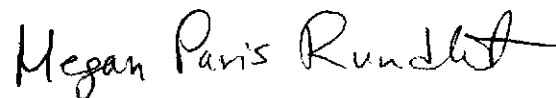
¹ The voters also disapproved Amendment 66, an additional tax increase. That measure, however, was a citizen initiative rather than a TABOR referendum, and thus is not relevant to this case.

With Proposition AA the legislature successfully exercised its significant power to vote on and shape tax and spending policy, and with voter approval of the tax, increased state revenue.² This is contrary to Plaintiffs' repeated contention that "TABOR totally eliminates the power of the General Assembly to enact revenue measures" or that "TABOR directly prohibits the General Assembly from legislating on matters involving new tax or taxes increases" Ans. Br. at 40-41.

To the extent any misimpression remains about the actual operation of TABOR, the Governor is prepared to engage in any supplemental briefing the Court might request.

Sincerely,

FOR THE ATTORNEY GENERAL



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² This was not the only such example. *See* Op. Br at 9-11 (citing other legislatively-initiated tax and spending increases). While Proposition AA was, in part, prompted by the people's previous vote on Amendment 64, *see* Colo. Const. art. XXVIII, § 16, it took the same form of a traditional TABOR referendum as the examples cited in the Opening Brief.

cc:

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An Act

HOUSE BILL 13-1318

BY REPRESENTATIVE(S) Singer, Fields, Fischer, Ginal, Hullinghorst, Kagan, Labuda, Pabon, Rosenthal, Tyler, Court, Melton, Ryden, Schafer; also SENATOR(S) Jahn, Crowder, Giron, Guzman, Heath, Hodge, Johnston, Jones, Kerr, Nicholson, Schwartz, Steadman, Todd, Ulibarri, Morse.

CONCERNING THE RECOMMENDATIONS MADE IN THE PUBLIC PROCESS FOR THE PURPOSE OF IMPLEMENTING CERTAIN STATE TAXES ON RETAIL MARIJUANA LEGALIZED BY SECTION 16 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

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

ARTICLE 28.8 **Taxes on Marijuana and Marijuana Products**

PART 1 **DEFINITIONS**

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

39-28.8-101. Definitions. UNLESS THE CONTEXT OTHERWISE REQUIRES, ANY TERMS NOT DEFINED IN THIS ARTICLE SHALL HAVE THE MEANINGS SET FORTH IN ARTICLE 26 OF THIS TITLE. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AVERAGE MARKET RATE" MEANS THE AVERAGE PRICE, AS DETERMINED BY THE DEPARTMENT ON A BIENNIAL 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.

(2) "CONSUMER" MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO PURCHASES RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS FOR PERSONAL USE BY PERSONS TWENTY-ONE YEARS OF AGE OR OLDER BUT NOT FOR RESALE TO OTHERS.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

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

(5) "LOCAL GOVERNMENT" MEANS A COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

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

(7) "RETAIL MARIJUANA" MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE

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

(8) "RETAIL MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY LICENSED TO CULTIVATE, PREPARE, AND PACKAGE RETAIL MARIJUANA AND SELL RETAIL MARIJUANA TO RETAIL MARIJUANA STORES, TO RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND TO OTHER RETAIL MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

(9) "RETAIL MARIJUANA PRODUCTS" MEANS CONCENTRATED RETAIL MARIJUANA PRODUCTS AND RETAIL MARIJUANA PRODUCTS THAT ARE COMPRISED OF RETAIL MARIJUANA AND OTHER INGREDIENTS AND ARE INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT NOT LIMITED TO, EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

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

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

(12) "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED BY THE DEPARTMENT TO PURCHASE RETAIL MARIJUANA FROM RETAIL MARIJUANA CULTIVATION FACILITIES AND RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS FROM RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO SELL RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS TO CONSUMERS.

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

(14) "TRANSFER" MEANS TO GRANT, CONVEY, HAND OVER, ASSIGN, SELL, EXCHANGE, OR BARTER, IN ANY MANNER OR BY ANY MEANS, WITH OR WITHOUT CONSIDERATION.

