



March 17, 2022

**SUMMARY OF BILL AS AMENDED (015310):** Redefines “marijuana,” as applicable to criminal offenses, thereby establishing that marijuana includes hemp which has a tetrahydrocannabinol (THC) concentration of more than 0.3 percent on a dry weight basis.

**FISCAL IMPACT OF BILL AS AMENDED:**

**Decrease State Revenue – Net Impact - \$4,840,900/FY22-23 and Subsequent Years**

**Increase State Expenditures - \$2,900 Incarceration**

**Decrease Local Revenue – Net Impact - \$1,975,400/FY22-23 and Subsequent Years**

Assumptions for the bill as amended:

*State and Local Revenue*

- This legislation will effectively prohibit the sale or possession of hemp products that have a THC concentration of more than 0.3 percent on a dry weight basis.
- Currently, hemp products containing the delta-8 cannabinoid, a form of THC, are unregulated at the state and federal level and are commonly sold across the state.
- The sale of such products is assumed to be due to the psychoactive effects of such cannabinoid.
- Such products are assumed to significantly exceed the concentration threshold of 0.3 percent.
- It is assumed that the majority of retailers who currently sell such products will cease sale of such products across the state, rather than risk criminal penalties.
- State and local sales tax is applicable to such sales.
- Prohibiting the sale of such products will result in a decrease in state and local sales tax revenue.
- Based on research conducted by the Brightfield Group, the hemp market brought in approximately \$4,700,000,000 in 2020.
- The exact percent of this market, to which this legislation is applied is not known but it is assumed to apply to at least 75 percent of such market.
- This legislation will be applicable to a market valued at \$3,525,000,000 (\$4,700,000,000 x 75%).

- According to the 2020 U.S. Census, the United States had an overall population of 331,449,281, of which approximately 2.085 percent was comprised of Tennessee residents (6,910,840).
- The market in this state, to which this legislation applies, is expected to be valued at \$73,496,250 ( $\$3,525,000,000 \times 2.085\%$ ).
- It is assumed that the market value of such products is related to retail sales.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent; the effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.
- The recurring decrease in state sales tax revenue is estimated to be \$4,958,653 [ $(\$73,496,250 \times 7.0\%) - (\$73,496,250 \times 7.0\% \times 3.617\%)$ ].
- The recurring decrease in local sales tax revenue is estimated to be \$2,023,491 [ $(\$73,496,250 \times 2.5\%) + (\$73,496,250 \times 7.0\% \times 3.617\%)$ ].
- Twenty-five percent of tax savings, or \$1,745,536 [ $(\$4,958,653 + \$2,023,491) \times 25\%$ ], will be spent in the economy on other sales-taxable goods and services.
- The recurring increase in state sales tax collections is estimated to be \$117,768 [ $(\$1,745,536 \times 7.0\%) - (\$1,745,536 \times 7.0\% \times 3.617\%)$ ].
- The recurring increase in local sales tax collections is estimated to be \$48,058 [ $(\$1,745,536 \times 2.5\%) + (\$1,745,536 \times 7.0\% \times 3.617\%)$ ].
- The net recurring decrease in state revenue as a result of this legislation is estimated to be \$4,840,885 ( $\$4,958,653 - \$117,768$ ).
- The net recurring decrease in local revenue as a result of this legislation is estimated to be \$1,975,433 ( $\$2,023,491 - \$48,058$ ).

#### *Incarceration*

- Tennessee Code Annotated § 39-17-402(16)(A) currently defines “marijuana” as all parts of the plant cannabis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, including concentrates and oils, its seeds or resin.
- This legislation will include certain hemp products within the definition of marijuana, effectively prohibiting the sale or possession of hemp products that have a THC concentration of more than 0.3 percent on a dry weight basis, regardless of whether such THC is derived of the delta-8 cannabinoids or otherwise.
- This legislation will result in an increase in felony arrests of persons in possession of hemp products with THC concentration levels exceeding the legal limit established by this legislation.
- Pursuant to Tenn. Code Ann. § 39-17-415(a), marijuana is a Schedule VI drug.
- Pursuant to Tenn. Code Ann. § 39-17-417, it is an offense to manufacture, deliver, sell, or possess a controlled substance.
- Pursuant to Tenn. Code Ann. § 39-17-417(g), it is a graded felony offense to manufacture, deliver, sell, or possess marijuana in the following forms, dependent upon the volume of marijuana, in whatever form, found on any individual, punishable as the following:
  - 14.175 grams to 10 lbs. of marijuana, less than 2 lbs. of non-leafy, resinous material containing THC (hashish): Class E felony and fine of up to \$5,000;

- 10 lbs. to 70 lbs. of marijuana, 2 lbs. to 4 lbs. of hashish, or 10 to 19 marijuana plants: Class D felony and fine of up to \$50,000;
- 4 lbs. to 8 lbs. of hashish, or 20 to 99 marijuana plants: Class C felony and fine of up to \$100,000.
- Based upon information provided by the Department of Correction (DOC), there has been an average of 6.6 admissions in each of the last 10 years for the Class C felony offense under Tenn. Code Ann. § 39-14-417(g) for manufacturing, delivering, selling, or possession of marijuana with an estimated average time served of 1.59 years, after adjusting for pre-trial jail credits.
- It is assumed that this legislation will result in one additional admission for a Class C felony offense every 10 years under this legislation.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The estimated increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 1,800	FY22-23
\$ 2,900	FY23-24
\$ 2,900	FY24-25
\$ 2,900	FY25-26
\$ 2,900	FY26-27
\$ 2,900	FY27-28
\$ 2,900	FY28-29
\$ 2,900	FY29-30
\$ 2,900	FY30-31
\$ 2,900	FY31-32

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring cost increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$2,900.
- Based on the Fiscal Review Committee’s 2008 study and the Administrative Office of the Courts’ 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal note are available upon request.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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