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Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsor: Sen. Huffman

Local Impact Statement Procedure Required: Yes

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Highlights

Adult-use marijuana excise tax

- The bill repeals two state programs that, under current law, are to be funded by the 10% excise tax on adult-use marijuana. These are the Cannabis Social Equity and Jobs Program in the Department of Development, and cannabis addiction services provided by the Department of Mental Health and Addiction Services. This prevents any state expenditures on these programs.
- As of this writing, the state has received about \$28.6 million from the excise tax, but no appropriations of the excise tax revenue have been made. The bill also does not include any appropriations of this revenue.
- The bill prohibits municipal governments from levying any excise tax on adult-use marijuana, thus preventing them from collecting additional revenue from such a tax.

Department of Commerce – Division of Cannabis Control

- The bill integrates regulation of adult-use marijuana into a new Division of Cannabis Control in the Department of Commerce (COM). COM has already established this Division, which consists of 55 employees to oversee the Medical Marijuana Control Program (MMCP) and adult-use marijuana.
- The Division's operating costs are covered by application, initial certificate of operation, and renewal fees collected from cultivators, processors, testing laboratories, and dispensaries deposited into the Medical Marijuana Control Fund (Fund 5SY0). Almost all these licenses allow for dual-use (medical and adult-use) operation. All licenses are annual, except for the dispensary license, which is biennial.

Detailed Analysis

Overview

The bill merges the regulations concerning cultivating, processing, dispensing, use, and home grow of adult-use and medical marijuana. This analysis examines the costs to state agencies for implementing the Marijuana Control Law, and the penalties for violations of the law. Several of the provisions in the bill codify existing rules and procedures currently used to regulate the industry.

Adult-use marijuana excise tax

Under continuing law, there is a 10% excise tax on adult-use marijuana in addition to the sales and use tax. The revenue from this excise tax is deposited into the Adult Use Tax Fund (Fund QG18). From there the Director of Budget and Management is required to transfer the cash to four funds: 36% to the Cannabis Social Equity and Jobs Fund, 36% to the Host Community Cannabis Fund, 25% to the Substance Abuse and Addiction Fund, and the remaining 3% to the Division of Cannabis Control and Tax Commissioner Fund.

The bill removes the stated purpose of the cash in two of those funds – the Cannabis Social Equity and Jobs Fund and the Substance Abuse and Addiction Fund. Under current law, cash in the Cannabis Social Equity and Jobs Fund is to be used for a business assistance program established by the Department of Development called the Cannabis Social Equity and Jobs Program. The bill repeals this program. Under current law, cash in the Substance Abuse and Addiction Fund is to be used by the Department of Mental Health and Addiction Services for a program for cannabis addiction services. The bill also repeals this program. The repeal of these two programs prevents any state expenditures on them.

As of this writing, Fund QG18 has received about \$28.6 million from the excise tax, but no transfers have been made to the other funds. In addition, no appropriations of the excise tax revenue have been made. The bill also does not include any appropriations of this revenue.

Finally, the bill prohibits municipal governments from levying an excise tax on adult-use marijuana, thus preventing them from collecting additional revenue from such a tax.

State agency expenditures

State agencies will incur additional expenditures to administer the newly enacted marijuana provisions under both current law and the bill. The bill incurs a fiscal effect for state agency expenditures to the extent its requirements differ from current law, however many of the described agencies have already been regulating adult-use marijuana. The notable provisions are discussed in the following sections.

Department of Commerce – Division of Cannabis Control

The bill combines oversight of medical and adult-use marijuana in one Division of Cannabis Control (DCC) within the Department of Commerce (COM). In practice, COM has already established DCC, which currently consists of 55 employees. Its operating costs are paid through revenue deposited into the Medical Marijuana Control Fund (Fund 5SY0), which collects revenue from the following sources: (1) fees collected to register patients and caregivers and to issue licenses to marijuana retail dispensaries, and (2) fees collected by COM to issue licenses to marijuana cultivators, processors, testing laboratories, and dispensaries. The Division pays the

costs of both medical and adult-use marijuana regulation under Fund 5SY0 ALI 800650, Medical Marijuana Control Program. Operating costs totaled \$6.4 million in FY 2024.

