

qualifying patient, practitioner, or person being in the presence of the medical use of cannabis shall be subject to arrest, prosecution, or denial of any right or privilege by a court or occupational or professional licensing board.

Section 3 would prohibit a state or local law enforcement officer expending state or local resources to conduct an investigation or arrest for activity the officer believes violates only the federal Controlled Substances Act, if the activity complies with HB 166.

The Federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.) stipulates that marijuana cultivation, sale, and possession are all illegal, though the enforcement of that Act in states that have legalized marijuana has been a bit unpredictable. The most recent communication on the subject from the U.S. Attorneys' Office is the January 4, 2018, Memorandum of Attorney General Jeff Sessions, rescinding the Obama Administration marijuana enforcement guidance. The January 2018 Memorandum commits to federal law enforcement in each state investigative and prosecutorial discretion in deciding enforcement priorities. The Memorandum references previous "well-established" principles governing prosecutorial discretion, established in 1980 and found in the U.S. Attorneys Manual. With regard to states that permit marijuana production, distribution, and possession, these states should 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 and enforcement scheme itself, in addition to increasing the number of federal criminal prosecutions.

Section 4 would prohibit: possessing or using medical cannabis on a school bus, on school grounds, in a correctional facility, or on federal property; would prohibit possessing medical cannabis while operating a motor vehicle, aircraft, motorboat, or personal watercraft; smoking medical cannabis in public; being in physical control of a motor vehicle, aircraft, or motorboat or personal watercraft while under the influence of medical cannabis; and using cannabis if one does not have a debilitating medical condition.

Section 5 would establish that an employer is not required to allow ingestion of medical cannabis in a workplace or to allow an employee to work under the influence of medical cannabis.

Section 7 would provide a "medical purpose" defense to prosecution for an offense involving medical use of marijuana.

Section 8 would establish a Cannabis Enforcement Program to be administered by the Kentucky Department for Alcohol Control ("the Department").

Section 10 would establish the requirement of a separate license to cultivate, process, produce, possess, test, transfer, or sell medical cannabis or products; would establish a license and renewal fee of \$5,000; **Section 11** would establish a license application form fee of \$100.

Section 15 would require that every qualifying patient, designated caregiver, visiting qualifying patient, medical cannabis business, its agent or employee have and carry a registry identification card; **Section 16** would establish registry identification card fees of \$20 - \$120 for varying classes of cardholders and \$300 for a medical cannabis business.

Section 17 would establish 3 tiers of medical cannabis businesses and a license fee for each tier comprised of a flat fee plus a percentage of gross receipts. Compassion centers and distributors would be required to pay a registration certificate fee of \$5,000, to be used by the Department to offset expenses of implementing and administering HB 166. Section 17 would establish criteria for scoring applications for a registry certificate and the Department would be encouraged to issue a registration certificate within each area development district (ADD). Section 17 would establish criteria for denial of a business registration certificate and prohibit most medical cannabis businesses within 1,000 feet of a day care, elementary school, or secondary school with case-by-case exceptions. All license fees, registration costs, and fines collected would go into the medical cannabis trust fund established in Section 31 of the Act.

Sections 18, 19, and 20 would set requirements and guidelines for compassion centers, compassion center agents, cultivators, and safety compliance facilities and its agents. These categories shall not be subject to prosecution, search except by the department pursuant to Section 24, seizure, or penalty in an manner, or be denied any right or privilege, solely for acting in accordance of this Act.

Section 21 would authorize suspension or revocation of a registration certificate for violation of HB 166.

Section 22 would prohibit a medical cannabis business, except a distributor transporting medical cannabis on a public roadway, locating in a city or county unless authorized by city or county legislative action, by vote of the citizens on a ballot measure, or by public question initiated by petition and submitted to the voters; would authorize local governments to enact ordinances regulating the time, place, and manner of cannabis business operations, but may not prohibit them. Section 22 would establish the duties of the county clerk regarding submission of the question of allowing cannabis activities within a jurisdiction to the voters or a petition to do the same.

