HOUSE BILL No. 1303

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-4; IC 16-19-3-32; IC 20-20-43-3; IC 35-48.

Synopsis: Medical marijuana. Establishes the medicinal marijuana excise tax, and requires a medicinal marijuana dispensary to transfer the tax to the department of state revenue for deposit in the system for teacher and student advancement grant fund and the local infrastructure revolving fund. Requires the executive board of the state department of health to adopt rules to regulate registered medicinal marijuana cardholders, medicinal marijuana dispensaries, and registered medicinal marijuana dispensary employees. Requires that medicinal marijuana sold in a medicinal marijuana dispensary must be harvested and processed in Indiana. Provides that certain crimes involving marijuana, hash oil, hashish, and paraphernalia do not apply in certain circumstances to medicinal marijuana cardholders, medicinal marijuana dispensaries, and registered medicinal marijuana dispensary employees.

Effective: July 1, 2017.

Candelaria Reardon

January 10, 2017, read first time and referred to Committee on Public Policy.
HOUSE BILL No. 1303

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-7-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

Chapter 4. Medicinal Marijuana Excise Tax

Sec. 1. The following definitions apply throughout this chapter:

(1) "Department" means the department of state revenue.

(2) "Medicinal marijuana dispensary" means a medicinal marijuana dispensary described in IC 35-48-8 and regulated and approved by the state department of health.

Sec. 2. The medicinal marijuana excise tax is imposed on medicinal marijuana sold in Indiana.

Sec. 3. The medicinal marijuana excise tax is three dollars and fifty cents ($3.50) for each gram dispensed and a proportionate amount for each fraction of a gram dispensed.

Sec. 4. A medicinal marijuana dispensary shall collect the medicinal marijuana excise tax at the time the medicinal marijuana is dispensed.
Sec. 5. Before the fifteenth day of each month, each medicinal marijuana dispensary liable for the tax imposed by this chapter shall:

(1) file a return with the department that includes all information required by the department, including the:
   (A) name of the medicinal marijuana dispensary;
   (B) address of medicinal marijuana dispensary;
   (C) invoice date;
   (D) invoice number; and
   (E) weight of the medicinal marijuana dispensed during the preceding month; and

(2) pay the tax for which it is liable under this chapter for the preceding month, minus the amount specified in section 6 of this chapter.

All returns required to be filed and taxes required to be paid under this chapter must be made in an electronic format prescribed by the department.

Sec. 6. A medicinal marijuana dispensary that files a complete return and pays the tax due within the time specified in section 5 of this chapter is entitled to deduct and retain from the tax a collection allowance of seven-thousandths (0.007) of the amount due. If a medicinal marijuana dispensary files an incomplete report, the department may reduce the collection allowance by an amount that does not exceed the lesser of:

(1) ten percent (10%) of the collection allowance; or
(2) fifty dollars ($50).

Sec. 7. The department shall deposit fifty percent (50%) of the taxes collected under this chapter in the system for teacher and student advancement grant fund established by IC 20-20-43-3, and the remaining fifty percent (50%) of the taxes collected under this chapter in the local infrastructure revolving fund established by IC 4-10-19-3.

SECTION 2. IC 16-19-3-32 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 32. (a) The state department shall:

(1) process applications for medicinal marijuana cardholders under IC 35-48-8-2;
(2) issue cards for approved medicinal marijuana cardholders under IC 35-48-8-2; and
(3) regulate medicinal marijuana dispensaries under IC 35-48-8-4.

(b) The executive board shall adopt rules under IC 4-22-2 to
regulate:

(1) registered medicinal marijuana cardholders under IC 35-48-8-2;
(2) medical marijuana dispensaries under IC 35-48-8-4; and
(3) registered medicinal marijuana dispensary employees under IC 35-48-8-4.

(c) The rules adopted by the executive board under subsection (b) must require that a medical marijuana dispensary only dispense marijuana that has been harvested and processed in Indiana.

(d) The state department shall prescribe forms to carry out the state department's duties under this section.

SECTION 3. IC 20-20-43-3, AS ADDED BY P.L.106-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) The system for teacher and student advancement grant fund is established for the purpose of providing grants to school corporations to implement programs described in section 4 of this chapter.

(b) The fund consists of the following:
(1) Appropriations made by the general assembly.
(2) Gifts, grants, devises, or bequests made to the commission for higher education to achieve the purposes of the fund.
(3) Transfers from the department of state revenue from the medicinal marijuana excise tax.

(c) The state board, in consultation with the department, shall administer the fund.