Overall, the changes in the bill could add some additional regulatory costs beyond what the Division of Cannabis Control currently incurs for regulating marijuana cultivation, processing, testing, and sale to adult-use consumers through dispensaries. As of January 30, 2025, the Division had approved the following certificates of operation: 37 for Level 1 (up to 25,000 sq. ft. capacity) and Level II (up to 3,000 sq. ft. capacity) cultivators, 46 for processors, nine for testing labs, and 131 for dispensaries. Almost all the licenses issued within these categories are for dual use, both medical and adult-use marijuana. This allows DCC to satisfy the bill's requirement that holders of multiple licenses renew them at the same time with respect to current licensees. The bill gives leeway for Level II cultivators to expand their operations to up to 15,000 sq. ft. under certain conditions. The bill further requires DCC to track the data for adult-use marijuana and submit it to the Ohio Automated Rx Reporting System (OARRS) in a similar fashion to what is currently required for medical marijuana.

The table below shows the current license types and fees related to each of these regulated areas. Note that the bill limits the number of licensed dispensaries that may operate in the state at any one time to 350. The number of additional certificates of operation that the Division issues within this limit will depend on market demand for adult-use marijuana.

License Type (Current Number)	Application	Initial (Certificate of Operation)	License Renewal
Cultivator Level I (23)	\$20,000	\$180,000	\$200,000 annual
Cultivator Level II (14)	\$2,000	\$18,000	\$20,000 annual
Processor (46)	\$10,000	\$90,000	\$100,000 annual
Testing (9)	\$2,000	\$18,000	\$20,000 annual
Dispensary (131)	\$5,000	\$70,000	\$70,000 biennial

Department of Public Safety

Under the bill, the Department of Public Safety (DPS) is required to assist the Division of Cannabis Control in enforcing the adult-use as well as the existing medical marijuana law. The DPS Ohio Investigative Unit (OIU) may inspect or investigate the premises of any person under these laws if requested by the Division of Cannabis Control for one of their licensees or in any case of alleged criminal activity. OIU may also be invited to assist local law enforcement having jurisdiction over the person(s) inspected or investigated. According to DPS, the bill's requirements are likely to result in additional costs, including necessitating the hiring of additional staff in order to carry out these new duties. OIU enforces Ohio's alcohol, tobacco, and food stamp fraud laws. The bill adds to this authority.

Criminal offenses

Fiscal effect of criminal offenses

The legalization of adult-use marijuana, under both current law and the bill, is expected to reduce the number of marijuana offenses to some degree, especially minor misdemeanor offenses. The bill creates new offenses, though, which may offset some of these savings. Most significantly, incarceration costs may increase due to the penalties associated with passenger use of marijuana in a vehicle, with penalties potentially reaching a felony of the third degree with a mandatory prison term of one, two, three, four, or five years. These changes will result in a complicated mix of potential outcomes, largely impacting the Department of Rehabilitation and Correction (DRC), local courts, jails, and probation departments. It is possible that some of these costs would be partially offset by the penalties and fines that are collected. However, the net impact is indeterminate and would vary from jurisdiction to jurisdiction.

As an example, for new cases generated by the prohibition against the smoking, combustion, and vaporizing of marijuana as a passenger in a vehicle, most costs would likely be borne by the local criminal justice systems, including jails. Based on an average daily jail cost of \$90.25 per bed,¹ an offender sentenced to three days in a county jail costs \$271; an offender sentenced to ten days costs \$903; 30 days, \$2,708; six months, \$16,471; and one year, \$32,941. This cost is offset somewhat by the collection of mandatory fines of which some portion is likely to go uncollected due to an offender's indigence or inability to pay.

For those offenders sanctioned with a felony level charge, costs would be split between the local jurisdiction (charging, defense/prosecution, and adjudication) and the state (incarceration or supervision). For FY 2024, DRC reported an average annual cost per inmate of \$38,599, or \$105.75 per day. However, when considering only the marginal cost increase, the cost to house an individual inmate was \$13.47 per day, or \$4,917 per year. Marginal costs are based on additional medical and mental health costs as well as food and clothing. It does not include additional security, facility, or administrative costs which have already been factored into the overall operating costs of DRC. Felony offenses under the bill with mandatory prison terms of up to five years with up to one additional year could result in additional costs from \$29,496 (marginal cost) to up to \$231,594 (institutional cost) per offender. The number of offenders that could be charged and ultimately sentenced under the bill's new prohibitions is indeterminate and would likely vary from jurisdiction to jurisdiction.

Detailed below are the various new criminal prohibitions included in the bill and proposed penalty structure for each. For context, Table 2 illustrates the general penalty structure for misdemeanors and felonies under current law. However, a number of the new prohibitions feature unique sanctions.

