

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

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**FISCAL IMPACT STATEMENT**

**LS 7125**

**BILL NUMBER:** SB 308

**NOTE PREPARED:** Jan 4, 2023

**BILL AMENDED:**

**SUBJECT:** Cannabis Legalization.

**FIRST AUTHOR:** Sen. Walker K

**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 makes conforming amendments.

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

**Explanation of State Expenditures:** *Summary* - The bill establishes a Cannabis Commission that may function similar to the Alcohol and Tobacco Commission (ATC) in regulating production and sale of cannabis. It establishes taxes on cannabis and adds and removes felony offenses.

*Cannabis Commission:* In the initial years, the bill is estimated to increase annual state expenditures by \$509,000 for the Cannabis Commission. After an indeterminate implementation period, the commission's total costs may be similar to the Alcohol and Tobacco Commission (ATC) with \$10 M annual expenditures. The commission's expenditures will depend on the number of employees needed to regulate cannabis with support personnel, a prosecutor's office, and enforcement officers. The costs will be offset with fees and penalties established by the Commission.

*Cannabis Excise Tax:* Implementing the Cannabis Excise Tax would require additional workload and expenditures for the Department of State Revenue (DOR) outside of the agency's routine administrative functions. The DOR would need to update software, create forms, guidance, and processes to implement the bill's provisions regarding the new tax. The bill also requires the DOR to adopt rules to implement the 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.

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.

*Cannabis Commission:* 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 Cannabis Commission is comprised of four commissioners appointed by the Governor. 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 will 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.

The agency expenditure estimate is based on the Alcohol and Tobacco Commission (ATC), which has five commissioners, an executive secretary, and average annual expenditures for administration and internal services of about \$509,000 between FY 2018 and FY 2022. The general counsel and lieutenants, captains, and corporals of the excise police have combined average of \$91,300 in salary expense, with an average of 19.5 years of service. [Internal services include databases, software, human resources services, and telephone expenses. Commissioner and executive personnel salaries are not included in these expenses. Additionally, the ATC has 11 executive and commission staff, 16 support and accounting staff, and 73 excise police with total salary and benefits expense of \$8.6 M. The ATC commissioners receive salary, while the commissioners of the new entity do not.]

*Penalty Provisions:* This bill could result in a minor reduction in the Department of Correction (DOC) offender population. [Eleven persons were committed to DOC for felony possession of marijuana between FY 2017 and FY 2021. In FY 2022, no person was convicted and sentenced for possession of marijuana as a Level 6 felony and committed to DOC for possession as the most serious sentence. For persons dealing in either marijuana or hashish, 140 out of 1,432 persons between FY 2017 and 2022 were convicted and sentenced to DOC for dealing ]

Penalty Provisions: This bill removes the following offenses:

- Dealing in marijuana, hash oil, or hashish as Class A misdemeanors and as Level 5 and 6 felonies.
- Possessing marijuana, hash oil, or hashish as Class A and B misdemeanors and as Level 6 felonies.
- Paraphernalia involving marijuana, hash oil, hashish related offenses as Class A infractions, Class A misdemeanors, and Level 6 felonies.

It adds the following new felonies:

- 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.
- Knowingly, recklessly, or intentionally providing cannabis to a person under 21 years old resulting in serious bodily injury or death, a Level 6 felony.

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

	Minimum	Advisory	Maximum
Level 5	1 years	3 years	6 years
Level 6	6 mos.	1 year	30 months

The average expenditure to house an adult offender was \$27,185 annually, or \$74.43 daily, in FY 2022. (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. These marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene. The estimated average cost of housing a juvenile in a state juvenile facility was \$130,547, or \$357.42 daily, in FY 2022. The marginal cost for juvenile facilities was \$5,125 annually or \$14.04 daily.

**Explanation of State Revenues:** *Excise and Sales Taxes:* Significant revenue from the Cannabis Excise Tax and Sales Tax could potentially be collected when legal retail sales begin. 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.

Revenue Source	Estimated Revenue upon Full Implementation
Cannabis Excise Tax	\$21.2 M to \$45.6 M
Sales Tax	\$14.8 M to \$31.9 M
<b>Total</b>	<b>\$36.0 M to \$77.5 M</b>

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%).

*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 remainder will be distributed as follows.

State General Fund	40%
Indiana Department of Health (for use in cooperation with the Department of Education and the Division of Mental Health and Addiction in the Family and Social Services Administration)	15%
Prosecuting attorneys in counties with cannabis retail facilities	15%
Cities, Towns, and Counties with cannabis facilities	15%
Sheriffs	15%

*Surety Bond:* 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.

*Penalty Provisions:* The potential revenue loss is estimated to be \$120,000 to the state General Fund, \$20,700 to the State User Fee Fund, and an indeterminable revenue loss to the Common School Fund. Additionally, a court may impose a fine of \$1,000 to \$25,000 for failing to remediate a public nuisance.

*Additional Information - Excise and Sales Taxes:* The bill establishes the Cannabis Excise Tax at a rate of 10% of the retail price of cannabis. This tax could potentially generate an estimated \$21.2 M to \$45.6 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 revenue increase could be approximately \$14.8 M to \$31.9 M in the first full year of sales.

The estimated potential tax revenue is based on retail sales of cannabis and revenue collections in states that have implemented similar programs, adjusted for tax rate, population, and prevalence of cannabis use. The estimate also assumes that retailers in Indiana will make fewer sales to non-residents than dispensaries and retailers in other states. 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 2026, and the first full year of collections may be FY 2027.

*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. [Once permits are established, fee and fine revenue may be similar to the ATC. In FY 2021, the ATC had \$17 M in alcoholic beverage and tobacco permit fee revenue and \$470,890 in fine revenue.] Cannabis organization permit fees are listed in the following table.

	Number of Permits	Application Fee	Initial Permit Fee	Permit Renewal Fee	Annual Investigation Fee
Grower <5,000 Square Feet (sq ft)	12	\$5,000	\$2,500	\$2,500	\$1,250
Grower 5,000 - 15,000 sq ft	6	10,000	5,000	5,000	2,500
Grower >15,000 sq ft	4	15,000	7,500	7,500	3,750
Processor		5,000	2,500	2,500	1,250
Transport		5,000	2,500	2,500	1,250
Retail <sup>1</sup>	300	10,000	5,000	5,000	2,500
Integrated Permit (additional fees)		30,000	15,000	15,000	7,500
<sup>1</sup> No single retailer can hold more than 10% of the retail permits; the commission will issue one retail permit per 25,000 population, at least one permit per county, and so each county has no more permits than its population divided by 25,000.					

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.

*Penalty Provisions:* 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.
- 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.
- Class C infraction for public use of cannabis.

**Explanation of Local Expenditures:** 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 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 15% to cities, towns, and counties that have cannabis growing, processing, or retail facilities, and 15% to county sheriffs.

*Penalty Provisions:* Revenue loss from removing marijuana, hash oil, and hashish from the list of illegal drugs is estimated to be \$51,000.

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

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

**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.

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