

Section 7 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 136.

Section 8 would prohibit medical cannabis on a school bus, on school grounds, in a correctional facility, or on federal property; would prohibit possessing, controlling, or operating a car or other motorized vehicle under the influence of medical cannabis; smoking medical cannabis in public; and using cannabis if one does not have a debilitating medical condition.

Section 9 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 9 would establish that it shall be an unlawful practice for an employer to fail or refuse to hire, to discharge, or to discriminate against any individual who is a cardholder or otherwise permitted to use medical marijuana; to limit, segregate, or classify employees in any way which would deprive an individual of employment opportunities or affect the status of the employee who is a cardholder or otherwise permitted to use medical marijuana; to require as a condition of employment that any employee or applicant abstain from using medical marijuana outside the course of employment.

In addition to other fees, Section 10 would establish an additional fee of \$20 to obtain a registry identification card, to be forwarded to the sheriff's department for the county where the patient or designated caregiver lives, and would also provide to the sheriff's department a list of qualified patients and designated caregivers authorized to cultivate marijuana in the sheriff's jurisdiction.

Section 18 of the bill expresses a need to ensure adequate geographic distribution of cannabis businesses, depending on the number of cannabis business applications received.

Section 19 would allow a local government to regulate by ordinance the time, place, and manner of cannabis business operations, 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 government legislative body prohibits cannabis business operations through the passage of an ordinance, a public question that is initiated by petition and that proposes allowing a cannabis business to operate within the affected territory is authorized. 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 26 would deem information/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 31 would establish the state medicinal marijuana trust fund, consisting of payments from registration and licensing fees, fines, and penalties, and a portion of excise taxes imposed. Eighty-five per cent 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. Cities where at least one cannabis business is allowed would receive 75% of the excise tax revenue from all cannabis businesses licensed to operate within the city. If the surrounding county has prohibited cannabis businesses, then the city would receive 100% of the excise tax revenue collected within the city boundary. Trust fund money would be used for local enforcement of medical marijuana laws, local licensing, and other drug-related purposes.

Section 33 of the bill would impose a 10% excise tax on each sale of marijuana by a cultivator, processor, and dispensary for the privilege of conducting business; 20% of the excise tax revenue would be deposited to the local medicinal marijuana trust fund established within Section 32.

Sections 35, 36, and 37 removes the penalties of trafficking, possession, and cultivation for individuals and businesses authorized to possess medical marijuana in accordance and authorized by Sections 1 to 30 of the Act.

HB 136 would have an indeterminable fiscal impact on local governments. The total amount of revenue would depend on the amount of medicinal marijuana purchased by patients, the number of qualified patients, the number of qualified patients who cultivate marijuana at home, and the number of cannabis businesses, all of which are currently unknown in Kentucky. Revenue collections are also sensitive to changes in marijuana prices.

The state tax structure would also impact potential excise tax revenue from cannabis businesses. The tax structure proposed in HB 136 is higher than tax rates observed in states with a legal medical marijuana program. HB 136 imposes a 10% excise tax on the actual sale price of marijuana at each point of sale, which include sales from cultivators, processors, and dispensaries. Medicinal marijuana would also be subject to the state sales tax of 6% under HB 136. The highest tax rate observed in any other state with only a medicinal marijuana program and no recreational marijuana program is a 10% excise tax on the wholesale price of marijuana in West Virginia. Since this tax rate is not observed in any other state with only a medicinal marijuana program, staff are unable to determine if cannabis activity will occur upon implementation of HB 136.

Many local governments are also authorized to impose an occupational license tax on local businesses. As of 2018, 138 cities and 76 counties in Kentucky impose an occupational license tax (exclusive of Louisville/Jefferson Count Metro and Lexington/Fayette Urban-

County Government). 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 would have a **positive fiscal impact on local jails**. 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 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 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. 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 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

Part II, above, relates to HB 136 as introduced. There is no prior introduced bill to compare in Part III.

Data Source(s): Administrative Office of the Courts; LRC staff

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