A jurisdiction would incur costs associated with adding a medical cannabis question to the ballot on an election. According to Harp Enterprises, a vendor that provides electronic voting machines to 97 Kentucky counties, the costs would range from \$14 per precinct for larger counties such as Fayette, with 291 precincts (\$4,074) to \$46 per precinct for counties such as Franklin with 44 precincts (\$1,980).

Section 24 would establish siting, sales, and recordkeeping requirements for a medical cannabis business and compassion centers, violation of which would be punishable by a civil fine up to \$3,000.

Section 25 would deem information and records developed for the purposes of administering the Act confidential and exempt from the Open Records Act; disclosure of confidential records would constitute a misdemeanor punishable by a maximum 180 days in jail and a \$1,000 fine.

Section 27 would require the Department to establish a 19-member oversight committee.

Section 30 would impose on every cultivator, processor, and producer selling medical cannabis or products containing medical cannabis to a distributor an excise or “privilege” tax of 5% of the sales price; would impose a 10% excise tax on sales by a cultivator, processor and producer to a compassion center; and would impose an excise tax of 5% on sales by a distributor to a compassion center. It would require that 20% of the excise tax revenue would be deposited to the local medical cannabis trust fund established by **Section 32**, to be distributed equally among first class or home rule cities, counties or other localities in each ADD that permit at least 1 medical cannabis business to operate.

Section 31 would establish the medical cannabis trust fund, consisting of an 80% share of excise taxes imposed by Section 30, plus registration costs, license fees, and fines imposed under the Act and other sources; to be used to administer and enforce the Act.

Section 32 would establish the local medical cannabis trust fund, consisting of a portion of the excise taxes imposed under Section 30 and to be used for local enforcement of medical cannabis laws, local medical cannabis licensing, hiring of extra drug recognition experts, local evidence-based drug addiction rehabilitation projects or educational activities within local jails;

HB 166 would have a minimal positive fiscal impact on local governments. HB 166 would not be mandatory and does not impose any mandate on cities.

The bill provides for partial distribution of excise taxes collected on medical marijuana sales to local governments for purposes of local law enforcement. Section 31 (4) of the bill makes reference to local medical cannabis licensing but includes no explicit authorization for local governments to license or charge a licensing fee to medical cannabis operations. It is unknown the amount of revenue that would be generated to local governments from licensing such activities.

The impact on local jails may be the biggest fiscal impact of the bill. In addition to the new misdemeanor created by **Section 25** for breaching confidentiality of information and records developed for the purposes of administering the Act and punishable by a maximum 180 days in jail, according to the Administrative Office of the Courts (AOC), in CY 2017 there were 12,722 convictions in Kentucky circuit and district courts for marijuana-related charges at the Class D felony, Class A misdemeanor or Class B misdemeanor levels. The great majority of those were misdemeanor charges. It is not known how many of the persons arrested, convicted, and incarcerated for possession and other marijuana-related charges in 2017 would have been entitled to a medical marijuana defense under HB 166, 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. However, if the increase in legal cannabis in the state results in an increase in misdemeanor marijuana charges and convictions, costs for local jails could increase as they are responsible for costs of incarcerating misdemeanants. However, many first-time or low level marijuana offenders are and will no doubt continue to be fined rather than jailed, or sentenced to a diversion program or other incarceration alternative. The legislation could also result in savings to local governments from its prohibition on state and local law enforcement expending funds to enforce the Federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.). There could be some costs and additional administrative burden to local law enforcement to verify registration validity of a person possessing a card.

For those incarcerated though, a person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II pertains to the bill as introduced and there are no prior introduced versions of the bill.

Data Source(s): LRC staff; Kentucky League of Cities; Harp Enterprises; Kentucky Department of Corrections

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