

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2016 Regular Session**

Part I: Measure Information

Bill Request #: 1274

Bill #: SB 263

Bill Subject/Title: AN ACT relating to medical cannabis

Sponsor: Senator Perry Clark

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local
Government

Office(s) Impacted: Local law enforcement, local jails

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

The purpose of SB 263 is to establish a comprehensive system for state regulation of the cultivation, sale, and use of marijuana for medical purposes in Kentucky. The bill would allow “cultivators,” “compassion centers,” “qualifying patients,” “visiting qualifying patients,” “designated caregivers,” and “safety compliance facilities” to participate in the system without threat of civil or criminal consequence. The legislation would provide a “medical purpose” defense to prosecution for an offense involving marijuana where the marijuana is intended for the patient’s medical use. Section 33 of the bill would establish a Department of Alcoholic Beverage and Cannabis Control; Section 34 would create a Division of Cannabis within the Department to administer laws regarding cultivation, processing, testing, and sale of cannabis and cannabis products. Section 22 of SB 263 would allow local governments to enact ordinances regulating the time, place, and manner of compassion center or cultivator operations and safety compliance facilities, but could not prohibit their operation. Section 11 of the bill would establish the Medical Cannabis Administration fund to be administered by the Department of Alcoholic Beverage and Cannabis Control, consisting of money received from several sources, including application, license, registration and other fees imposed by the bill. The bill would prohibit possessing or engaging in the medical use of marijuana in any correctional facility.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of SB 263 on local governments is indeterminable.

According to the Administrative Office of the Courts, in calendar year 2015 there were 10,942 convictions in Kentucky for possession of marijuana under 8 oz., first offense and related offenses. It is not known how many of the persons arrested, convicted, and incarcerated for possession and other marijuana-related charges would have been entitled to a medical marijuana defense under SB 263, but that number would represent savings to local governments for costs of their incarceration. The ultimate savings to local government resulting from a reduction in prosecutions cannot be quantified, though each additional inmate increases local jails costs by an estimated average of \$31.92 per day. The legislation could also result in savings to local law enforcement because it would prohibit state and local law enforcement from expending funds for enforcement of the Federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.).

SB 263 would create a new misdemeanor punishable by up to 180 days in jail and a \$1,000 fine for a breach of confidentiality of information obtained pursuant to the provisions of the bill. Local governments are responsible for the cost of incarcerating those convicted or who don't make bail when charged with a Class B or Class A misdemeanor. A person convicted of a Class B misdemeanor or a Class A misdemeanor can be incarcerated respectively for up to 90 days or one year in one of Kentucky's 78 jails. While the expense of housing inmates may vary widely by jail, as stated above, each additional inmate will increase local jails costs by an estimated average of \$31.92 per day.

While it is unknown how many individuals or entities would be authorized to cultivate, sell, or use medical marijuana under the provisions of the Act, given the comprehensive nature of the legislation, such activities would increase. The bill includes a requirement that qualifying persons or entities register and obtain a registry card allowing them to engage in activities that would be authorized under the act. There could be some costs and additional administrative burden to local law enforcement to verify registration validity of a person possessing a card. Local governments could incur additional costs if they elect to enact and enforce ordinances regulating the time, place, and manner of compassion center or cultivator operations and safety compliance facilities. It is currently unknown what, or if, additional costs might arise from the legal use of marijuana for medical purposes.

Possession and cultivation of marijuana other than in compliance with SB 263 would remain illegal.

Marijuana cultivation, sale, and possession are all illegal under the Federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.). However, the Obama Administration has taken various positions on enforcement. According to the National Conference of State Legislatures, in October of 2009 the Administration sent a memo to federal prosecutors

encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law. In 2011, the Drug Enforcement Administration stated that marijuana had no valid medical purpose. Furthermore, the DEA would continue to target “criminals engaged in the cultivation and trafficking of marijuana,” even in states that have approved the use of “medical” marijuana. (U.S. Department of Justice, Drug Enforcement Administration, *“The DEA Position on Marijuana,”* (2011) p.2). On August 29, 2013 the federal government revised its policy and issued a Memorandum titled “Guidance Regarding Marijuana Enforcement” (the “Cole Memo”) setting forth the federal government’s eight enforcement priorities, including preventing: distribution of marijuana to minors, the use of violence in furtherance of the cultivation and distribution of marijuana, and drugged driving. These priorities did not historically include prosecuting individuals for possession of small amounts of marijuana for personal use on private property. The Cole Memo encourages states that permit marijuana production, distribution, and possession to create effective regulatory and enforcement schemes to address public safety, public health, and other law enforcement interests. If a state’s efforts are insufficiently robust, the federal government may challenge the regulatory scheme itself in addition to increasing federal criminal prosecutions.

Data Source(s): Administrative Office of the Courts; Department of Corrections; National Conference of State Legislatures; U.S. Dept. of Justice; LRC staff, Kentucky Association of Counties

Preparer: Mary Stephens **Reviewer:** JWN **Date:** 3/18/16