

2021 Regular Session

HOUSE BILL NO. 568

BY REPRESENTATIVE JORDAN

TAX/EXCISE: Authorizes the levy of an excise tax on cannabis

1 AN ACT

2 To enact Chapter 20 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, to
3 be comprised of R.S. 47:1699.1 through 1699.7, relative to a state excise tax on
4 cannabis; to levy an excise tax on cannabis; to provide certain definitions; to provide
5 for the rate of the excise tax; to provide for the application of the tax on cannabis in
6 the inventory of certain cannabis production facilities; to authorize the promulgation
7 of rules; to provide for the use of the avails of the excise tax; to provide for an
8 effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 20 of Subtitle II of Title 47 of the Louisiana Revised Statutes of
11 1950, comprised of R.S. 47:1699.1 through 1699.7 are hereby enacted to read as follows:

12 CHAPTER 20. CANNABIS TAX

13 §1699.1. Definitions

14 As used in this Chapter, the following terms shall have the meaning ascribed
15 to them in this Section unless the context clearly indicates otherwise:

16 (1) "Arm's-length transaction" means a transaction made between two
17 informed and willing parties, the cannabis production facility and the cannabis
18 retailer, in which the payment received by the cannabis production facility shall
19 reflect the fair market value of cannabis in the open market.

1 (2) "Average market rate" means the average price, as determined by the
2 secretary on an annual basis, of all cannabis sold, transferred, or used to produce a
3 cannabis-infused product by a cannabis production facility in this state.

4 (3) "Buds" means the flowers of the plant Genus Cannabis within the plant
5 family Cannabaceae.

6 (4) "Cannabis" means all parts of plants of the Genus Cannabis, whether
7 growing or not; the seeds thereof; the resin extracted from any part of the plant; and
8 every compound, manufacture, salt, derivative, mixture, or preparation of the plant,
9 its seeds or resin. Cannabis shall not include the mature stalks of a cannabis plant,
10 fiber produced from the stalks, oil or cake made from the seeds of the plant, any
11 other compound, manufacture, salt, derivative, mixture, or preparation of the mature
12 stalks, except the resin extracted from the plant, fiber, oil, or cake, or the sterilized
13 seed of the plant which is incapable of germination.

14 (5) "Cannabis-infused product" means any food, potable liquid, concentrate,
15 extract, or any other product intended for human consumption or use into which
16 cannabis has been incorporated. A cannabis-infused product does not include usable
17 cannabis by itself.

18 (6) "Cannabis production facility" means an entity licensed to cultivate,
19 process, manufacture, package, and sell cannabis and cannabis-infused products to
20 a cannabis retailer. A cannabis production facility shall not sell cannabis or
21 cannabis-infused products directly to a consumer.

22 (7) "Cannabis retailer" means an entity licensed to purchase cannabis and
23 cannabis-infused products from a cannabis production facility and to sell cannabis
24 and cannabis-infused products to a consumer.

25 (8) "Consumer" means a person twenty-one years of age or older who
26 purchases cannabis or cannabis-infused products for personal use but not for resale
27 to others.

28 (9) "Department" means the Department of Revenue.

1 (10) "Immature plant" means the plant Genus Cannabis within the plant
2 family Cannabaceae that has no flowers.

3 (11) "Initial period" means the period of time where the average market rate
4 is determined by the secretary based on the estimated price a cannabis retailer would
5 pay to a cannabis production facility in an arm's-length transaction for cannabis in
6 the wholesale market.

7 (12) "Leaves" means the leaves of the plant Genus Cannabis within the plant
8 family Cannabaceae.

9 (13) "Secretary" means the secretary of the Department of Revenue or his
10 duly appointed representatives.

11 (14) "Seeds" means the seeds of the plant Genus Cannabis within the plant
12 family Cannabaceae.

13 (15) "Taxpayer" means a cannabis production facility.

14 (16) "Test period" means the period of time used to calculate the average
15 market rate using reported sales of each category of cannabis. The test period shall
16 be each January 1st to the subsequent November 30th.

17 (17) "Wet whole plant" means the plant Genus Cannabis within the plant
18 family Cannabaceae that has been harvested but is not trimmed or separated from
19 stalk or other waste products.