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

PART 2 RETAIL MARIJUANA SALES TAX

39-28.8-201. Retail marijuana sales tax - administration - enforcement. THE TAX IMPOSED PURSUANT TO THIS PART 2 SHALL BE ADMINISTERED AND ENFORCED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 21 OF THIS TITLE AND PART 1 OF ARTICLE 26 OF THIS TITLE, INCLUDING, WITHOUT LIMITATION, ANY PENALTIES FOR FAILURE TO MAKE ANY RETURN OR TO COLLECT OR PAY ANY TAX; EXCEPT THAT, IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS PART 2 AND THE PROVISIONS OF ARTICLE 21 OF THIS TITLE OR PART 1 OF ARTICLE 26 OF THIS TITLE, THE PROVISIONS OF THIS PART 2 SHALL CONTROL.

39-28.8-202. Retail marijuana sales tax. (1) (a) IN ADDITION TO THE TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE AND THE SALES TAX IMPOSED BY A LOCAL GOVERNMENT PURSUANT TO TITLE 29, 30, 31, OR 32, BEGINNING JANUARY 1, 2014, THERE IS IMPOSED UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY A RETAILER A TAX AT THE RATE OF TEN PERCENT OF THE AMOUNT OF THE SALE, TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR FORMS PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT; EXCEPT THAT A RETAIL MARIJUANA STORE IS NOT ALLOWED TO RETAIN ANY PORTION OF THE RETAIL MARIJUANA SALES TAX COLLECTED PURSUANT TO THIS PART 2 TO COVER THE EXPENSES OF COLLECTING AND REMITTING THE TAX AND EXCEPT THAT THE DEPARTMENT OF REVENUE MAY REQUIRE A RETAILER TO MAKE RETURNS AND REMIT THE TAX DESCRIBED IN THIS PART 2 BY ELECTRONIC MEANS.

(b) THE MAXIMUM TAX RATE THAT MAY BE IMPOSED PURSUANT TO THIS SECTION IS FIFTEEN PERCENT. AT ANY TIME ON OR AFTER JANUARY 1, 2014, THE GENERAL ASSEMBLY MAY, BY A BILL ENACTED BY THE GENERAL ASSEMBLY AND THAT BECOMES LAW:

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

(II) AFTER ESTABLISHING A TAX RATE THAT IS LOWER THAN FIFTEEN PERCENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), INCREASE THE TAX RATE TO BE IMPOSED PURSUANT TO THIS SUBSECTION (1); EXCEPT THAT, IN NO EVENT SHALL THE GENERAL ASSEMBLY INCREASE THE TAX RATE ABOVE FIFTEEN PERCENT OF THE SALE OF RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN INCREASE IN THE TAX RATE PURSUANT TO THIS SUBPARAGRAPH (II) SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT PART 4 OF THIS ARTICLE.

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

(3) THE DEPARTMENT MAY REQUIRE RETAIL MARIJUANA STORES TO FILE TAX RETURNS AND REMIT PAYMENTS DUE PURSUANT TO THIS PART 2 ELECTRONICALLY. THE DEPARTMENT SHALL PROMULGATE RULES GOVERNING ELECTRONIC PAYMENT AND FILING.

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

(a) (I) AN AMOUNT EQUAL TO FIFTEEN PERCENT OF THE GROSS RETAIL MARIJUANA SALES TAX REVENUES COLLECTED BY THE DEPARTMENT SHALL BE APPORTIONED TO LOCAL GOVERNMENTS. THE CITY OR TOWN SHARE SHALL BE APPORTIONED ACCORDING TO THE PERCENTAGE THAT RETAIL MARIJUANA SALES TAX REVENUES COLLECTED BY THE DEPARTMENT WITHIN THE BOUNDARIES OF THE CITY OR TOWN BEARS TO THE TOTAL RETAIL MARIJUANA SALES TAX REVENUES COLLECTED BY THE DEPARTMENT. THE COUNTY SHARE SHALL BE APPORTIONED ACCORDING TO THE PERCENTAGE

THAT RETAIL MARIJUANA SALES TAX REVENUES COLLECTED BY THE DEPARTMENT IN THE UNINCORPORATED AREA OF THE COUNTY BEARS TO TOTAL RETAIL MARIJUANA SALES TAX REVENUES COLLECTED BY THE DEPARTMENT.

