



violates only the federal Controlled Substances Act, if the activity complies with HB 136 HCS 1.

**Section 8** would prohibit consuming or possessing medicinal marijuana while operating a motor vehicle or possessing medical marijuana, with exceptions, on a school bus, on school grounds, in a correctional facility, or on federal property and would prohibit smoking marijuana in public. The Act would not supersede existing law regarding driving under the influence.

**Section 9** would establish that an employer is not required to allow the use, consumption, possession, sale or distribution of medicinal marijuana in the workplace or to allow employees to work under the influence, nor is an employer prohibited from restricting the use of medicinal marijuana by employees by contract or prohibited for establishing and enforcing a drug testing policy or drug-free workplace.

**Section 19** would establish terms for granting or denying a cannabis business license; Section 19 expresses a need to ensure adequate geographic distribution of cannabis businesses, depending on the number of cannabis business applications received.

**Section 26** would allow a local government to regulate the time, place, and manner of cannabis businesses, or to prohibit cannabis businesses within its territory, or to submit the question to voters at the next regular election. If a county prohibits cannabis businesses within its boundary a city within the boundary may approve a cannabis business within its boundary only. If a city does so, the county government may assess a reasonable fee to cover any additional corrections impact caused by the approved cannabis business. Where neither the city government nor county government prohibit cannabis businesses, fees payable shall be shared between the city and the county.

If a local jurisdiction legislative body prohibits cannabis business operations by ordinance, **Section 26** would authorize a public question initiated by petition to propose allowing a cannabis business in the affected territory. The county clerk is required to complete a certificate as to the petitions sufficiency. If it is sufficient, then the county clerk shall have prepared to place before the voters of the affected territory at the next regular election the question, which shall be “Are you in favor of the sale of medicinal marijuana at a dispensary and the operation of cannabis businesses in (affected territory)? Yes or No?”

**Section 27** would deem information/records developed for the purposes of administering the Act confidential and exempt from the Open Records Act; disclosure would be a misdemeanor punishable by up to 180 days in jail and a \$1,000 fine.

**Section 29** states the Act would not require a workers’ compensation carrier or employer self-funded workers’ compensation plan to reimburse for costs of medicinal marijuana.

**Section 31** would establish the state medicinal marijuana trust fund, consisting of payments for registration and licensing fees, fines, and penalties, and 80% of excise taxes collected.

No more than seventy percent (70%) of the money in the fund would apply to offset the cost of the medicinal marijuana program and enforcement activities required by the bill.

**Section 32** of the bill would establish the local medicinal marijuana trust fund, to which 20% of the excise tax collected in the immediately preceding fiscal quarter would be deposited, and which would be distributed to local governments that don't prohibit medicinal cannabis businesses within their jurisdiction.

Cities where at least one cannabis business operates would receive 75% of the excise tax revenue from cannabis businesses licensed to operate in the city and deposited to the local medicinal marijuana trust fund. If the surrounding county has prohibited cannabis businesses, then the city would receive 100% of the excise tax revenue collected within the city boundary and deposited to the local fund. Counties that allow medicinal cannabis businesses and in which at least one cannabis business is licensed would receive 100% of the excise tax revenue from all cannabis businesses inside the county but outside the city that is deposited to the local fund, plus 25% of excise tax revenue from cannabis businesses licensed in an incorporated municipality within the county that is deposited to the local medicinal marijuana trust fund. Trust fund money may be used for local enforcement of medical marijuana laws, local licensing, and other listed drug-related purposes.

**Section 33** would impose a 12% excise tax on the gross receipts of a cultivator or processor from the sale of medicinal marijuana to a dispensary, with 80% to be deposited to the state medicinal marijuana trust fund and 20% to the local medicinal marijuana trust fund.

**Section 35** would exclude gross receipts from the sale of medical marijuana from sales tax.

**Section 36** would exclude the use of medicinal marijuana pursuant to the Act from the definition of the term "marijuana."

**Sections 37, 38, and 39** would remove the penalties for trafficking, possession, and cultivation for individuals and businesses authorized to possess medical marijuana in accordance with and authorized by the Act.