20 (18) "Wholesale sale" means the first sale or transfer of cannabis by a
21 cannabis production facility to a cannabis retailer. A wholesale sale shall include the
22 use of cannabis by a cannabis production facility to produce a cannabis-infused
23 product.

24 §1699.2. Imposition of tax

25 A. There is hereby levied an excise tax upon each wholesale sale of cannabis
26 within the state of Louisiana. The tax levied by this Chapter shall be at the rate of
27 fifteen percent of the average market rate at wholesale of the cannabis. The excise
28 tax on cannabis shall be calculated based on the average market rate of each of the

1 categories of buds, leaves, immature plants, seeds, wet whole plants, and cannabis
2 used to produce cannabis-infused products.

3 B. The excise tax is considered a tax upon the cannabis production facility,
4 and the cannabis production facility is considered a taxpayer.

5 §1699.3. Exemption from tax

6 Marijuana obtained pursuant to R.S. 40:1046 is hereby exempted from the
7 taxes levied by this Chapter; however, nothing in this Section shall be construed to
8 exempt the tax on cannabis.

9 §1699.4. Calculation of excise tax

10 A. In order to calculate the tax using the average market rate, the weight or
11 unit of cannabis sold at wholesale sale shall be multiplied by the average market rate
12 and the result shall be multiplied by fifteen percent. If multiple categories of
13 cannabis are included in the wholesale sale, the excise tax shall be calculated
14 separately for each category of the cannabis in the wholesale sale.

15 B.(1) For the category of buds, the excise tax is calculated on the total
16 weight of the cannabis.

17 (2) For the category of leaves, the excise tax is calculated on the total weight
18 of the cannabis.

19 (3) For the category of immature plants, the excise tax is calculated on the
20 number of plants being sold.

21 (4) For the category of seeds, the excise tax is calculated on the number of
22 seeds being sold.

23 (5) For the category of wet whole plants, the excise tax is calculated on the
24 weight of the entire plant. The wet whole plant shall be weighed within two hours
25 of the plant being harvested, the plant shall not undergo any further processing prior
26 to being weighed, and tax must be paid on the weight of the entire unprocessed plant.

27 (6) For the category of cannabis used to produce cannabis-infused products,
28 the excise tax is calculated based on the weight when buds, leaves, or wet whole

1 plants are used to produce the cannabis-infused product and based on the count when
2 immature plants or seeds are used to produce the cannabis-infused product.

3 C. For sales beginning January 1, 2022, through December 31, 2022, the
4 secretary shall establish the average market rate based on the estimated price that a
5 cannabis retailer would pay to a cannabis production facility in an arm's-length
6 transaction for cannabis in the wholesale market.

7 D.(1) The secretary shall calculate the average market rate by using the
8 reported sales of each category of cannabis during the immediately preceding test
9 period. The test periods shall be each January first through the subsequent
10 November thirtieth.

11 (2) The secretary shall determine and publish the average market rate on an
12 annual basis. The average market rate shall be determined and published on or
13 before December twentieth, and the rate shall be effective on the subsequent January
14 first of each year. The secretary shall use reported sales beginning January 1, 2022,
15 through November 30, 2022, to calculate the average market rate that will be
16 published on December 20, 2022, and effective on January 1, 2023.

17 §1699.5. Enforcement

18 The secretary shall collect, supervise, and enforce the collection of all taxes,
19 penalties, interest, and other charges that may be due under the provisions of this
20 Chapter in the same manner provided for by law under the provisions of this Subtitle.
21 The secretary shall administer legislative mandates contained in this Subtitle. To
22 that end the secretary is vested with all of the power and authority conferred by this
23 Subtitle, except as conferred upon other officials.

24 §1699.6. Rules

25 The department may promulgate rules in accordance with the Administrative
26 Procedure Act as are necessary to implement the provisions of this Chapter,
27 including rules regarding the determination of the average market rate, enforcement
28 of the assessment and collection of all taxes, interest and penalties that may be due
29 under the provisions of this Chapter, investigations and hearings, adoption of a

1 uniform system of providing taxpayer reporting requirements, the destruction of
2 goods, and issuing refunds for any reason to a taxpayer.

