

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington St., Suite 301
Indianapolis, IN 46204
(317) 233-0696
iga.in.gov

FISCAL IMPACT STATEMENT

LS 6405
BILL NUMBER: HB 1350

NOTE PREPARED: Dec 15, 2023
BILL AMENDED:

SUBJECT: Cannabis Legalization.

FIRST AUTHOR: Rep. VanNatter
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill establishes a procedure for the lawful production and sale of cannabis in Indiana. It also makes conforming amendments.

Effective Date: July 1, 2024.

Explanation of State Expenditures: *Summary* - The bill could increase state costs by between \$893,500 and \$1.1 M in FY 2025 and between \$493,500 and \$663,500 in FY 2026 for the Cannabis Commission (commission), the advisory committee, and the Department of State Revenue (DOR). The bill will have an indeterminate impact on the number of commitments to the Department of Corrections (DOC) for felony violations by adding new offenses and removing substances from the definitions of certain marijuana crimes.

Additional Information - Marijuana is federally classified as a Schedule I controlled drug with no medically indicated uses. Although 14 states have comprehensive medical marijuana programs and 24 states have combined adult and medical use regulatory programs, future federal responses to state initiatives is unknown.

Cannabis Commission and Advisory Committee: In the initial years, the commission could incur annual state expenditures between \$480,000 and \$650,000 to establish and operate the commission. After an indeterminate implementation period, the commissions's total costs will depend on the number of employees needed to regulate cannabis as prescribed in the bill. The costs may be at least partially offset with fees established by the commission. The cost of the advisory committee will depend on the budget established by the Legislative Council. Recently, budgets for committees of similar size are estimated at \$13,500 per interim.

The cost range was estimated using relevant staff positions in other state regulatory agencies and divisions of state agencies with regulatory functions. The administrative costs are based on the Indiana Gaming Commission's overhead costs and estimated costs for new equipment. Total regulatory expenses are determined by overall enforcement activities of the agency, the number of regulated entities, the complexity of items to be regulated, and the number of facilities to be inspected. Ultimately, the number of regulated entities under this bill may increase over time leading to increased expenditures by the commission in future years.

The bill establishes a Cannabis Commission that may function similarly to the Alcohol and Tobacco Commission in regulating production and sale of cannabis. The commission will operate a statewide monitoring system through a service provider selected by bid to track sales, seeds, and third party inventory data. The system expense may be offset with plant tag purchases and other fees. The commission is comprised of four commissioners and an executive director who is a nonvoting member. Each commissioner is entitled to salary per diem and reimbursement of traveling and other expenses. The commissioners must execute surety bonds of \$10,000 and an oath of office. The commission may employ all necessary employees, determine their duties, and fix their salaries with the approval of the State Budget Agency.

The commission's prosecutor may hire clerical staff with the consent of the commission to carry out duties concerning prosecution of cannabis law violations and to assist local prosecutors with cannabis law violation investigations and prosecutions. The prosecutor must execute a \$5,000 surety bond and may administer oaths of office. The superintendent of enforcement officers must have 10 years in active law enforcement and at least 5 years in law enforcement management. Enforcement officers will execute surety bonds of \$1,000.

Cannabis Excise Tax: Implementing the Cannabis Excise Tax would require additional workload and expenditures for the DOR outside of the agency's routine administrative functions. The DOR's workload and expenses would also increase to administer the Sales Tax exemption for cannabis purchased by veterans. The DOR would need to update computer software and create forms, guidance, and processes to implement the bill's tax provisions. [The DOR reports that the software-related costs to implement the Electronic Cigarette Tax and Closed System Cartridge Tax were approximately \$400,000.]

The DOR will experience additional costs and workload to implement the provisions outlined in the bill. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

Penalty Provisions: The overall impact of the bill on the number of offenders committed to DOC facilities is potentially minor. While the number of offenders who may be committed to a DOC facility (as a result of the new felony offenses established in the bill) is indeterminate, the number of offenders committed to DOC facilities for marijuana dealing and possession each year is relatively small.

The bill adds several new felony offenses:

- Dealing in mislabeled low THC hemp extract, a Level 5 felony;
- Knowingly or intentionally growing or selling cannabis without a permit, a Level 6 felony;
- Retail sales violations, a Level 6 felony; and
- Knowingly, recklessly, or intentionally providing cannabis to a person under 21 years old resulting in serious bodily injury or death, a Level 6 felony.

This bill removes marijuana, hash oil, and hashish from dealing, possessing, and paraphernalia offenses for

which the criminal penalties are a Class A or Class B misdemeanor, Class A infraction, or Level 6 felony. [Salvia remains an element of these crimes.] The bill could result in a minor reduction in the Department of Correction (DOC) offender population with 26 offenders a year on average committed to a DOC facility between FY 2019 and FY 2023. There were no commitments to DOC for possession of paraphernalia since FY 2018.