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

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

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

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

(VI) NOTHING IN THIS PARAGRAPH (a) SHALL BE CONSTRUED TO PREVENT A LOCAL GOVERNMENT FROM IMPOSING, LEVYING, AND COLLECTING ANY FEE OR ANY TAX UPON THE SALE OF RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS OR UPON THE OCCUPATION OR PRIVILEGE OF SELLING RETAIL MARIJUANA PRODUCTS, NOR SHALL THE PROVISIONS OF THIS PARAGRAPH (a) BE INTERPRETED TO AFFECT ANY EXISTING AUTHORITY OF A LOCAL GOVERNMENT TO IMPOSE A TAX ON RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS TO BE USED FOR LOCAL AND MUNICIPAL PURPOSES; HOWEVER, ANY LOCAL TAX IMPOSED AT OTHER THAN THE LOCAL JURISDICTION'S GENERAL SALES TAX RATE SHALL NOT BE COLLECTED,

ADMINISTERED, AND ENFORCED BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 29-2-106, C.R.S., BUT SHALL INSTEAD BE COLLECTED, ADMINISTERED, AND ENFORCED BY THE LOCAL GOVERNMENT ITSELF.

(b) FOLLOWING APPORTIONMENT OF LOCAL GOVERNMENT SHARES PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), AN AMOUNT EQUAL TO ALL REMAINING REVENUES COLLECTED SHALL BE TRANSFERRED FROM THE GENERAL FUND TO THE MARIJUANA CASH FUND CREATED IN SECTION 12-43.3-501, C.R.S., TO BE USED FOR THE ENFORCEMENT OF REGULATIONS ON THE RETAIL MARIJUANA INDUSTRY AND FOR THE OTHER PURPOSES OF THE FUND AS DETERMINED BY THE GENERAL ASSEMBLY. THE GENERAL ASSEMBLY SHALL MAKE APPROPRIATIONS FROM THE MARIJUANA CASH FUND FOR THE EXPENSES OF THE ADMINISTRATION OF THIS SECTION.

(2) ON OR BEFORE APRIL 1, 2014, AND ON OR BEFORE APRIL 1 EACH YEAR THEREAFTER THROUGH APRIL 1, 2016, THE FINANCE COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, SHALL REVIEW THE PROVISIONS OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION TO DETERMINE WHETHER THE PERCENTAGE OF THE TAX IMPOSED PURSUANT TO THIS PART 2 THAT IS APPORTIONED TO LOCAL GOVERNMENTS IS APPROPRIATE. THE FINANCE COMMITTEES MAY REQUEST ASSISTANCE AND INPUT FROM THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF LOCAL AFFAIRS IN MAKING THIS DETERMINATION.

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

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

PART 3
RETAIL MARIJUANA EXCISE TAX

39-28.8-301. Retail marijuana excise tax - administration - enforcement. THE TAX IMPOSED PURSUANT TO THIS PART 3 SHALL BE ADMINISTERED AND ENFORCED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 21 OF THIS TITLE AND PART 1 OF ARTICLE 26 OF THIS TITLE, INCLUDING, WITHOUT LIMITATION, ANY PENALTIES FOR FAILURE TO MAKE ANY RETURN OR TO COLLECT OR PAY ANY TAX; EXCEPT THAT, IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS PART 3 AND THE PROVISIONS OF ARTICLE 21 OF THIS TITLE OR PART 1 OF ARTICLE 26 OF THIS TITLE, THE PROVISIONS OF THIS PART 3 SHALL CONTROL.

