

# Insights

## Legislation from the 2022 Indiana Legislative Session that proposed regulatory changes to cannabis

June 15, 2022

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During the 2022 Legislative Session, the Indiana legislative body considered more than ten bills focused on regulations that affect the cannabis industry. These bills presented different viewpoints on the approach to regulate cannabis. On one end of the spectrum were bills that proposed to legalize cannabis and allow it to be sold directly to consumers at retail. On the other end was a proposal to curtail the current law by reducing the THC concentration of legal hemp products. This article provides a brief description of the legislative bills introduced during the 2022 Legislative Session which touch upon Indiana cannabis regulation.

One group of bills sought to legalize the possession of cannabis and paraphernalia used in connection with cannabis.<sup>1</sup> Some of these bills would permit the use of cannabis, but only after marijuana is removed as a federal Schedule I controlled substance.<sup>2</sup> Notably, these bills use the term "cannabis", which is a broader term that refers to all products derived from the plant *Cannabis sativa*, such as marijuana, hemp and CBD.<sup>3</sup> All of these bills proposed to establish some form of governance structure (e.g., commission, committee, or agency) to regulate or study the production, manufacture, and retail of cannabis, and to enforce the rules and regulations associated therewith.<sup>4</sup> This installation of government oversight would likely increase costs for the state when, by comparison, the state already incurs about \$300,000 in annual administrative costs to regulate hemp.<sup>5</sup> This additional cost, however, could be offset by a tax. House Bill 1212 proposed an Adult Use Cannabis Excise Tax. In the first year, the tax rate would be 1% of the retail price of cannabis, excluding medical cannabis. In year two, the rate would be 2%, and in year three, the rate would be 3%. This fiscal report for House Bill 1212 estimates that cannabis sales would generate tax revenue of \$1.2M to \$2.7M in the first year, \$2.3M to \$5.4M in the second year, and \$3.5M to \$8.1M in the third year. The State's 7% sales tax would also apply to the sale of all cannabis products and would project to generate an additional \$25.7M of state tax revenue in the first full year of legalization.

Another group of bills proposed to narrowly decriminalize the possession of marijuana.<sup>6</sup> In Indiana, the possession of marijuana is illegal, no matter the amount.<sup>7</sup> These bills would have changed the current law to allow an individual to possess two ounces or less of marijuana.<sup>8</sup> Senate Bill 354 proposed to repeal the offense of possession of marijuana as a Level 6 felony. On the one hand, decriminalization of marijuana would lead to a reduction of fees for misdemeanor and felony offenses collected by the State; while on the other hand, local jails and county courts would likely incur less operational and prosecution costs due to a decrease in the number of

individuals arrested and charged with possession of marijuana.<sup>9</sup>

Another group of bills proposed to legalize medical marijuana to allow individuals with serious medical conditions to use marijuana for treatment purposes.<sup>10</sup> One approach proposed the establishment of a medical marijuana program with a related governing body charged with enforcement of the program and its underlying regulations.<sup>11</sup> Under this regulatory framework, medical marijuana products would need to be properly labeled, placed in packaging that is child resistant and not designed to appeal to children.<sup>12</sup> Also, permit holders would be required to undertake steps to prevent diversion of medical marijuana to unauthorized persons.<sup>13</sup>

Perhaps one of the most debated bills this past Session was House Bill 1043, authored by Representative Sean Eberhart of District 57. This Bill aimed to permit the sale of craft hemp flower directly to Indiana consumers. By way of background, the introduction of House Bill 1043 led to a legal debate between law enforcement and hemp stakeholders, each advocating their position to the General Assembly. Under the Agriculture Improvement Act of 2018 (the "2018 Farm Bill"), Congress excluded industrial hemp from the federal definition of marijuana, opening the door for states to regulate the growth and sale of hemp.<sup>14</sup> However, Congress explicitly prohibited states from interfering with the transportation and shipment of hemp.<sup>15</sup> In Indiana, farmers may grow and sell hemp for processing, and it can be shipped out-of-state to be sold by a licensed handler.<sup>16</sup> However, craft hemp flower, the most lucrative part, cannot be sold at retail to consumers. House Bill 1043 aimed to change that, but law enforcement opposed the legislation, arguing that officers in the field cannot determine the difference between the flower and marijuana.<sup>17</sup> In response, proponents point out that the hemp flower is already allowed to travel in the state, and that House Bill 1043 requires an individual traveling with the flower to keep it in its untampered seal.<sup>18</sup>

House Bill 1043 passed the House, but the Senate did not schedule a committee hearing for the bill.