**Commitments to DOC by Fiscal Year for
Marijuana Offenses**

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Possession	20	2	1	0	4
Dealing	<u>25</u>	<u>19</u>	<u>15</u>	<u>17</u>	<u>25</u>
Totals	45	21	16	17	29

The following table shows the sentencing ranges for Level 5 and 6 felonies.

	<u>Minimum</u>	<u>Advisory</u>	<u>Maximum</u>
Level 5	1 years	3 years	6 years
Level 6	6 months	1 year	30 months

The average expenditure to house an adult offender was \$28,110 annually, or \$76.96 daily, in FY 2023. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,456 annually, or \$12.21 daily, per prisoner. The marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene.

Explanation of State Revenues: Summary - Revenue to the state General Fund is estimated to increase between \$83.4 M and \$163 M per year from Sales and Excise Taxes. Other state funds could increase between \$491,400 and \$15.8 M per year, primarily due to permit fees.

The addition of new offenses and defenses, as well as decriminalization of marijuana, hash oil, and hashish in existing offenses, will have an indeterminate overall impact on the state General Fund and could potentially reduce revenue to the Common School Fund by a maximum of \$9.5 M per year. Also, a reduction to court fees from fewer marijuana cases is expected.

Additional Information -

Excise and Sales Taxes: Significant revenue from the Cannabis Excise Tax and Sales Tax could potentially be collected beginning in FY 2025. However, the timing of revenue collections will depend on the length of time necessary to implement the cannabis regulatory program. The following table summarizes the estimated revenue that could be collected when the program is fully implemented.

**Estimated Revenue Upon Full Implementation
(in millions)**

Revenue Source	<u>Low Estimate</u>	<u>High Estimate</u>
Excise Tax	\$49.3	96.1
Sales Tax	<u>34.5</u>	<u>67.3</u>
Total	\$83.8	\$163.4

All revenue from the Cannabis Excise Tax will be deposited in the Cannabis Regulation Fund. Sales Tax revenue is deposited in the state General Fund (99.838%), Commuter Rail Service Fund (0.131%), and Industrial Rail Service Fund (0.031%).

The bill establishes the Cannabis Excise Tax at a rate of 10% of the retail price of cannabis. The excise tax revenue could potentially generate an estimated \$49.3 M to \$96.1 M in the first full year of regulated cannabis sales. Before the cannabis program is fully implemented, a lesser but potentially significant amount of revenue could be collected. The 7% state Sales Tax would also apply to sales of cannabis. The sales tax revenue increase could be approximately \$34.5 M to \$67.3 M in the first full year of sales.

The estimated potential sales revenue is based on retail sales of cannabis and revenue collections in states that have implemented programs permitting and taxing both medical cannabis and adult-use cannabis, adjusted for marijuana use percentage and population in each state and estimated cross-border sales. A review of 21 states found that the average time to implement a medical marijuana program is 29 months. If Indiana's implementation time is similar, revenue collection may begin in FY 2027, and the first full year of collections may be FY 2028.

Permits, Fees, and Fines: Permit fees and civil penalties imposed by the commission will increase revenue to the Cannabis Regulation Fund by a potentially significant amount. New programs such as those in Michigan or Illinois received between \$0.5 M and \$1.3 M from active licenses. The Indiana Alcohol and Tobacco Commission, a mature program, received an average \$15.8 M from alcohol beverage permits between FY 2018 and FY 2022. The application and license fees reviewed included growers, processors, dispensaries, testing laboratories, transportation providers, as well as identification cards for patients and caregivers.

Outdoor cannabis growing is prohibited, and individuals will be allowed to grow cannabis for personal use without permit fees. One business may not hold more than 10% of all issued permits.

Cannabis grower permittees may have a license revoked (or not renewed) and a civil penalty imposed of up to \$2,500 for violation of a permit requirement, permit term or condition, or a rule related to the growing of cannabis. Additionally, the commission may assess a civil penalty for violations of the law by any permittee up to \$50,000. A permit applicant must post a \$15,000 surety bond payable to the state, and the commission may recover between \$250 and \$500 for violations, or up to the full amount for failure to pay taxes or fees.

Fees for Permittees

Permit Type	Application (nonrefundable)	New and Renewed Permit (refundable)	Annual Investigation	Limited Number of Permits
Integrated Permits	\$30,000, plus each underlying permit fee	\$15,000	\$7,500	9
Grower (Permit fees and quality are based on canopy square footage)	\$5,000 to \$15,000	\$2,500 to \$7,500	\$1,250 to \$3,750	4 to 12
Processor	\$5,000	\$2,500	\$1,250	
Transport Carrier	\$5,000	\$2,500	\$1,250	
Retailer	\$10,000	\$5,000	\$2,500	300

Penalty Provisions: The potential revenue loss from court fees due to the decriminalization of certain marijuana offenses is estimate to be \$332,000 for the state General Fund and \$64,480 for the State User Fee Fund. The estimated loss is based on 2023 data of 358 felony convictions and 2,854 misdemeanor convictions for marijuana possession or dealing.