39-28.8-302. Retail marijuana - excise tax levied at first transfer from retail marijuana cultivation facility - tax rate. (1) (a) BEGINNING JANUARY 1, 2014, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), THERE IS LEVIED AND SHALL BE COLLECTED, IN ADDITION TO THE SALES TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE AND PART 2 OF THIS ARTICLE, 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. 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, A RETAIL MARIJUANA STORE, OR ANOTHER RETAIL MARIJUANA CULTIVATION FACILITY.

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

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

(II) AFTER ESTABLISHING A TAX RATE THAT IS LOWER THAN FIFTEEN

PERCENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), INCREASE THE TAX RATE TO BE IMPOSED PURSUANT TO THIS SUBSECTION (1); EXCEPT THAT, IN NO EVENT SHALL THE GENERAL ASSEMBLY INCREASE THE TAX RATE ABOVE FIFTEEN PERCENT OF THE AVERAGE MARKET RATE OF UNPROCESSED RETAIL MARIJUANA AT THE TIME THAT IT IS SOLD OR TRANSFERRED. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN INCREASE IN THE TAX RATE PURSUANT TO THIS SUBPARAGRAPH (II) SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT TO PART 4 OF THIS ARTICLE.

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

39-28.8-303. Books and records to be preserved. (1) EVERY RETAIL MARIJUANA CULTIVATION FACILITY SHALL KEEP AT EACH LICENSED PLACE OF BUSINESS COMPLETE AND ACCURATE ELECTRONIC RECORDS FOR THAT PLACE OF BUSINESS, INCLUDING ITEMIZED INVOICES OF ALL RETAIL MARIJUANA GROWN, HELD, SHIPPED, OR OTHERWISE TRANSPORTED OR SOLD TO RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES, RETAIL MARIJUANA STORES, OR OTHER RETAIL MARIJUANA CULTIVATION FACILITIES IN THIS STATE.

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

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

(4) EVERY RETAIL MARIJUANA STORE SHALL KEEP AT ITS PLACE OF BUSINESS COMPLETE AND ACCURATE RECORDS TO SHOW THAT ALL RETAIL

MARIJUANA RECEIVED BY THE RETAIL MARIJUANA STORE WAS PURCHASED FROM A RETAIL MARIJUANA CULTIVATION FACILITY. THE RETAIL MARIJUANA STORE SHALL PROVIDE A COPY OF SUCH RECORDS TO THE DEPARTMENT IF SO REQUESTED. THE DEPARTMENT MAY ESTABLISH THE ACCEPTABLE FORM OF SUCH RECORDS.

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

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

(2) EVERY RETAIL MARIJUANA CULTIVATION FACILITY SHALL FILE A RETURN WITH THE DEPARTMENT BY THE TWENTIETH DAY OF THE MONTH FOLLOWING THE MONTH REPORTED AND WITH THE REPORT SHALL REMIT THE AMOUNT OF TAX DUE.

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

(4) A RETAIL MARIJUANA CULTIVATION FACILITY SHALL FILE WITH THE DEPARTMENT EVIDENCE OF A SURETY BOND ISSUED BY A COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE FOR THE BENEFIT OF THE DEPARTMENT IN AN AMOUNT EQUAL TO TWO MONTHS OF THE FACILITY'S ANTICIPATED LIABILITY FOR THE TAX IMPOSED PURSUANT TO THIS PART 3. THE AMOUNT OF THE FACILITY'S ANTICIPATED TAX LIABILITY SHALL BE DETERMINED SOLELY IN THE DISCRETION OF THE RETAIL MARIJUANA CULTIVATION FACILITY. THE DEPARTMENT MAY REQUIRE A FACILITY TO FILE OR A FACILITY MAY CHOOSE TO FILE A REPLACEMENT SURETY BOND IF THE AMOUNT OF THE FACILITY'S ACTUAL TAX LIABILITY CHANGES AFTER THE FACILITY HAS FILED A BOND WITH THE DEPARTMENT PURSUANT TO THIS SUBSECTION (4).