Lastly, Senate Bill 209 was also considered. This Bill proposed to repeal current law by changing the definition of "hemp product" to exclude "products that contain a total tetrahydrocannabinol concentration of more than three-tenths of one percent (0.3%) by weight." Currently, a 'hemp product' does not include smokable hemp or delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent (0.3%) by weight. By expanding the language of this exclusion, SB 209 would have outlawed delta-8 tetrahydrocannabinol and any other form of THC over 0.3%. However, after passing a Senate vote, the House modified the Bill, striking the changed definition while also urging the legislative council to assign to the Interim Study Committee on Corrections and Criminal Code the task of studying "delta-8 THC" and any of its related psychoactive cannabinoids. Though SB 209 did not pass the House, the Legislative Council met on May 24, 2022 and assigned the topic of Delta 8, Delta 9 and other THC products to the Interim Study Committee on Public Health, Behavioral Health and Human Services to study the potential health benefits, potential decriminalization, and other potential consequences.

While there was a significant amount of time and effort spent considering cannabis legislation this Session, not one bill passed. House Bill 1043 and Senate Bill 209 received the greatest traction, which suggest an emergence of varying opinions among Legislators regarding the approach to regulate cannabis. The federal government will soon consider whether to remove marijuana as a federal Schedule I controlled substance.<sup>19</sup> Legalization of marijuana at the federal level will likely tip the balance in the Indiana General Assembly.<sup>20</sup> But, for now, the law pertaining to cannabis in Indiana remains the same.

If you have any questions regarding the information in this article or with any of the federal or State legal requirements related to cannabis, hemp, or CBD, please contact **Travis D. Lovett**.

*Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.*

[1] See e.g., HB 1049; HB 1311; SB 324; and SB 197.

[2] HB 1212 and HB 1405.

[3] See <https://www.nccih.nih.gov/health/cannabis-marijuana-and-cannabinoids-what-you-need-to-know>.

[4] See e.g., HB 1049 (establishes the Cannabis Compliance Advisory Committee to review and evaluate certain rules, laws, and programs and the Cannabis Compliance Commission to regulate all forms of legal cannabis in Indiana); SB 324 (establishing the Cannabis Regulatory Agency and a Cannabis Regulatory Agency Advisory Committee).

[5] See HB 1049 Fiscal Impact Statement (stating that "hemp regulation expenditures for the Office of the Indiana Seed Commissioner were \$370,600 in FY 2021, without commission expenses. Other state commissions with regulatory responsibilities had average annual administrative expenses between \$350,000 and \$600,000, including commission expenses. Costs will ultimately depend on the hiring decisions and the level of enforcement undertaken by the [Cannabis Compliance Commission]").

[6] HB 1070; HB 1232; SB 354.

[7] IC 35-48-4-11.

[8] HB 1070, HB 1232.

[9] HB 1070 Fiscal Impact Statement (stating that "[r]evenue loss is estimated to be between \$122, 000 and \$144,000 to the State General Fund, \$24,460 to the State User Fee Fund, and an indeterminable revenue loss to the Common School Fund" based upon misdemeanor convictions in FY 2021" and stating that "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 121 days, and 86% were supervised by a community corrections agency, a probation department, or both").

[10] HB 1168; HB 1212; SB 231; SB 175.

[11] HB 1168; SB 231.

[12] *Id.*

[13] *Id.*

[14] 21 U.S.C. §§ 802(16)(B)(i), 812.

[15] See 7 U.S.C. § 1639p and § 1639o.

[16] Ind. Code § 35-48-4-10.1(c).

[17] House Commerce, Small Business, and Economic Development.

[18] *Id.*

[19] <https://www.cleveland.com/news/2022/04/us-house-of-representatives-passes-bill-to-remove-marijuana-from-list-of-federally-controlled-substances.html>.

[20] HR 3617, the Marijuana Opportunity Reinvestment and Expungement ("MORE") Act passed the House in Congress in March 2022, but the Senate will need to pass the MORE Act before it will become law. See <https://www.washingtonpost.com/politics/2022/04/01/house-passes-bill-decriminalizing-marijuana-senate->



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