State General Fund Revenue Loss Estimates

	<u>Trial Courts</u>	<u>City and Town Courts</u>	<u>Totals</u>
Court Fees	\$61,404	\$162,822	\$224,226
Other Fees	<u>\$24,854</u>	<u>\$83,878</u>	<u>\$108,732</u>
Totals	\$86,258	\$246,700	\$332,958

If fewer persons are found guilty of felonies and misdemeanors, revenue to the Common School Fund from fines will be reduced by a maximum of \$9.5 M. The table below shows the maximum potential loss based on average convictions from FY 2019 to FY 2023 and assuming the maximum monetary penalty was given in every case. The impact on OWI convictions due to changes in metabolite levels was not included in the estimate.

Maximum Revenue Loss from Marijuana Offense Convictions

Criminal Penalty	Average Annual Convictions	Maximum Monetary Penalty	Totals
Felony	369	\$10,000	\$ 3.7 M
Class A Misdemeanor	659	5,000	3.3 M
Class B Misdemeanor	2,475	1,000	2.5 M
Totals	3,503	---	\$9.5 M

The bill adds the following misdemeanors and infractions:

- Class A misdemeanors for transporting cannabis in an unidentified vehicle; providing cannabis to a person less than 21 years old with a prior conviction; permittees who violate sections; knowingly or intentionally possessing marijuana, hash oil, hashish, or salvia falsely identified as low THC hemp extract; possession of mislabeled low THC hemp extract.
- Class B misdemeanors for providing cannabis to a person less than 21 years old; allowing or enabling a person less than 21 years old to use cannabis with a prior conviction or adjudication; knowingly and intentionally employing a person under 21 years old.
- Class A infraction for county vendors spending money to promote a public question.
- Class C infraction for allowing or enabling a person less than 21 years old to use cannabis; knowingly or intentionally aiding, inducing, or causing a person less than 21 years old to unlawfully possess cannabis; a person under 21 years old entering the premises of a cannabis retailer; a permittee allowing, or a parent, guardian, trustee, or other person with custody of a child under 18 years old, taking a child to a cannabis retailer or other location where cannabis is sold; the public use of cannabis.

Cannabis Regulation Fund: The bill creates the Cannabis Regulation Fund to receive taxes, fees, and penalty revenue. Money remaining in the fund at the end of the year is distributed among state and local entities. If money remains in the fund at the end of the year, the state General Fund will receive 40% of the remaining funds, and the Department of Health will receive 15% to provide a youth cannabis abuse prevention and education program in consultation with the Department of Education and the Division of Mental Health and Addiction (in the Family and Social Services Administration), and 15% each to prosecuting attorneys in counties with cannabis retail facilities and cities, towns, or counties with cannabis facilities. The commission may charge credit cards users for processing fees.

Explanation of Local Expenditures: *Public Questions:* Counties may hold public questions on permitting cannabis retailers within the county either during a regular primary or general election or through a special election.

Penalty Provisions: These provisions would likely reduce the costs to counties for public defense expenses and the pre and post trial jail confinement for persons who are charged with possessing or dealing marijuana as either misdemeanors or felonies. The bill would also reduce the supervisory burden on community corrections agencies and probation departments.

For persons who were sentenced for marijuana possession as a Level 6 felony, about 85% were confined in a county jail pretrial. In addition, 48% of these persons were confined in a county jail after trial for an average of 121 days, and 86% were supervised by a community corrections agency, a probation department, or both. No similar information was available about persons convicted and sentenced for marijuana dealing or possession as a misdemeanor.

Explanation of Local Revenues: *Cannabis Regulation Fund:* The bill will distribute 15% of money remaining in the Cannabis Regulation Fund at the end of the year to county prosecuting attorneys where retail facilities are allowed, and will distribute 15% to cities, towns, and counties that have cannabis growing, processing, or retail facilities.

Penalty Provisions: Revenue loss from removing marijuana, hash oil, and hashish from the list of illegal drugs is estimated to be \$141,000 per year.

State Agencies Affected: Department of State Revenue; Department of Correction.

Local Agencies Affected: Courts with criminal jurisdiction; prosecuting attorneys.

Information Sources: State program websites and contacts available from LSA upon request; U.S. Substance Abuse and Mental Health Services Administration; National Survey on Drug Use and Health, December 2020; U.S. Census Bureau, Annual Estimates of the Resident Population by Single Year of Age and Sex; Indiana Supreme Court Abstracts of Judgment.

Fiscal Analyst: Karen Rossen, 317-234-2106, Qian Li, 317-232-9671, Mark Goodpaster, 317-232-9852.