39-28.8-305. Distribution of tax collected. (1) ALL MONEYS RECEIVED AND COLLECTED IN PAYMENT OF THE TAX IMPOSED BY THE PROVISIONS OF THIS PART 3 SHALL BE TRANSMITTED TO THE STATE

TREASURER, WHO SHALL DISTRIBUTE THE MONEY AS FOLLOWS:

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

(b) ANY AMOUNT REMAINING AFTER THE TRANSFER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE TRANSFERRED TO THE MARIJUANA CASH FUND CREATED IN SECTION 12-43.3-501, C.R.S.

39-28.8-306. Prohibited acts - penalties. IT IS UNLAWFUL FOR ANY RETAIL MARIJUANA CULTIVATION FACILITY TO SELL OR TRANSFER RETAIL MARIJUANA WITHOUT A LICENSE AS REQUIRED BY LAW, OR TO WILLFULLY MAKE ANY FALSE OR FRAUDULENT RETURN OR FALSE STATEMENT ON ANY RETURN, OR TO WILLFULLY EVADE THE PAYMENT OF THE TAX, OR ANY PART THEREOF, AS IMPOSED BY THIS PART 3. ANY RETAIL MARIJUANA CULTIVATION FACILITY OR AGENT THEREOF WHO WILLFULLY VIOLATES ANY PROVISION OF THIS PART 3 SHALL BE PUNISHED AS PROVIDED BY SECTION 39-21-118.

39-28.8-307. Revenue and spending limitations. NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUES GENERATED BY THE RETAIL MARIJUANA EXCISE TAX IMPOSED PURSUANT TO THIS PART 3 AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2013 MAY BE COLLECTED AND SPENT AS VOTER-APPROVED REVENUE CHANGES AND SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT TO PART 4 OF THIS ARTICLE.

39-28.8-308. Rules. THE DEPARTMENT SHALL PROMULGATE RULES FOR THE IMPLEMENTATION OF THIS PART 3 IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S.

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

39-28.8-401. Submission of ballot questions regarding imposition of retail marijuana sales and excise tax. (1) THE SECRETARY OF STATE SHALL SUBMIT A BALLOT QUESTION TO A VOTE OF THE REGISTERED ELECTORS OF THE STATE OF COLORADO AT THE STATEWIDE ELECTION TO BE HELD IN NOVEMBER 2013, FOR THEIR APPROVAL OR REJECTION. FOR PURPOSES OF TITLE 1, C.R.S., THE BALLOT QUESTION IS A PROPOSITION. EACH ELECTOR VOTING AT SAID NOVEMBER ELECTION SHALL CAST A VOTE AS PROVIDED BY LAW EITHER "YES/FOR" OR "NO/AGAINST" ON THE PROPOSITION: "SHALL STATE TAXES BE INCREASED BY \$70,000,000 ANNUALLY IN THE FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER BY IMPOSING AN EXCISE TAX OF 15% WHEN UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A RETAIL MARIJUANA CULTIVATION FACILITY WITH THE FIRST \$40,000,000 OF TAX REVENUES BEING USED FOR PUBLIC SCHOOL CAPITAL CONSTRUCTION AS REQUIRED BY THE STATE CONSTITUTION, AND BY IMPOSING AN ADDITIONAL SALES TAX OF 10% ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS WITH THE TAX REVENUES BEING USED TO FUND THE ENFORCEMENT OF REGULATIONS ON THE RETAIL MARIJUANA INDUSTRY AND OTHER COSTS RELATED TO THE IMPLEMENTATION OF THE USE AND REGULATION OF RETAIL MARIJUANA AS APPROVED BY THE VOTERS, WITH THE RATE OF EITHER OR BOTH TAXES BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF EITHER TAX DOES NOT EXCEED 15%, AND WITH THE RESULTING TAX REVENUE BEING ALLOWED TO BE COLLECTED AND SPENT NOTWITHSTANDING ANY LIMITATIONS PROVIDED BY LAW?"

