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Office

S.B. 86
136th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 86's Bill Analysis](#)

Version: As Passed by the Senate

Primary Sponsors: Sens. Huffman and Wilkin

Local Impact Statement Procedure Required: No

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Highlights

- The bill imposes two new taxes – a 10% tax on the intoxicating hemp product (IHP) receipts received by licensed dispensaries and a \$3.50 per gallon excise tax on manufacturers' sales of drinkable cannabinoid products (DCPs) – and requires all revenue from both taxes be credited to the state GRF. The estimated total tax revenue that would be generated from both taxes would be roughly between \$11.1 million and \$12.8 million per year.
- Currently, 96.6% of tax revenue is credited to the GRF while the remaining 3.4% is allocated to the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065), as each fund receives 1.7% of GRF tax revenue under current law. The GRF revenue gain would be roughly between \$10.7 million and \$12.4 million while the LGF and PLF would each gain between \$190,000 and \$220,000 annually.
- The bill prohibits a municipality from levying a tax that is the same or similar to the tax levied by the bill.
- The Division of Cannabis Control within the Department of Commerce expects to incur additional costs, including for creating approximately 30 or more new positions to regulate IHPs and DCPs as required by the bill. The new positions would be in the areas of licensing, compliance, legal, and administration, with additional annual wage costs of between \$1.6 million to almost \$2.1 million, depending on staffing decisions.
- Operating expenses the Division of Cannabis Control incurs for regulating IHPs and DCPs would be paid out of the Medical Marijuana Control Fund (Fund 5SY0). This is also the fund that would collect fees for licensing the various cultivators, manufacturers,

processors, and retailers in the IHP and DCP industries. The bill requires the Division to establish these fees by rule.

- The Ohio Investigative Unit within the Ohio Department of Public Safety expects to incur additional costs, including hiring additional staff, for enforcing compliance with the bill's regulations regarding IHP.
- The Bureau of Motor Vehicles may experience an increase in administrative costs and corresponding reinstatement fee revenue related to administrative license suspensions imposed if violations alleging operating a vehicle while operating a vehicle impaired (OVI) increase. The \$475 fee to reinstate an administrative license suspension is credited to specified funds in the state treasury.
- Certain local criminal justice systems may see an increase in the number of cases to adjudicate and offenders to sanction, the magnitude of which will vary by court and depend on the number of individuals who are ultimately charged, convicted, and sanctioned. These costs may be at least partially offset by the collection of fines, fees, and court costs.

Detailed Analysis

Overview

The bill imposes two new taxes: (1) a 10% tax on the intoxicating hemp product (IHP) receipts received by licensed dispensaries in the state, and (2) an excise tax on sales by a manufacturer to a distributor or retailer of drinkable cannabinoid products (DCPs) at the rate of \$3.50 per gallon of such products sold. Along with these taxes, the bill makes the Division of Cannabis Control within the Department of Commerce responsible for regulating the sale of both IHPs and DCPs. For IHPs, this includes overseeing all persons who cultivate, process, distribute, and sell such products. For DCPs, the bill establishes a three-tier system of regulation covering manufacturers, distributors, and retailers. As a result of these new responsibilities, the Division of Cannabis Control will incur new costs, chiefly for hiring additional staff to administer the new regulatory program. There will also be enforcement costs for the Department of Public Safety's Ohio Investigative Unit, as well as impacts on local courts. The fiscal impacts are described in more detail in the sections below.

Taxation of IHPs and DCPs

The bill imposes two new taxes: (1) a 10% tax on the IHP receipts received by licensed dispensaries in the state, and (2) an excise tax on sales by a manufacturer to a distributor or retailer of DCPs at the rate of \$3.50 per gallon of such products sold. The bill requires all revenue from both taxes be credited to the state GRF.

The bill requires a dispensary to register with the Tax Commissioner no later than 30 days after first receiving IHP receipts. The bill also requires a manufacturer to register with the Tax Commissioner no later than 30 days after first selling a DCP to a distributor or retailer.

The bill specifies that if the Tax Commissioner notifies a dispensary or manufacturer required to register under the bill to remit the applicable taxes due, and the dispensary or manufacturer fails to so register and remit the tax within 60 days after the notice, the Tax Commissioner is allowed to impose an additional penalty of up to 35% of the tax due. The bill

allows the Tax Commissioner to make an assessment, based on any information in the Commissioner's possession, against any person that fails to file a return or pay applicable taxes. The bill also specifies other requirements associated with applicable taxes, including return filing dates, refunds, delinquent payments, penalties, and interest.

Fiscal effect of taxes imposed

The estimated total tax revenue that would be generated from both new taxes would be roughly between \$11.1 million and \$12.8 million per year. Tax revenue collections from those taxes would be collected on the effective date of the bill, potentially beginning sometime in FY 2026. Approximately 96.6% of such tax revenue would be credited to the GRF. Any tax revenue gain credited to the GRF will also increase allocations to the Local Government Fund (LGF) and the Public Library Fund (PLF), as each fund receives 1.7% of GRF tax revenue under current law. Any revenue gain to the LGF will increase allocations to counties, municipalities, townships, and other local government entities. Any revenue gain to the PLF will increase allocations to public libraries.

The estimated tax revenue from a 10% tax on the IHP receipts received by licensed dispensaries is based upon the estimated tax base of hemp-derived cannabinoid products per adult population in Minnesota and information from the 2023 National Cannabinoid Report published by Whitney Economics. Based on both sources, the estimated tax base for all hemp products in Ohio would be up to \$240 million per year, of which \$53 million is assumed to be for DCPs and the remaining \$187 million is attributed to all other hemp products. However, the bill limits the sale of IHP to a licensed adult-use cannabis dispensary, which will significantly curtail taxable sales of IHP. Assuming this restriction reduces the tax base for IHP by about 50%,¹ a 10% tax on the IHP receipts received by licensed dispensaries would generate roughly \$9.4 million per year. Future sales of IHP may increase or decrease depending on consumption patterns of hemp products and adult-use marijuana, as the two could be considered substitutes.

To estimate tax revenue from DCPs, information from a report on the U.S. cannabis beverages market, produced by Grandview Research and other assumptions were used. According to the report, the U.S. cannabis beverages market was valued at \$1.51 billion in 2023. In addition, according to a Market Watch article, [Cannabis Drinks Take Hold](#), the estimated price of a 12-ounce can of cannabis drinks range between \$5 and \$10. Based on information on the U.S. market value and the estimated prices, the estimated amount of the U.S. cannabis beverage market as measured in gallons in 2023 would range between 14.2 million gallons and 28.3 million gallons. Based on [2022-2023 National Surveys on Drug Use and Health \(NSDUH\)](#), the proportion of adults in Ohio compared to the nation that used marijuana in the past month was approximately 3.6%. Thus, the estimated gallonage of cannabis beverages that was consumed by adults in Ohio could range between 0.5 million gallons and 1 million gallons. Therefore, estimated tax revenue from DCPs would range between \$1.7 million and \$3.5 million per year.

¹ Very rough statistics from other states indicate that restricting the sale of IHP to select retailers would reduce sales by about 35%. However, it is unclear how authorized retailers in Ohio will respond. The bill limits the sale of IHP to licensed adult-use cannabis dispensaries, but those retailers are not obligated to sell the product. Those private businesses make their own independent decisions about market demand, profitability, competition, and product quality.

The sum of the revenue gain from both taxes would range between \$11.1 million and \$12.8 million annually. The GRF would retain between \$10.7 million and \$12.4 million while the LGF and PLF would each gain between \$190,000 and \$220,000 annually.

Local option taxes

The bill prohibits municipalities from levying taxes on the IHP receipts and sales of DCP.

Division of Cannabis Control

Regulatory costs

According to estimates that the Division of Cannabis Control (DCC) shared with LBO, the Division will need to create between 29 and 35 new staff positions to regulate operators in the IHP and DCP industries. The functions, the number of full-time equivalents (FTEs) needed for these positions, and total additional wage costs for the positions are shown in the table below. Most of the new positions would be in the compliance area, with 14 to 16 new positions estimated. If all these positions among the four functional areas were filled, DCC could incur new wage costs of approximately \$1.6 million to nearly \$2.1 million annually, not including the additional fringe benefit costs associated with the new positions, the employer's share of medical coverage and retirement contributions being the largest. (For FY 2025, the state's share of providing single coverage under the Ohio Med PPO plan is just under \$8,600 annually. The state's share of retirement is 14% of the employee's salary.) Beyond payroll expenses for additional staff, there will also be additional costs for equipment, supplies, and additional office space, although no cost estimate is yet available.

Table 1. Potential New Positions Needed to Regulate IHPs and DCPs			
Function	FTEs	Hourly Rate	Annual Wage Cost
Licensing	9-11	\$20.28-\$21.97	\$379,642-\$502,674
Compliance	14-16	\$28.58	\$832,250-\$951,142
Legal	3-4	\$41.23-\$45.45	\$257,275-\$378,144
Administration	3-4	\$24.66-\$25.76	\$153,878-\$214,323
Total	29-35		\$1,623,045-\$2,046,283

The bill could also result in some other costs. For example, the Division of Liquor Control may see a small increase in cost given its role in regulating DCPs sold in permitted retail liquor stores, bars, and restaurants. The Department of Agriculture may see a small increase in costs given its role in consulting with DCC. Other potential costs are less certain. This includes increased inspection time for hemp when compared to regulated marijuana, which is grown under more tightly controlled conditions. Hemp, however, can be grown outside, leaving it exposed to more contaminants.

Fees to be established by rule

To pay for the additional regulatory costs, the bill gives DCC the authority to establish fees applying to those involved in the cultivation, processing, distribution, and sales of IHPs. For DCPs, this includes persons involved with manufacturing, distributing, and marketing these products. Under the Division's existing program related to medical and recreational use marijuana, operating costs are paid through licensing and certification fees deposited into the Medical Marijuana Control Fund (Fund 5SY0).

