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FISCAL IMPACT STATEMENT

LS 6993

BILL NUMBER: SB 294

NOTE PREPARED: Jan 4, 2024

BILL AMENDED:

SUBJECT: Medical Cannabis.

FIRST AUTHOR: Sen. Bassler

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Legalization Date:* After marijuana is removed as a federal schedule I controlled substance, the bill permits the use of cannabis by a person with a serious medical condition as determined by the person's physician.

Program: The bill establishes a cannabis program (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: It establishes the Indiana Cannabis Commission (ICC) as a state agency to oversee, implement, and enforce the program, and it 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 also prohibits packaging cannabis in a manner that is appealing to children.

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

Expungement: The bill establishes a procedure for the expungement of a cannabis related conviction if the act constituting the conviction becomes legal.

The bill makes conforming amendments.

Effective Date: July 1, 2024.

Explanation of State Expenditures: The fiscal impact is based on the effective date of the bill. However, the many provisions of the bill containing fiscal impact will not be effective until the July 1 after marijuana is removed as a Schedule I controlled substance at the federal level. Actual future cost estimates may change depending on the year the provisions go into effect.

Prior to the legalization date, the Indiana Cannabis Commission (ICC) and a legislative advisory committee may meet, increasing state costs by between \$197,000 and \$236,800. After the legalization date, the ICC and the legislative advisory committee costs will increase to between \$493,500 and \$663,500 for full program implementation.

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 response to state initiatives is unknown.

ICC: The regulatory agency is comprised of three commissioners appointed by the Governor and an executive director. 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 regulatory agency may employ all necessary employees, determine their duties, and fix their salaries (with the approval of the State Budget Agency). The regulatory agency will issue medical marijuana cards, advise the General Assembly, and permit and encourage research concerning medical marijuana. After an indeterminate implementation period, the regulatory agency's total costs will depend on the number of employees needed to regulate medical marijuana. The costs may be at least partially offset with fees established by the program.

Prior to the legalization date, the cost range was based on state regulatory agency head salaries and benefits, as well as a salary per diem and meeting costs for the three commission members. After the legalization date, 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. Ultimately, the number of regulated entities under this bill may increase over time leading to increased expenditures in future years.

ICC Advisory Committee: This bill establishes an advisory committee with twelve members - four legislative members and eight nonvoting members. Members of the committee are to receive the same salary per diem, travel, 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 regulatory agency, evaluate the marijuana research and development program, and evaluate the operation of the medical marijuana program. 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.

Penalty Provisions: After the legalization date, the bill provides a defense for qualified patients, caregivers, and researchers from criminal penalties concerning dealing, use, possession, or transportation of marijuana or related paraphernalia that may be felony offenses based on the circumstance of the offense. Any reduction in the number of new commitments based on the defenses in the bill is expected to be minor.

There are few operating while intoxicated (OWI) felony cases in which persons have been convicted and sentenced for OWI causing either serious bodily injury or death in which a controlled substance or a metabolite has been found in the person's blood. There were a total of 17 offenders committed to the

Department of Correction (DOC) for a Schedule I or II controlled substance in blood between FY 2019 and FY 2023. [The record does not indicate which among the 250 Schedule I and II controlled substances were found in the blood.]

Explanation of State Revenues: After the legalization date, revenue to the state General Fund could increase between \$11.1 M and \$25.5 M in the initial year from Sales Tax and permit and identification fees. An estimated total between \$17,000 and \$39,200 from state Sales Tax revenue would be distributed to the Commuter Rail Service Fund and the Industrial Rail Service Fund per fiscal year, and revenue to the Controlled Substance Tax Fund and Common School Fund could decrease. [The potential revenue increase estimates are based on the FY 2025 and FY 2026 biennium. The magnitude of the revenue estimates will change for future years.]

Additional Information -

Sales Tax: Sales of medical cannabis would be subject to Sales Tax after marijuana is removed as a federal Schedule I controlled substance and after state permits for the sale of cannabis have been issued. Sales Tax revenue could increase by an estimated \$10.6 M to \$24.2 M in the first full year of sales. This estimate is based on data from other states that have implemented similar programs, adjusted for population and prevalence of marijuana use, as well as potential out-of-state sales. 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%).

Permit and Identification Fees: Permit fees will increase revenue to the state General Fund by an indeterminate, but potentially significant amount. Comparable agencies and programs have fee and fine revenue of between \$4 M and \$17 M per year, while similar new programs in other states received between \$0.5 M and \$1.3 M in the early years. The Indiana Alcohol and Tobacco Commission, a mature program, received an average of \$15.8 M per year from alcohol beverage permits between FY 2018 and FY 2022. The IDOH may 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 IDOH may revoke an identification card or permit.

An identification card application 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 IDOH 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. Medical marijuana organization permit fees are listed in the following table.

Fee Type	Grower	Processor	Qualified Retailer	Testing Laboratory
Application (nonrefundable)	\$500	\$2,500	\$2,000	\$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

Penalty Provision: After the legalization date, the bill will have an indeterminate impact on revenues from fines and court fees, impacting the Common School Fund and the state General Fund.

Controlled Substance Excise Tax (CSET) Repeal: The tax is collected on the delivery, possession, or manufacture of controlled substances in violation of state or federal law. CSET collections were \$3,555 per year on average between FY 2019 and FY 2023. Revenue is deposited in the Controlled Substance Tax Fund.

Explanation of Local Expenditures: The following changes to state law, and the resulting fiscal impacts, will not take effect until the federal government removes marijuana as a Schedule I controlled substance.

Expungement: After the legalization date, an increase in 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: The bill 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.

Criminal Penalties: The changes in criminal penalties are likely to have a minor change in county jail populations. If fewer convictions occur due to the defense protections in the bill, local jail populations may be reduced.

Explanation of Local Revenues: *Penalty Provisions:* After the legalization date, local governments would receive less revenue from court fees if there are fewer criminal prosecutions. However, any reduction in revenue would likely be minor.

When cases are filed in a court of record, the county general fund receives \$47.40 and qualifying municipalities will receive a share of \$3.60. When cases are filed in a municipal court, the county receives \$30, and the municipality will receive \$46. The following linked document describes the fees and distribution of the revenue: [Court fees imposed in criminal, juvenile, and civil violation cases.](#)

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

Local Agencies Affected: Prosecuting attorneys; law enforcement agencies; courts with certain criminal jurisdiction; community corrections agencies.

Information Sources: State Budget Agency; Comptroller'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; Abstracts of Judgment, Indiana Supreme Court.

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