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

39-28.8-402. Repeal of article. (1) THIS ARTICLE IS REPEALED, EFFECTIVE FEBRUARY 1, 2014, IF THE VOTERS AT THE NOVEMBER 2013 STATEWIDE ELECTION DO NOT APPROVE THE QUESTION DESCRIBED IN SECTION 39-28.8-401 AND THE GOVERNOR ISSUES AN OFFICIAL DECLARATION OF THE VOTE THEREON.

(2) THIS SECTION IS REPEALED, EFFECTIVE FEBRUARY 1, 2014, IF THE VOTERS AT THE NOVEMBER 2013 STATEWIDE ELECTION APPROVE THE QUESTION DESCRIBED IN SECTION 39-28.8-401 AND THE GOVERNOR ISSUES

AN OFFICIAL DECLARATION OF THE VOTE THEREON.

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

12-43.3-501. Marijuana cash fund. (1) All moneys collected by the state licensing authority pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the ~~medical~~ marijuana license cash fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the department of revenue for the direct and indirect costs associated with implementing this article AND ARTICLE 28.8 OF TITLE 39, C.R.S. Any moneys in the fund not expended for the purpose of this article OR ARTICLE 28.8 OF TITLE 39, C.R.S., may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

SECTION 3. In Colorado Revised Statutes, add 17-18-109 as follows:

17-18-109. Appropriation to comply with section 2-2-703 - HB 13-1318 - repeal. (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATION, OR SO MUCH THEREOF AS MAY BE NECESSARY, IS MADE IN ORDER TO IMPLEMENT HOUSE BILL 13-1318, ENACTED IN 2013:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2014, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TWENTY THOUSAND EIGHT HUNDRED SIXTEEN DOLLARS (\$20,816).

(b) FOR THE FISCAL YEAR BEGINNING JULY 1, 2015, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF FOURTEEN THOUSAND NINE HUNDRED EIGHTY-SEVEN DOLLARS (\$14,987).

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2016.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the marijuana cash fund created in section 12-43.3-501 (1) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2013, the sum of \$4,246,090 and 11.5 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

Executive Director's Office, Personal Services and Operating Expenses	\$92,376 and 1.5 FTE
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Executive Director's Office, Vehicle Lease Payments	\$9,956
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Taxation Business Group, CITA Annual Maintenance and Support	\$3,400,000
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Taxation Business Group, Taxation and Compliance Division	\$576,696 and 8.3 FTE
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Taxation Business Group, Taxpayer Services Division	\$167,062 and 1.7 FTE
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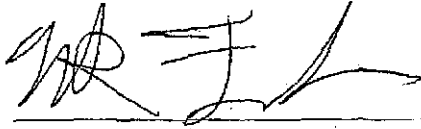
SECTION 5. Effective date. (1) Except as specified in subsection (2) of this section, this act takes effect upon passage.

(2) (a) Sections 3 and 4 of this act take effect only if, at the November 2013 statewide election, a majority of voters approve the ballot question submitted pursuant to section 39-28.8-401, Colorado Revised Statutes, enacted in section 1 of this act.

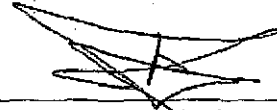
(b) If the voters at the November 2013 statewide election approve the ballot question described in paragraph (a) of this subsection (2), then sections 3 and 4 of this act take effect on the date of the official declaration of the vote thereon by the governor.

SECTION 6. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



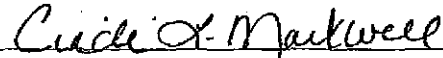
Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



John P. Morse
PRESIDENT OF
THE SENATE

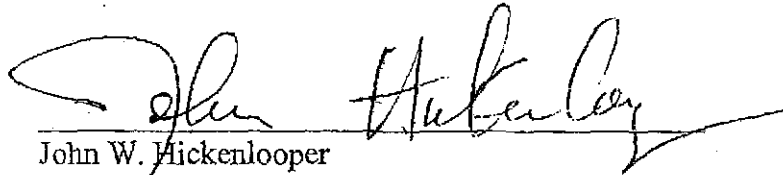


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED 11:23 am 5/28/13



John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO