

**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 6864

BILL NUMBER: SB 293

NOTE PREPARED: Dec 26, 2022

BILL AMENDED:

SUBJECT: Craft Hemp Flower Distribution and Taxation.

FIRST AUTHOR: Sen. Holdman

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Craft Hemp Flower Products Tax:* This bill imposes an excise tax on the retail sale of craft hemp flower products at a rate of 8%. It defines "craft hemp flower". It requires a retail dealer to obtain a craft hemp flower products retail dealer's certificate from the Department of State Revenue (in addition to a retail merchant's certificate). The bill deposits the revenue from the excise tax in the state General Fund.

Distribution and Sales of Craft Hemp Flower: The bill establishes certain regulatory testing and packaging requirements for the distribution and sale of craft hemp flower. It excludes craft hemp flower from the definition of "hemp product". It removes references to smokable hemp. The bill repeals a law that requires that a hemp bud or a hemp flower be sold only to a processor licensed in Indiana. It provides that a food is not considered adulterated for containing low THC hemp extract or craft hemp flower.

Craft Hemp Flower Violations: The bill provides that craft hemp flower is not included in the definition of "controlled substance analog", "hashish", "low THC hemp extract", or "marijuana". The bill prohibits the sale of low THC hemp extract to a person less than 21 years of age if it contains certain elements. It also repeals the definition of "smokable hemp" and criminal penalties concerning smokable hemp. It adds infractions that apply with regard to persons less than 21 years of age involving the sale, distribution, purchase, and possession of craft hemp flower.

The bill makes conforming changes and technical corrections.

Effective Date: July 1, 2023.

Explanation of State Expenditures: *Office of State Chemist and Seed Commissioner (OISC):* The OISC workload could increase if allowing hemp sales (to persons age 21 and over, after testing and packaging requirements are met) directly to the public increases the number of hemp license applications to be processed. The OISC is integrated in the Purdue University budgets, including the regulatory costs of the state hemp program. The OISC states that the hemp program is currently operating at a loss. [See also *Explanation of State Revenues.*]

Office of the Attorney General: The administrative expenditures and workload of the Office of the Attorney General could potentially increase to enforce the bill's requirements for packaging and distribution of craft hemp flower under trade regulation laws. The bill's requirements are within the agency's routine administrative functions and should be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

Department of State Revenue (DOR): Implementing the Craft Hemp Flower Products Tax would require additional workload and expenditures for the DOR outside of the agency's routine administrative functions. The DOR would need to issue craft hemp flower products retail dealer's certificates and additional retail merchant's certificates to retailers selling these products to consumers. In addition, the DOR would need to update computer software and create forms, guidance, and processes to implement the bill's provisions regarding the new tax. 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.

Penalties for Craft Hemp Flower Retailers: The bill makes it a Level 6 felony to knowingly fail to collect or remit the Craft Hemp Flower Products Tax. A Level 6 felony is punishable by a prison term ranging from 6 to 30 months, with an advisory sentence of 1 year. The sentence depends on mitigating and aggravating circumstances. Assuming 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. However, any additional expenditures are likely to be small.

Explanation of State Revenues: *Craft Hemp Flower Products Tax:* The bill imposes an 8% excise tax on retail sales of craft hemp flower products. This tax could potentially yield approximately \$0.6 M to \$3.5 M annually beginning in FY 2024. However, actual revenue collections will depend on prices of craft hemp flower products. All revenue from the tax will be deposited in the General Fund.

Retailers that sell craft hemp flower products would also be required to obtain a retail merchant's certificate and a craft hemp flower products retail dealer's certificate from the DOR. The registration fee for a retail merchant's certificate is \$25 and is paid every two years. The annual fee for a craft hemp flower products retail dealer's certificate is \$25 per business location.

Sales Tax: The bill could increase sales tax revenue by an estimated \$0.6 M to \$3.3 M annually beginning in FY 2024. Sales of craft hemp flower products would be subject to the 7% sales and use tax. In addition, the bill provides that the excise tax amount is included in the total sales price of craft hemp flower products for purposes of calculating sales tax. Revenue is deposited in the General Fund (99.838%), Commuter Rail Service Fund (0.131%), and Industrial Rail Service Fund (0.031%).

Hemp Licensing Revenue: By allowing sales of craft hemp flower directly to the public (to persons age 21 and over), revenue to the OISC could increase from hemp grower and handler license applications and other

hemp fees and penalties. The bill would allow “craft hemp flower” (including hemp bud and flower) to be distributed to the public (current law allows sales only to licensed processors), after the product has passed independent laboratory testing and has been packaged in tamper evident packaging. Hemp penalties may also increase, but have not yet been imposed by the OISC, as Indiana is operating under a federal emergency rule. The amount of the revenue increase is indeterminate.

