

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6490**

**BILL NUMBER:** HB 1039

**NOTE PREPARED:** Dec 16, 2022

**BILL AMENDED:**

**SUBJECT:** Medical and Adult Use Cannabis.

**FIRST AUTHOR:** Rep. Teshka

**BILL STATUS:** As Introduced

**FIRST SPONSOR:**

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** After marijuana is removed as a federal Schedule I controlled substance, the bill permits the use of cannabis by: (1) a person at least 21 years of age; and (2) a person with a serious medical condition as determined by the person's physician.

*Adult Use Cannabis Excise Tax:* The bill establishes the adult use cannabis excise tax, and requires a retailer to transfer the tax to the Department of State Revenue for deposit in the state General Fund. It exempts veterans from payment of the sales tax on medical or adult use cannabis.

*Program:* It also establishes a cannabis program to permit the cultivation, processing, testing, transportation, and sale of cannabis by holders of a valid permit.

*Indiana Cannabis Commission (ICC) and ICC Advisory Committee:* The bill establishes the Indiana Cannabis Commission (ICC) as a state agency to oversee, implement, and enforce the program, and establishes the ICC Advisory Committee to review the effectiveness of the program.

*Distribution and Labeling:* The bill requires that permit holders take steps to prevent diversion of cannabis to unauthorized persons. It requires that cannabis and cannabis products be properly labeled, placed in child resistant packaging, and tested by an independent testing laboratory before being made available for purchase. The bill prohibits packaging cannabis in a manner that is appealing to children.

*Research:* The bill authorizes research on cannabis in accordance with rules set forth by the ICC.

*Expungement:* It establishes a procedure for the expungement of a cannabis related conviction if the act

constituting the conviction becomes legal.

The bill also makes conforming amendments.

**Effective Date:** July 1, 2023.

**Explanation of State Expenditures: Summary** - The bill establishes the Indiana Cannabis Commission (ICC) and a legislative advisory committee which may begin carrying out duties prior to the legalization date of July 1 following the date marijuana is removed from Schedule I. In the initial years, the ICC could incur annual state expenditures between \$509,000 and \$791,000 to establish and operate the ICC. After an indeterminate implementation period, the ICC's total costs will depend on the number of employees needed to regulate cannabis. The costs may be at least partially offset with fees established by the ICC. The cost of the advisory committee will depend on the budget established by the Legislative Council. Recently, budgets for committees of similar size have been \$13,500 per interim.

The Department of State Revenue (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. [The DOR reports that the software-related costs to implement the Electronic Cigarette Tax and Closed System Cartridge Tax were approximately \$400,000.]

**Additional Information** - Marijuana is federally classified as a Schedule I controlled drug with no medically indicated uses. Although 16 states have comprehensive medical marijuana programs and 21 states have combined adult and medical use regulatory programs, future federal responses to state initiatives is unknown. The bill will allow adult use of cannabis when marijuana is removed as a Schedule I controlled drug. The following expenditures would only be incurred after marijuana is removed as a federal Schedule I controlled substance. The amounts reflect current biennial expenses.

*ICC:* The high-end cost estimate is based on the average annual costs for the Alcohol and Tobacco Commission (ATC) of about \$791,000 from FY 2018 to FY 2022. The estimate includes average annual expenditures for four commissioners and an executive secretary's salary and benefits, administrative and operating, and internal services expenditures. [Internal services include databases, software, human resources services, and telephone expenses. The ATC commissioners receive an annual salary that was not included in the cost estimates.]

The low-end cost estimate is based on the average annual costs for the Indiana Gaming Commission (IGC) of about \$509,000 from FY 2018 to FY 2022. This estimate includes salary per diem and traveling expenses for seven commissioners, the executive director's annual salary and benefits, and administrative and operations expenses and internal services costs.

*Adult Use Cannabis Excise Tax:* Implementing the Adult Use 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.

*Penalty Provisions:* Overall, the use, possession, delivery, distribution, transport, cultivation, or manufacture

of cannabis or paraphernalia used in connection with cannabis would be lawful if it is used recreationally by an adult or for medical use by patients, caregivers, or research facilities. However, impaired operation of a motor vehicle, a motorboat, or any other device or equipment while under the influence of cannabis would still be at least a Class C misdemeanor. This bill would have little or no effect on the Department of Correction (DOC) offender population because five or fewer persons have been sentenced to DOC for possessing marijuana in any given year between FY 2017 and FY 2021. Persons convicted and sentenced for felony possession of marijuana would either be sentenced for a misdemeanor or not be sentenced at all.

*Advisory Committee:* This bill establishes an advisory committee with 12 members - 4 legislative members and 8 nonvoting members. Members of the committee are to receive the same salary per diem and traveling and other expense reimbursement paid to legislative or lay members of interim study committees. The committee is to review rules and legislative proposals of the ICC and evaluate the cannabis research and development program and the operation of the cannabis program and matters with bearing on the operation of the program. Prior to marijuana being removed as a Schedule I controlled substance, the committee will meet to adopt rules, take testimony, and make recommendations.

**Explanation of State Revenues:** After marijuana is removed as a federal Schedule I controlled substance, revenue to the state General Fund could increase, and revenue to the Controlled Substance Tax Fund and Common School Fund could decrease.