**HB 136 HCS 1 would have an indeterminable fiscal impact on local governments.** The amount of revenue would depend on the number of qualified patients and the amount of medicinal marijuana purchased by them, and on the number of cannabis businesses, all of which are currently unknown in Kentucky. Revenue collections are also sensitive to changes in marijuana prices. Costs to local governments, including for monitoring and enforcement, are not known at this time.

The taxes imposed by the bill would also impact potential revenue from cannabis businesses. The 12% excise tax on gross receipts of cultivators and producers on sales to a dispensary imposed by HB 136 HCS 1 is higher than the next highest tax rate of 10% observed in a state with a medicinal marijuana program only and no recreational marijuana program. Since the 12% tax rate is not observed in any other state with only a medicinal marijuana program, staff are unable to determine the amount of cannabis activity likely to

occur upon implementation of HB 136 HCS 1. HB 136 HCS 1 would exempt medicinal marijuana from the state sales tax of 6%.

In addition, many local governments are authorized to impose an occupational license tax on local businesses. As of 2018 138 cities and 76 counties in Kentucky (not counting Louisville/Jefferson County Metro and Lexington/Fayette Urban-County Government) impose an occupational license tax. First class cities may impose a license fee up to 1.25% of net profits; there is no specific statutory maximum on the license fee a home rule city may levy. Counties may impose an occupational license fee of 1% to 1.25% of net profits, depending on population. Those local governments that are authorized to do so and impose an occupational license fee on the medicinal marijuana businesses located within their jurisdiction would see an indeterminable increase in revenue, so long as the combined state and local taxes didn't amount to a disincentive to undertaking a legal cannabis business.

HB 136 HCS 1 would have a **positive fiscal impact on local jails**. First, where a city allows cannabis businesses but the county where it is situated prohibits such businesses, the bill would allow the county to assess an additional reasonable fee to compensate for any additional corrections impact caused by the city's approval of cannabis businesses. In addition, the bill could result in fewer marijuana prosecutions and incarcerations. 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, the great majority of those being Class A or B 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 136 HCS 1, 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. If the increase in legal cannabis in the state resulted in an increase in illegal use and corresponding misdemeanor 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 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.

HB 136 HCS 1 would create a new misdemeanor for breaching confidentiality of information/records developed for the purposes of administering the Act and punishable by a maximum 180 days in jail; however, it is not anticipated that this provision of the Act would result in many prosecutions resulting in jail time.

Those misdemeanants incarcerated 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.

Marijuana cultivation, sale, and possession are all illegal under the Federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.), and the total fiscal impact on local government revenues, expenditures and costs is indeterminate due to significant uncertainties related to federal enforcement of that Act related to marijuana.

The most recent communication on the subject of federal enforcement of federal marijuana laws 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. States that permit marijuana production, distribution, and possession 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.

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).

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

Relative to the fiscal impact on local governments, HB 136 HCS 1 differs from the original bill as follows:

The original bill would impose a 10% excise tax on the sale of medicinal marijuana at 3 different points, and would subject consumer sales to the state sales tax. HCS 1 would impose a 12% excise tax on gross receipts once, from the sale of medicinal marijuana by a cultivator or processor to a dispensary. The substitute would exempt retail sales and gross receipts from the sale of medicinal marijuana subject to the excise tax under Section 33 of the Act from state sales and use tax.

The original bill would require the Department of Alcoholic Beverages and Cannabis Control to attempt to effect memoranda of understanding with local law enforcement to conduct program inspections and investigations, etc. HCS 1 contains no such provision.

The original bill would assess an additional fee of \$20 to obtain a registry card and would send that amount to the sheriff's department for the county where the patient or designated caregiver lives. HCS 1 contains no such provision.

The original bill would have authorized cardholder patients to grow a limited quantity of medical marijuana. HCS 1 contains no such provision.

The fiscal impact of HB 136 HCS 1 is unchanged from the bill as introduced, largely due to having little or no information on the number of qualifying patients there would be in Kentucky, or on the level of business activity that would be generated by a medicinal marijuana program.

**Data Source(s):** Administrative Office of the Courts; LRC staff; Kentucky Department of Corrections

**Preparer:** Mary Stephens      **Reviewer:** KHC      **Date:** 3/11/19