(d) The expenses of administering the fund shall be paid from money in the fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 4. IC 35-48-4-8.1, AS AMENDED BY P.L.158-2013, SECTION 634, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8.1. (a) A person who manufactures, finances the manufacture of, or designs an instrument, a device, or other object that is intended to be used primarily for:
(1) introducing into the human body a controlled substance;
(2) testing the strength, effectiveness, or purity of a controlled substance; or
(3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for manufacturing paraphernalia.

(b) A person who:

(1) knowingly or intentionally violates this section; and

(2) has a previous judgment for violation of this section;

 commits manufacture of paraphernalia, a Level 6 felony.

(c) This section does not apply to a medicinal marijuana dispensary under IC 35-48-8 or a registered medicinal marijuana dispensary employee acting in the capacity of a medicinal marijuana dispensary employee.

SECTION 5. IC 35-48-4-8.3, AS AMENDED BY P.L.187-2015, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8.3. (a) This section does not apply to a rolling paper.

(b) A person who knowingly or intentionally possesses an instrument, a device, or another object that the person intends to use for:

(1) introducing into the person's body a controlled substance;

(2) testing the strength, effectiveness, or purity of a controlled substance; or

(3) enhancing the effect of a controlled substance;

 commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated judgment or conviction under this section.

(c) It is a defense to a prosecution under this section that the person is a medicinal marijuana dispensary under IC 35-48-8 or a registered medicinal marijuana dispensary employee acting in the capacity as a medicinal marijuana dispensary employee.

SECTION 6. IC 35-48-4-8.5, AS AMENDED BY P.L.208-2015, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8.5. (a) A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for:

(1) ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(3) enhancing the effect of a controlled substance;

(4) manufacturing, compounding, converting, producing,
processing, or preparing marijuana, hash oil, hashish, salvia, a
synthetic drug, or a controlled substance;
(5) diluting or adulterating marijuana, hash oil, hashish, salvia, a
synthetic drug, or a controlled substance by individuals; or
(6) any purpose announced or described by the seller that is in
violation of this chapter;
commits a Class A infraction for dealing in paraphernalia.
(b) A person who knowingly or intentionally violates subsection (a)
commits a Class A misdemeanor. However, the offense is a Level 6
felony if the person has a prior unrelated judgment or conviction under
this section.
(c) This section does not apply to the following:
(1) Items marketed for use in the preparation, compounding,
packaging, labeling, or other use of marijuana, hash oil, hashish,
salvia, a synthetic drug, or a controlled substance as an incident
to lawful research, teaching, or chemical analysis and not for sale.
(2) Items marketed for or historically and customarily used in
connection with the planting, propagating, cultivating, growing,
harvesting, manufacturing, compounding, converting, producing,
processing, preparing, testing, analyzing, packaging, repackaging,
storing, containing, concealing, injecting, ingesting, or inhaling
of tobacco or any other lawful substance.
(3) A qualified entity (as defined in IC 16-41-7.5-3) that provides
a syringe or needle as part of a program under IC 16-41-7.5.
(4) Any entity or person that provides funding to a qualified entity
(as defined in IC 16-41-7.5-3) to operate a program described in
IC 16-41-7.5.
(5) A medicinal marijuana dispensary under IC 35-48-8 or a
registered medicinal marijuana dispensary employee acting
in the capacity of a medicinal marijuana dispensary employee.
SECTION 7. IC 35-48-4-10, AS AMENDED BY P.L.44-2016,
SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2017]: Sec. 10. (a) A person who:
(1) knowingly or intentionally:
(A) manufactures;
(B) finances the manufacture of;
(C) delivers; or
(D) finances the delivery of;
marijuana, hash oil, hashish, or salvia, pure or adulterated; or
(2) possesses, with intent to:
(A) manufacture;
(B) finance the manufacture of;
(C) deliver; or
(D) finance the delivery of;
marijuana, hash oil, hashish, or salvia, pure or adulterated;
commits dealing in marijuana, hash oil, hashish, or salvia, a Class A misdemeanor, except as provided in subsections (b) through (d).

(b) A person may be convicted of an offense under subsection (a)(2) only if:
(1) there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug; or
(2) the amount of the drug involved is at least:
(A) ten (10) pounds, if the drug is marijuana; or
(B) three hundred (300) grams, if the drug is hash oil, hashish, or salvia.