¹ Based on daily jail cost per bed as reported to DRC in 2023.

Table 2. Felony and Misdemeanor Sentences and Fines for Offenses Generally

Offense Level	Fine	Term of Incarceration
Felony 1 st degree*	Up to \$20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years indefinite prison term
Felony 2 nd degree*	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years indefinite prison term
Felony 3 rd degree	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Felony 4 th Degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Felony 5 th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term
Misdemeanor 1 st degree	Up to \$1,000	Jail, not more than 180 days
Misdemeanor 2 nd degree	Up to \$750	Jail, not more than 90 days
Misdemeanor 3 rd degree	Up to \$500	Jail, not more than 60 days
Misdemeanor 4 th degree	Up to \$250	Jail, not more than 30 days
Minor misdemeanor	Up to \$150	Citation issued; no jail

*The sentencing court shall impose a minimum sentence for first and second degree felony offenses committed after March 22, 2019 (definite sentences were previously imposed). The court shall specify a maximum sentence that is 50% greater than the minimum sentence. The court may, after a hearing, reduce the minimum sentence by 5%-15% upon recommendation of the Department of Rehabilitation and Correction.

Marijuana use in a vehicle (while a passenger)

The bill establishes a new prohibition against the smoking, combustion, and vaporizing of marijuana as a passenger in a vehicle, streetcar, trackless trolley, watercraft, or aircraft. Current OVI laws pertaining to prohibitions against smoking, combustion, and vaporizing marijuana as the operator of a vehicle, streetcar, trackless trolley, watercraft, or aircraft remain unchanged. Table 3 below shows the penalties for violations of the new prohibition which elevate depending on the number of previous violations from a first degree misdemeanor to third degree felony with specified minimum terms of incarcerations, mandatory fines, and license suspensions based on the level of offense. The lookback period for subsequent offenses is ten years.

The bill's license suspension provisions may increase the total number of driver's license suspensions administered annually by the Bureau of Motor Vehicles (BMV). The cost of administering such suspensions will be at least partially offset by the collection of a \$40 fee required under existing law to reinstate a license suspended under the bill.² The magnitude of

² That amount, which applies to suspensions of at least 90 days, is forwarded to the state treasury and deposited as follows: \$30 to the Public Safety – Highway Purposes Fund (Fund 5TM0) and \$10 to the Indigent Defense Support Fund (Fund 5DY0) (R.C. 4507.45).

any increase in driver's license suspensions or subsequent reinstatement fee revenue generated annually will ultimately depend on the number of violations that result in a license suspension.

Table 3. Punishments for Violations of the Prohibition Against Certain Uses of Marijuana by a Passenger in a Vehicle, Streetcar, Trackless Trolley, Watercraft, or Aircraft

Violation	Level of Offense*	Mandatory Incarceration**	Additional Permitted Incarceration***	Mandatory Fine Range	Length of License Suspension
First violation	M-1	3 days in jail	6 months	\$375-\$1,075	Not to exceed 1 year
One prior violation	M-1	10 days in jail	6 months	\$525-\$1,625	3 months to 2 years
Two prior violations	M-1	30 days in jail	1 year	\$850-\$2,750	6 months to 3 years
Three prior violations	F-4	Prison term of 1, 2, 3, 4, or 5 years	1 year	\$1,350-\$10,500	1 to 5 years
A prior felony violation	F-3	Prison term of 1, 2, 3, 4, or 5 years	1 year	\$1,350-\$10,500	2 to 10 years

*M is used to denote a misdemeanor offense; F is used to denote a felony offense.

**All terms are consecutive.

***Permitted terms are not to exceed the amount of time listed and misdemeanor offenses are inclusive of the mandatory term.

Transportation of marijuana or marijuana paraphernalia in a vehicle

The bill generally prohibits the transportation of marijuana or marijuana paraphernalia in a motor vehicle unless the marijuana or paraphernalia are in the original, unopened packaging and stored in the trunk of the vehicle, or other allowable space. A violation of either prohibition is a minor misdemeanor offense.

Personal use and possession offenses

The bill regulates personal use of marijuana by placing restrictions on use and possession. The bill prohibits the smoking, combustion, and vaporization of marijuana in public places (minor misdemeanor), limits the quantities that one may possess, limits the number of plants an individual may grow at home, and prohibits a person under 21 years of age from purchasing, using, or possessing marijuana (minor misdemeanor).