The OISC is integrated in the Purdue University budgets, including the regulatory costs of the state hemp program. Hemp fee revenue is to be used for hemp administrative expenses; whereas, hemp penalty revenue is to be transferred to the Indiana State Department of Agriculture to be used for hemp marketing and research purposes. The OISC states that the hemp program is currently operating at a loss and that they expect a decrease in license applications due to the decline in CBD price and the number of current growers with enough crop stored that may not apply for a growers’ license (only a handlers’ license) for the 2023 season.

Penalties for Craft Hemp Flower Retailers: In addition to the Level 6 felony for failure to collect and remit the excise tax, the bill also makes it a Class A misdemeanor to sell craft hemp flower without a craft hemp flower products retail dealer’s certificate. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Level 6 felony is \$10,000, and the maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenues would likely be small.

Craft Hemp Flower Violations: The bill eliminates the Class A misdemeanor penalties for possessing or dealing “smokable hemp” (maximum judgment \$5,000), allowing for the possession and distribution of “craft hemp flower,” subject to packaging requirements. The following table identifies the penalties established in the bill related to craft hemp flowers

If an infraction judgment rather than a misdemeanor fine is assessed, revenue to the state General Fund may increase. (Fines are deposited in the Common School Fund, while infraction judgments are deposited in the state General Fund.) Revenue from court fees may also be reduced. The court fee for a misdemeanor is \$120, while the criminal costs fee for an infraction is \$70.

Proposed Penalties		
Craft Hemp Flower Violation:	Penalty:	Maximum Judgment:
Improper Labeling or Packaging	Class B infraction Class A infraction (with prior)	\$1,000 \$10,000
Retail Establishment Selling/Distributing to Person under 21	Class C infraction	\$400* \$800-\$2,000* (repeat offenses)
Purchasing by Person under 21	Class C infraction	\$500
Possessing (with broken seal) while motor vehicle is in operation or on right-of-way of public highway	Class C infraction	\$500
*Deposited in the Richard D. Doyle Youth Tobacco Education and Enforcement Fund		

Low THC Hemp Extract Violations: The bill prohibits the sale of low THC hemp extract containing certain

ingredients, including delta-8 THC and delta-10 THC, to a person less than 21 years of age. The bill sets the following maximum civil penalties for violations:

- (1) \$1,000 for a first violation.
- (2) \$5,000 for a second violation that occurs within two years after a first violation, and suspension of the retail dealer's certificate for up to six months.
- (3) \$10,000 for each subsequent violation that occurs within two years of the preceding violation, and revocation of the retail dealer's certificate, with a one year waiting period for reapplication.

In addition, the bill makes changes to packaging requirements for low THC hemp products, the penalty for a violation of which is a Class B infraction, or a Class A infraction with prior violations. The maximum judgment for a Class B infraction is \$1,000, and the maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund. However, any additional revenue is likely to be small.

Additional Information - Craft Hemp Flower Products Tax; Sales Tax: The estimated potential revenue from the excise tax and sales tax is based on data in the USDA National Hemp Report. The USDA reports that a total of 16 million pounds of utilized industrial floral hemp were produced in the U.S. in 2021. The fiscal impact estimate assumes that about 2% (the proportion of Indiana's population to the national population) of the total will be sold in Indiana. Prices ranged from an average of \$23.40 per pound for industrial floral hemp grown in Indiana to a national median price of \$132 per pound. The median price of floral hemp grown under protection was \$300 per pound.

Hemp Licensing Revenue: Hemp grower and handler licenses became available for the 2021 growing season. There were 87 licensed growers and/or handlers for the 2022 growing season. License application fees are \$750 for grower or handler or \$1,500 for both; application late fees are \$750; field change fees are \$50; and remediation, sampling, travel and laboratory fee, if charged, are \$325 for retesting of certain crops that test above 0.3%.

Explanation of Local Expenditures: *Craft Hemp Flower Violations and Penalties for Craft Hemp Flower:* Costs to local governments might be reduced since no term of imprisonment is imposed for infractions, as opposed to a Class A misdemeanor (punishable by up to one year in jail) or a Class B misdemeanor (punishable by up to 180 days in jail). If more defendants charged with a Level 6 felony are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. In addition, a Class A misdemeanor is punishable by up to one year in jail. However, the net change in expenditures would likely be small.

Explanation of Local Revenues: *Craft Hemp Flower and Low THC Hemp Extract Violations:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Persons found guilty of an infraction are also required to pay the following fees that are deposited in local funds: the document storage fee (\$5), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund. However, any additional revenue is likely to be small.

Penalties for Craft Hemp Flower Retailers: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Office of the Attorney General; Office of State Chemist and Seed Commissioner, Indiana State Department of Agriculture; Department of State Revenue.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Don Robison, Office of the Indiana State Chemist. USDA National Hemp Report, February 17, 2022, <https://release.nass.usda.gov/reports/hempan22.pdf>. US Census Bureau Annual Population Estimates, 2021.

Fiscal Analyst: Lauren Tanselle, 317-232-9586; Heather Puletz, 317-234-9484.