*Additional Information* - The following revenue impacts would only occur after marijuana is removed as a federal Schedule I controlled substance.

*Adult Use Cannabis Excise Tax:* The bill establishes the Adult Use Cannabis Excise Tax, effective July 1 following the date marijuana is removed as a Schedule I controlled substance. In the first year of legal cannabis sales, the tax rate would be 1% of the retail price of cannabis (excluding medical cannabis). The rate would increase to 2% in the second year and 3% in the third and subsequent years. Revenue would be deposited in the state General Fund. The following table shows the estimated potential excise tax revenue.

Estimated Potential Tax Revenue (in Millions)	
Year 1 (1%)	\$2.0
Year 2 (2%)	\$3.9
Year 3 (3%)	\$5.9

These estimates are based on retail sales of adult use cannabis and revenue collections in states that have implemented similar programs, adjusted for tax rate, population, and prevalence of marijuana use. The estimate also assumes that dispensaries in Indiana will make fewer sales to nonresidents than dispensaries in other states.

*Sales Tax:* The 7% state Sales Tax would also apply to sales of adult use and medical cannabis. The revenue increase could be approximately \$14.8 M to \$31.9 M in the first full year of sales. However, actual revenue would be lower to the extent veterans purchase cannabis exempt from tax. This estimate is based on data from other states that have implemented similar programs, adjusted for tax rate, population, and prevalence of marijuana use. 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%).

*Permits, Fees, and Fines:* Permit and fee revenue will increase revenue to the state General Fund by an indeterminate, but potentially significant amount. The ICC will assess a penalty of up to \$20,000 per violation and an additional penalty of up to \$2,500 for each day a violation continues. The ICC may revoke an identification card or permit.

An identification card for a patient or caregiver is \$50 for issuance or renewal. Demonstrated financial hardship may reduce or waive the fee. The bill also requires the ICC to conduct a national criminal history background check of each applicant for a caregiver identification card. The applicant is responsible for the \$15 State Police Fee. Cannabis organization permit fees are listed in the following table.

Fee Type	Grower	Processor	Qualified Retailer	Testing Laboratory
Application (nonrefundable)	\$500	\$2,500	\$200	\$1,000
Permit (refundable)	\$2,500	\$10,000	\$1,000/location	\$2,500/location
Permit renewal (refundable)	\$1,000	\$5,000	\$750/location	\$2,000/location
Permit amendment (nonrefundable)	\$250	\$250	\$250	\$250

*Controlled Substance Excise Tax Repeal:* Repeal of the Controlled Substance Excise Tax (CSET) will have minimal fiscal impact on state revenue. The tax is collected on the delivery, possession, or manufacture of controlled substances in violation of state or federal law. CSET collections are \$2,950 per year on average between FY 2018 and FY 2022. Revenue is deposited in the Controlled Substance Tax Fund.

*Penalty Provisions:* The changes in the bill’s penalty provisions could reduce revenue from court fees and criminal fines, which are deposited in the Common School Fund and state General Fund. The bill will potentially reduce the amount of court fees and criminal fines received from offenders of marijuana related crimes by offering a defense to possessing or dealing in paraphernalia, and possessing or dealing in marijuana. Under current law, these offenses can range from Class A, Class B, and Class C misdemeanors to Level 6 and Level 5 felonies.

**Explanation of Local Expenditures:** *Expungement:* More petitions for expungement would increase the workload of local courts. Persons who have been convicted of marijuana offenses in different counties would need to file petitions in each county with the circuit or superior court in that county for an expungement. Whether the added workload can be accommodated with a court’s existing resources will depend on the number of possible cases filed, how quickly they could be processed, and each court’s capacity. While the volume of new cases is uncertain, most of these cases will be for Class A or B misdemeanors and not Level 6 felonies. Since more than 80% of cases that are expunged are disposed with a bench disposition, the court proceedings should be briefer because they historically have not required introducing witnesses or evidence.

*Effect on County Jails, Probation Departments and Community Corrections Agencies:* This provision would reduce the costs to counties for public defense expenses and the pre- and post-trial jail confinement for persons who are charged with possession of marijuana as either a misdemeanor or felony. The bill would also reduce the supervisory burden on community corrections agencies and probation departments.

*Additional Information* – Of the 891 persons who were sentenced for marijuana possession as a Class B misdemeanor, 29% were appointed a public defender.

A Class A misdemeanor is punishable by a maximum one year term in a county jail, and the maximum term for a Class B misdemeanor is punishable by up to 180 days in jail. [The average cost per day is approximately \$64.53 based on the per diem payments reported by U.S. Marshals to house federal prisoners in 11 county jails across Indiana during CY 2021.]

**Explanation of Local Revenues:** Persons petitioning for an expungement would pay no civil filing fee. Consequently, some revenue loss may occur.

**State Agencies Affected:** Governor's Office; General Assembly; Department of State Revenue; State Department of Agriculture; State Department of Health.

**Local Agencies Affected:**

**Information Sources:** State Budget Agency; Auditor's Data; State program websites and contacts available from LSA upon request. U.S. Census Bureau, Annual Estimates of the Resident Population by Single Year of Age and Sex. U.S. Department of Health and Human Services, National Survey on Drug Use and Health, December 2021.

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