3 §1699.7. Disposition of collections

4 A. Beginning January 1, 2022, subject to the exceptions contained in Article
5 VII, Section 9(A) of the Constitution of Louisiana, all proceeds, penalties, and
6 interest received from the tax imposed under the provisions of this Chapter shall be
7 paid into the state treasury and, after satisfying the requirements of Article VII,
8 Section 9(B) of the Constitution of Louisiana relative to the Bond Security and
9 Redemption Fund, the state treasurer shall monthly deposit into the following funds
10 an amount equal to the avails of the tax imposed under the provisions of this Chapter.
11 All unexpended and unencumbered monies remaining in each fund at the end of any
12 fiscal year shall remain in each fund. The monies in the funds shall be used solely
13 for the express purposes listed and specifically as follows:

14 (1) Twenty-five percent of the monies shall be appropriated to the minimum
15 foundation program to be used solely for funding support of public elementary and
16 secondary schools.

17 (2) Fifteen percent of the monies shall be appropriated to the state
18 Department of Health to be used solely for purposes of funding the office of
19 behavioral health.

20 (3) Fifteen percent of the monies shall be appropriated to the Department of
21 Public Safety and Corrections and be used solely for the purposes of funding for the
22 office of state police.

23 (4) Fifteen percent of the monies shall be appropriated to the Transportation
24 Trust Fund to be used solely for the purposes of state highway pavement and bridge
25 sustainability projects.

26 (5) Ten percent of the monies shall be appropriated to the Louisiana Early
27 Childhood Education Fund pursuant to R.S. 17:407.30 to be used solely for the
28 funding of early childhood education.

1 (6) Five percent of the monies shall be appropriated to Louisiana State
2 University and Agricultural and Mechanical College to be used by the university
3 solely for its endowment, maintenance and support, or for the purpose of paying
4 construction costs of buildings, the cost of equipment, furniture or fixtures, or for the
5 repair or remodeling of present buildings.

6 (7) Five percent of the monies shall be appropriated to Southern University
7 and Agricultural and Mechanical College to be used by the university solely for its
8 endowment, maintenance and support, or for the purpose of paying construction
9 costs of buildings, the cost of equipment, furniture or fixtures, or for the repair or
10 remodeling of present buildings.

11 (8) Five percent of the monies shall be appropriated and used solely for the
12 funding of higher education programs.

13 (9) Five percent of the monies shall be appropriated and used solely for the
14 purpose of providing funding for the administration and operation of Drug Abuse
15 Resistence Education programs.

16 B. After being disbursed as provided in this Section, the remaining avails
17 shall be deposited by the state treasurer into the state general fund.

18 Section 2. This Act shall become effective on January 1, 2022.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 568 Original

2021 Regular Session

Jordan

Abstract: Authorizes the levy of an excise tax on the wholesale sale of cannabis by a cannabis production facility to a cannabis-infused product manufacturing facility or a cannabis retailer.

Proposed law authorizes an excise tax upon the wholesale sale of cannabis by a cannabis production facility to a cannabis-infused product manufacturing facility or cannabis retailer at the rate of 15%.

Proposed law provides for definitions.

Proposed law authorizes the secretary of the Dept. of Revenue to collect, supervise, and enforce the collection of taxes, penalties, and interest related to the excise tax.

Proposed law establishes that the cannabis production facility is responsible for collecting the excise tax at the point of wholesale sale and remitting the collected taxes along with returns to the Dept. of Revenue in accordance with the law.

Proposed law establishes that the Dept. of Revenue may make rules and regulations in order to carry out the duties of proposed law.

Proposed law establishes taxes collected pursuant to proposed law are dedicated for the following uses:

- (1) 25% to elementary and secondary schools.
- (2) 15% to mental health.
- (3) 15% to state police.
- (4) 15% to transportation.
- (5) 10% to early childhood education.
- (6) 5% to La. State University.
- (7) 5% to Southern University.
- (8) 5% to drug and alcohol prevention.
- (9) 5% to higher education programs.

Effective Jan. 1, 2022.

(Adds R.S. 47:1699.1-1699.7)