



**151st GENERAL ASSEMBLY  
FISCAL NOTE**

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| <b>BILL:</b>        | <b>HOUSE BILL NO. 150</b>   |
| <b>SPONSOR:</b>     | <b>Representative Osienski</b>  |
| <b>DESCRIPTION:</b> | <b>AN ACT TO AMEND TITLES 4, 11, 16, AND 30 OF THE DELAWARE CODE<br/>CREATING THE DELAWARE MARIJUANA CONTROL ACT.</b> |

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**Assumptions:**

1. This Act, known as the Delaware Marijuana Control Act, becomes effective upon signature by the Governor.
2. This Act regulates and taxes marijuana in the same manner as alcohol and allows adults over age 21 to possess and consume under one ounce of marijuana. Other provisions of this Act relevant to this fiscal projection include:
  - a. permitting the operation of marijuana businesses (i.e., retail stores, testing, cultivation, and product manufacturing facilities) if operated under proposed licenses and restrictions as defined within the Act;
  - b. creates the Delaware Marijuana Control Act Oversight Committee to evaluate and make recommendations regarding the implementation of this Act;
  - c. expands upon the powers and duties of the Division of Alcohol and Tobacco Enforcement (DATE) of the Department of Safety and Homeland Security (DSHS) for the enforcement of marijuana laws;
  - d. creates a Marijuana Commissioner who would have the authority to adopt regulations to implement this Act, including the establishment of requirements related to obtaining licenses for marijuana establishments and the products sold at these establishments;
  - e. creates an Appeals Commission who shall hear an applicant or licensee's appeal of a decision of the Marijuana Commissioner;
  - g. creates the Marijuana Regulation Fund, administered by the Department of Finance, which would consist of the fees collected, civil penalties imposed, and taxes collected under this Act;
  - h. creates a state tax deduction for all ordinary and necessary expenses paid or incurred by a marijuana establishment to reflect the inability of a business licensed under this Act to deduct these expenses from federal taxes; and
  - i. allows for the expungement of prior marijuana-related offenses if the individual has no convictions for violent felonies.
3. This Act expands upon the DATE duties and powers and creates an Office of the Marijuana Commissioner and Appeals Commission. Recurring annual costs are estimated at \$2,277,432, and one-time costs are estimated at \$508,171 and are as follows:
  - a. Addition of 22.0 FTE positions to the DATE for marijuana regulation and enforcement.
    - i. Recurring Costs - \$1,868,851

1. \$1,683,851 in Personnel Costs, including Other Employment Costs (OECs), for 1.0 FTE, Captain; 1.0 FTE, Lieutenant; 1.0 FTE, Sergeant; 8.0 FTE, Marijuana Enforcement Agent III (same as Alcohol & Tobacco Enforcement Agent III); 6.0 FTE, Investigator II; 1.0 FTE, Agricultural Specialist; 1.0 FTE, Deputy Attorney General; 1.0 FTE, Public Information Officer; 1.0 FTE, Management Analyst II; and adjustments to the base salary of the Division Director and Deputy Director for DATE.
  2. \$185,000 for the estimated rent and utilities for a DATE marijuana facility to house the new positions.
- ii. One-Time Costs - \$496,971
1. \$65,000 to upgrade the current alcohol license tracking and violation system to accommodate marijuana.
  2. \$14,000 for travel needs for DATE to visit a regulated state(s) to observe marijuana regulation, enforcement, public health, and agricultural practices.
  3. \$75,000 for an external evidence storage building with security.
  4. \$20,000 startup costs for purchase, training, and equipping a drug detection K9 and equipping an existing vehicle in DATE's fleet.
  5. \$322,971 in supplies for equipment (uniforms, firearms, radios), computers, office furniture, and office supplies.
  6. Indeterminable amount for hiring a consultant to draft marijuana regulations and review the policies and procedures for marijuana regulation and enforcement.
- b. Addition of 4.0 FTE positions for the creation of an Office of the Marijuana Commissioner.
- i. Recurring Costs - \$408,581
1. \$402,831 in Personnel Costs, including OECs, for 1.0 FTE, Marijuana Commissioner; 1.0 FTE, Deputy Marijuana Commissioner; 1.0 FTE, Paralegal I; and 1.0 FTE, Administrative Specialist II.
  2. \$5,750 for estimated annual compensation and reimbursement of reasonable expenses related to creating a three-member Appeals Commission.
  3. Indeterminable amount for facility costs to house new positions.
- ii. One-Time Costs - \$11,200
1. \$11,200 for computer equipment and office furniture startup costs for new positions.
4. This Act requires the State Bureau of Identification (SBI) to conduct a mandatory expungement of prior marijuana-related offenses if the individual has no convictions for violent felonies. The SBI anticipates a significant increase in the number of mandatory expungements that it would need to process because of this Act. The expungement process is complex and detailed and requires research and coordination among various SBI sections. Recurring annual costs are estimated at \$257,954, and one-time costs are estimated at \$16,800 and are as follows:
- a. Addition of 6.0 FTE positions to conduct research and perform mandatory expungements.
- i. Recurring Costs - \$257,954
1. \$257,954 in Personnel Costs, including OECs, for 3.0 FTE, Administrative Specialist I; 1.0 FTE, Application Program Manager (Application Programmer); and 2.0 FTE, Criminal History Technician II.
- ii. One-Time Costs - \$16,800
1. \$16,800 for computer equipment and office furniture startup costs for new positions.