(c) The offense is a Level 6 felony if:
(1) the person has a prior conviction for a drug offense and the amount of the drug involved is:
(A) less than thirty (30) grams of marijuana; or
(B) less than five (5) grams of hash oil, hashish, or salvia; or
(2) the amount of the drug involved is:
(A) at least thirty (30) grams but less than ten (10) pounds of marijuana; or
(B) at least five (5) grams but less than three hundred (300) grams of hash oil, hashish, or salvia.

(d) The offense is a Level 5 felony if:
(1) the person has a prior conviction for a drug dealing offense and the amount of the drug involved is:
(A) at least thirty (30) grams but less than ten (10) pounds of marijuana; or
(B) at least five (5) grams but less than three hundred (300) grams of hash oil, hashish, or salvia; or
(2) the:
(A) amount of the drug involved is:
(i) at least ten (10) pounds of marijuana; or
(ii) at least three hundred (300) grams of hash oil, hashish, or salvia; or
(B) offense involved a sale to a minor.

(e) It is a defense to a prosecution under this section involving marijuana, hash oil, or hashish that the person is a medicinal marijuana dispensary under IC 35-48-8 or a registered medicinal marijuana dispensary employee acting in the capacity of a medicinal marijuana dispensary employee.
SECTION 8. IC 35-48-4-11, AS AMENDED BY P.L.226-2014(ts),
SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2017]: Sec. 11. (a) A person who:
(1) knowingly or intentionally possesses (pure or adulterated)
marijuana, hash oil, hashish, or salvia;
(2) knowingly or intentionally grows or cultivates marijuana; or
(3) knowing that marijuana is growing on the person's premises,
fails to destroy the marijuana plants;
commits possession of marijuana, hash oil, hashish, or salvia, a Class
B misdemeanor, except as provided in subsections (b) through (c).
(b) The offense described in subsection (a) is a Class A
misdemeanor if the person has a prior conviction for a drug offense.
(c) The offense described in subsection (a) is a Level 6 felony if:
(1) the person has a prior conviction for a drug offense; and
(2) the person possesses:
(A) at least thirty (30) grams of marijuana; or
(B) at least five (5) grams of hash oil, hashish, or salvia.
(d) It is a defense to a prosecution under this section involving
marijuana, hash oil, or hashish that the person is a:
(1) person who is a registered medicinal marijuana
cardholder under IC 35-48-8;
(2) medicinal marijuana dispensary under IC 35-48-8; or
(3) registered medicinal marijuana dispensary employee
acting in the capacity of a medicinal marijuana dispensary
employee.
SECTION 9. IC 35-48-8 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2017]:
Chapter 8. Medicinal Marijuana
Sec. 1. As used in this chapter, "debilitating medical condition"
means:
(1) cancer;
(2) glaucoma;
(3) positive status for human immunodeficiency virus;
(4) acquired immune deficiency syndrome;
(5) hepatitis C;
(6) amyotrophic lateral sclerosis;
(7) Crohn's disease;
(8) Alzheimer's disease;
(9) nail patella;
(10) multiple sclerosis;
(11) injury or disease to the spinal cord, spinal column, or
vertebra;
(12) myelomalacia;
(13) celiac disease;
(14) sickle cell anemia;
(15) a chronic or debilitating disease or medical condition or
the treatment for a chronic or debilitating disease or medical
condition that produces:
(A) cachexia or wasting syndrome;
(B) severe or chronic pain;
(C) severe or chronic nausea;
(D) seizures, including seizures that are characteristic of
epilepsy; or
(E) severe or persistent muscle spasms; or
(16) any other disease, condition, or symptom that the state
department of health has determined by its rulemaking
authority under IC 4-22-2 to be a debilitating medical
condition.
Sec. 2. (a) A person may apply to the state department of health
to be a registered medicinal marijuana cardholder if the person
has a debilitating medical condition.
(b) To be approved as a registered medicinal marijuana
cardholder, a person must submit to the state department of health
a letter from a physician licensed to practice medicine under
IC 25-22.5 stating that the person has a debilitating medical
condition.
(c) The state department of health shall issue a person a card
indicating the person is a registered medicinal marijuana
cardholder after receiving an application under subsection (a) and
a letter under subsection (b).
Sec. 3. A registered medicinal marijuana cardholder may not be
prosecuted for possession of marijuana, hash oil, or hashish that
the cardholder purchases at a medicinal marijuana dispensary
licensed under section 4 of this chapter.
Sec. 4. The state department of health shall license and regulate
medicinal marijuana dispensaries and medicinal marijuana
dispensary employees under rules adopted by the executive board
under IC 4-22-2.