Underage offenses

In addition to the prohibition against purchasing, using, or possessing marijuana by a person under 21, the bill also prohibits a person under 21 from purchasing or obtaining marijuana in a fraudulent manner.

The table below shows the level of offense, mandatory range, and length of potential license suspension for those guilty of using a fake or falsified identification to purchase or obtain adult-use marijuana from a licensed dispensary under 21. Under the bill, a court may sentence an offender to community service in lieu of suspending the offender’s license or temporary instruction permit. All fines are in addition to other sanctions applicable for a misdemeanor offense under current law.

Table 4. Punishments for Violations of the Prohibition Against Using a Fake or Falsified Identification to Obtain Marijuana by a Person Under 21

Violation	Level of Offense*	Mandatory Fine Range	Length of License Suspension**
First violation	M-1	\$250-\$1,000	None
One prior violation	M-1	\$500-\$1,000	Not to exceed 1 year
Two prior violations	M-1	\$500-\$1,000	3 months to 2 years

*M is used to denote a misdemeanor offense.

**Includes a temporary instruction permit, probationary driver’s license, or driver’s license.

Industry-related offenses

The bill creates a number of prohibitions related to the adult-use marijuana industry. Those include prohibitions against:

- Giving, selling, or distributing adult-use marijuana to a person under 21, a first degree misdemeanor on the first offense, elevating to a fifth degree felony with a prior conviction and which additionally requires the immediate revocation of a license issued by the Division of Cannabis Control;
- Growing, cultivating, processing, selling, dispensing, or conducting other activities that otherwise require a license or registration under the bill, a violation of which is an offense of trafficking marijuana or illegal cultivation of marijuana as applicable; and
- Selling more than the possession limits to a single customer in a single day, a violation of which is an offense of trafficking marijuana.

Penalties for trafficking in marijuana under current law range from a fifth degree felony to a first degree felony under certain circumstances. Penalties for the illegal cultivation of marijuana under current law range from a minor misdemeanor to a first degree felony under certain circumstances. In both cases, the offense level is dependent on the amount of marijuana involved.

Expungements

The bill allows a person who was convicted of or plead guilty to a violation of possession of marijuana or hashish to apply for expungement provided that the amount of the drug involved was not more than 2.5 ounces of marijuana, or 15 grams of hashish. The courts and clerks of courts can expect to process a large number of expungement application filings.

The bill's expungement provisions are similar to current law provisions for record expungements generally. When an application to expunge a record is filed, the court is required to set a hearing date and notify the prosecutor's office. The prosecutor may object to the application by filing a formal objection with the court prior to the hearing date. The court is required to direct the relevant probation department providing services to that particular county to investigate and submit reports concerning the applicant. Upon filing an application with a court, the applicant, unless deemed to be indigent, is required to pay a \$50 fee, of which \$30 is forwarded to the state treasury with half of that, or \$15, credited to the General Reimbursement Fund (Fund 1060) used by the Attorney General, and \$20 is paid to the county or municipal general fund as appropriate. Presuming that there will be a large number of applications made, revenue generated for the state and counties (especially larger counties) is expected to be sizable.

The combined annual cost for the clerks of courts, sentencing courts, prosecutors, and probation departments to perform the required additional work generated by this provision is indeterminate, although that cost could be significant. It is uncertain if the revenues generated from the \$20 portion of the application fees would completely offset these costs.

Under current law, the court is required to send notice of an order to seal or expunge a record of conviction to the state's Bureau of Criminal Investigation (BCI) and to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record. The latter potentially includes state and local law enforcement, prosecuting attorneys, probation departments, and the Adult Parole Authority. Because of the bill, the number of applications received and subsequent sealing/expungement orders issued will increase, perhaps significantly so.

Unemployment benefits

Currently, if a person is discharged from employment for using marijuana, the person will be considered to have been discharged for just cause, if the use of marijuana violates the employer's marijuana regulating policies, zero-tolerance policy, or other formal program or policy regulating the use of marijuana. The bill states that such a person will not be eligible to serve a waiting period or to receive unemployment benefits.

The Ohio Department of Job and Family Services administers the state's Unemployment Compensation system. Ohio employers fund benefits by paying contributions to Ohio's Unemployment Compensation Fund (most private sector employers) or reimbursing that fund for benefits paid (public sector and certain nonprofit employers).