5. In addition to mandatory expungements performed by the SBI, the Superior Court will also have to conduct expungements on each of its paper files housed in each county. Court personnel will be required to have sufficient knowledge to ready each document in a file to ensure no references to an expunged charge. Recurring annual costs are estimated at \$218,074, and one-time costs are estimated at \$11,200 and are as follows:
  - a. Addition of 4.0 FTE positions to coordinate, conduct research, and perform mandatory expungements of paper files for the Superior Court.
    - i. Recurring Costs - \$218,074
      1. \$218,074 in Personnel Costs, including OECs, for 3.0 FTE, Paralegal III (one for each county); and 1.0 FTE, Operations Support Specialist (for New Castle County).
    - ii. One-Time Costs - \$11,200
      1. \$11,200 for computer equipment and office furniture startup costs for new positions.
6. This Act would require the Delaware Criminal Justice Information System (DELJIS) to make significant programming and system modifications to the Criminal Justice Information System (CJIS) to ensure compliance with the expungement provision. Recurring annual costs are estimated at \$66,352, and one-time costs are estimated at \$152,800 and are as follows:
  - a. Addition of 1.0 FTE position to address ongoing maintenance programming, fixing, testing, auditing, and other post-implementation issues surrounding data integrity and continued coordination with the SBI upon implementing this Act.
    - i. Recurring Costs - \$66,352
      1. \$66,352 in Personnel Costs, including OECs, for 1.0 FTE, Management Analyst III.
    - ii. One-Time Costs - \$152,800
      1. \$150,000 for specialized contractual staff to make coding changes relating to the criminal justice impacts from this Act.
      2. \$2,800 for projected startup costs for technology, software, and furniture.
7. This Act will result in additional revenue by introducing application fees, license fees, civil penalties imposed, and a marijuana control enforcement tax of fifteen percent. The accompanying Fee Impact for this Act estimates that the State may receive \$925,000 in Fiscal Year 2023 from application and license fees, assuming that a sufficient applicant pool exists, and the maximum number of licenses issued.
8. All Fiscal Year 2022 personnel costs, except for the Office of the Marijuana Commissioner, have been estimated for 10-months of funding with the annualization of the remaining 2-months incorporated into subsequent year estimates. Additionally, a 2% inflation cost has been included for projected increases to salary, health insurance, and OECs.
9. Lastly, this fiscal impact assumes that the Fiscal Year 2022 operational costs associated with this Act would have to initially be funded through the General Fund as any revenue received by the generation of fees, penalties, and taxes to the Marijuana Regulation Fund would not occur until after the implementation and the hiring of the necessary FTE positions. Provided that enough revenue is collected to offset the operational costs identified, it is assumed that the Commissioner, DATE, and the Appeals Commission would be funded from revenues from the Marijuana Regulation Fund in subsequent fiscal years. Recurring identified budgetary needs for the SBI, DELJIS, and the Superior Court are projected to remain funded by the General Fund until otherwise determined by the General Assembly.

**Cost:**

|                          | <b><u>One-Time</u></b> | <b><u>General Fund</u></b> | <b><u>Marijuana<br/>Regulation Fund</u></b> |
|--------------------------|------------------------|----------------------------|---|
| <b>Fiscal Year 2022:</b> | <b>\$688,971</b>       | <b>\$2,819,812</b>         |   |
| <b>Fiscal Year 2023:</b> |                        | <b>\$663,873</b>           | <b>\$2,654,522</b>                          |
| <b>Fiscal Year 2024:</b> |                        | <b>\$677,150</b>           | <b>\$2,703,774</b>                          |

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