

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2018 Regular Session**

Part I: Measure Information

Bill Request #: 1392

Bill #: SB 118

Document ID #: 3250

Bill Subject/Title: AN ACT relating to medical cannabis.

Sponsor: Senator Stephen West

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

Office(s) Impacted: law enforcement, jails

Requirement: Mandatory Optional

Effect on
Powers & Duties: Modifies Existing Adds New Eliminates Existing

**Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local
Government**

SB 118 would create new sections of KRS Chapter 218A to establish a comprehensive system for state regulation of the cultivation, sale, distribution and use of marijuana for medical purposes by persons with a debilitating medical condition. The legislation would authorize various activities related to medical cannabis without threat of civil or criminal penalty or other sanction.

Possessing, trafficking or cultivating marijuana in violation of KRS Chapter 218A would remain a crime subject to penalties in accordance with KRS 218A.1421 – 218A.1423.

Section 1 of the bill would establish definitions for the Act. Section 1 would also define “medical cannabis” and what “medical cannabis” does not include, specifically, industrial hemp and industrial hemp products.

Section 2 of the bill would establish a presumption of authorized medical use of cannabis if a qualifying patient has a registry identification card or the equivalent, and possesses no

more than a 90 day supply of medical cannabis at their residence, a 10 day supply on their person, 12 mature plants and 12 seedlings. A qualifying patient, designated caregiver, visiting 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 2 would also stipulate that KRS sections 138.870 to 138.889, regarding taxation of marijuana and controlled substances, would not apply to use or possession of marijuana in compliance with SB 118.

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 SB 118; and would prohibit any state or local resources expended to provide information or logistical support related to such activity to a federal law enforcement authority or prosecuting entity.

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; 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; no school or landlord may penalize, and neither custody nor visitation rights may be denied, because a person is a qualifying patient or designated caregiver or otherwise in compliance with SB 118.

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

Section 8 would establish the Department for Medical Cannabis Administration in the Public Protection Cabinet to administer the Act (“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; establish a license and renewal fee of \$5,000; **Section 11** would establish a license application fee of \$100.

Section 15 would require that every qualifying patient, designated caregiver, visiting qualifying patient, medical cannabis business, its agent or employee have a registry identification card, and establish a provisional licensure system; **Section 16** would establish registry identification card fees of \$20 - \$120 for an individual and \$300 for a medical cannabis business, subject to lowering by the Department.

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; require compassion centers and distributors to pay a registration certificate fee of \$5,000, to be used by the Department to offset expenses of implementing and administering SB 118; establish criteria for scoring applications for a registry certificate; encourage the Department to issue a registration certificate within each area development district (ADD); establish criteria for denial of a business registration certificate; prohibit most medical cannabis businesses within 1,000 feet of a day care, elementary school or secondary school with case-by-case exceptions; and direct license fees, registration costs and fines collected to the medical cannabis trust fund established in Section 30 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 establish proceedings for the Department regarding investigation of complaints, require notice and opportunity for hearing, and authorize suspension or revocation of a registration certificate for violation of SB 118.

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; authorize local governments to enact ordinances regulating the time, place, and manner of cannabis business operations, but not prohibit them; establish that, where a city approves medical cannabis businesses but the county government does not, the business may operate within city limits and the county may assess a reasonable fee to compensate for any additional corrections impact caused by the medical cannabis business; where both the city and county approve, fees would be shared proportionally between the city and county governments; 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, 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 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 29 would establish that, if the Department fails to promulgate administrative regulations to implement SB 118, a citizen may initiate an action in Franklin Circuit Court to compel the Department to do so.

Section 30 would: establish the medical cannabis trust fund, comprised of funds collected from registration fees, license fees, and fines imposed under the Act; distribute 5% of trust fund money to compassion centers for indigent qualifying patients enrolled in Medicaid, receiving SSI or Social Security disability, or who are veterans.

Section 31 would amend KRS 218A.1421, penalties for trafficking in marijuana, to exempt activities in compliance with SB 118. **Section 32** would amend KRS 218A.1422, penalties for possession of marijuana, to exempt activities in compliance with SB 118. **Section 33** would amend KRS 218A.1423, penalties for marijuana cultivation, to exempt activities in compliance with SB 118.

SB 118 would have a minimal positive fiscal impact on local governments. SB 118 would not be mandatory and does not impose any mandate on cities.

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/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 SB 118, but that number would represent savings to local governments for costs of law enforcement and 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; Department of Corrections; Administrative Office of the Courts; Harp Enterprises

Preparer: Mary Stephens **Reviewer:** KHC **Date:** 2/28/18