Administrative penalties

In addition to licensing fees to be established by rule, the bill authorizes the Division to impose administrative penalties. These penalties may be levied against anyone selling an IHP or a DCP in a store that is not a licensed retailer, or selling to an individual under the age of 21. The Division may also impose administrative penalties for selling an IHP or a DCP that has not been tested or that does not meet the standards for packaging, labeling, or advertising. Presumably, penalties issued for IHP and DCP violations would be deposited into the Medical Marijuana Control Fund (Fund 5SY0). However, it is slightly different for DCPs, in particular for violations at the point of sale at permitted retailers. In those cases, violations would presumably be handled by the Ohio Investigative Unit, the Division of Liquor Control, and adjudicated by the Liquor Control Commission.

Criminal penalties

Selling an intoxicating hemp product

Under the bill, a person who recklessly violates the prohibition against selling an intoxicating hemp product is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense. Recklessly selling an intoxicating hemp product to a person under 21 is a fifth degree felony. The following table shows the sentences and fines for selling intoxicating hemp products.

Table 2. Sentences and Fines for Selling Intoxicating Hemp Products		
Offense Level	Fine	Term of Incarceration
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

Impaired driving (OVI)

The bill adds IHPs and DCPs to the definition of "drug of abuse" and authorizes law enforcement to arrest an individual who operates a vehicle under the influence of an IHP or a DCP under the state's operating a vehicle impaired (OVI) law. Such conduct is currently illegal however, explicitly including those substances as a "drug of abuse" may make prosecuting alleged OVI violations involving IHPs and DCPs easier. As a result, there may be a likely no more than minimal increase in the number of OVI convictions annually. OVI violations are generally first degree misdemeanors subject to not more than 180 days in a local jail, a fine of \$375 to \$1,075, and a mandatory one to three-year driver's license suspension. OVI violations also

require a three-day mandatory jail term or completion of a driver's intervention program in addition to any other jail term imposed. The offense level and penalties increase based on the circumstances present.

Administrative license suspension

Under continuing law, an automatic administrative driver's license suspension is imposed from the time of the alleged OVI until the court hearing to determine the operator's guilt. If more administrative driver's license suspensions are imposed, the Bureau of Motor Vehicles may experience an increase in administrative costs and a corresponding increase in reinstatement fee revenue. The fee to reinstate an administrative license suspension is \$475, which is credited to the state treasury as follows:

- \$112.50 to the Statewide Treatment and Prevention Fund (Fund 4750);
- \$75 to the Victims of Crime/Reparations Fund (Fund 4020);
- \$75 to the Services for Rehabilitation Fund (Fund 4L10);
- \$75 to the Drug Abuse Resistance Education Programs Fund (Fund 4L60);
- \$50 to the Indigent Drivers Interlock and Alcohol Monitoring Fund (Fund 5FF0);
- \$37.50 to the Indigent Drivers Alcohol Treatment Fund (Fund 7049);
- \$30 to the Public Safety – Highway Purposes Fund (Fund 5TM0); and
- \$20 to the Trauma & Emergency Medical Services Grants Fund (Fund 83M0).

Open container in public places

Under the bill, a person who knowingly violates the prohibition against having an opened container of an intoxicating hemp product that is a beverage or DCP in public places is guilty of a minor misdemeanor, which is subject to a fine of up to \$150.

Impact to state and local criminal justice systems

By creating prohibitions against selling intoxicating hemp products and having an intoxicating hemp product that is a beverage or DCP in a public place, as well as adding driving under the influence of a hemp product to the OVI law, the bill may increase the number of criminal cases for certain local courts to adjudicate. As a result, there may be an increase in costs for local courts to adjudicate any new cases and for state and local criminal justice systems to sanction offenders. These increased costs will vary by court and depend on the number of individuals who are ultimately charged, convicted, and subsequently sentenced to a period of incarceration in a local jail or state prison.

Fines, fees, and court costs

To the extent that additional cases are generated, the bill may also impact the amount of fine, fee, and court cost revenue, including the amount of court costs forwarded to the state, which may at least partially offset any expenses incurred. Any revenue received from fines or local court costs and fees (which vary by jurisdiction) for selling intoxicating hemp products would be retained locally, with locally collected state court costs distributed in the state treasury as shown in the table below.

Table 3. Statutory Distribution of State Court Costs		
Offense Type	Amount	State Treasury Distribution
Misdemeanor	\$29	<ul style="list-style-type: none">▪ \$20 to the Indigent Defense Support Fund (Fund 5DY0)▪ \$9 to the Victims of Crime/Reparations Fund (Fund 4020)
Felony	\$60	<ul style="list-style-type: none">▪ \$30 to the Indigent Defense Support Fund (Fund 5DY0)▪ \$30 to the Victims of Crime/Reparations Fund (Fund 4020)

Department of Public Safety

The Ohio Investigative Unit (OIU), which is housed within the Department of Public Safety (DPS), enforces Ohio's alcohol, tobacco, and food stamp fraud laws. OIU agents are responsible for investigating violations relating to the liquor control act as well as criminal activity in or around liquor permit locations and illegal establishments. Under the bill, OIU is also required to enforce or cause to be enforced the bill's provisions governing intoxicating hemp products. According to DPS, this requirement is likely to result in additional costs, including the hiring of additional staff, in order to carry out these new duties.