

medicinal cannabis; the list shall include, at a minimum, chronic pain, epilepsy, multiple sclerosis, and vomiting [Section 28].

Section 5 would establish a presumption of authorized use of cannabis if a cardholder possesses no more than “an uninterrupted 10 day supply” (on their person) or is transporting “an uninterrupted 30 day supply” from a dispensary to his or her residence and contained in a sealed package that requires a two-step process for initial opening.

Section 6 would prohibit consuming cannabis by smoking; would prohibit possessing, using, or being under the influence of medicinal cannabis while operating a motor vehicle, while on a school bus or school grounds, in a correctional facility, or on federal property.

Section 10 would require a cardholder or registered designated caregiver complete an initial and then annual consultation with a pharmacist licensed/authorized in Kentucky, a fee for such consultation, and a fee for collaborative agreements between a dispensary and a pharmacist.

Section 12 would establish an exemption to the registry identification card fee for a designated caregiver who is a parent or legal guardian of a qualified patient.

Section 16 would establish tiered licensing for medicinal cannabis cultivators based on acreage, with licensing fees ranging from \$5,000 for Tier 1 to \$50,000 for Tier IV; license fees for other medicinal cannabis businesses would be as follows:

Cannabis dispensary – initial license fee \$10,000

Cannabis processor – initial license fee \$20,000

Cannabis safety compliance facility – initial license fee \$2,500

Section 18 would establish that the DPH is not required to issue more cannabis business licenses than market pressures dictate; no later than 1 year after the effective date of the bill, if enough license applications have been submitted, the DPH would be required to issue at least 15 cultivator licenses, 25 dispensary licenses, 5 processor licenses, 3 cannabis producer licenses, and to issue a cannabis business license for at least 1 cannabis dispensary in each area development district (ADD).

Section 19 would prohibit advertising the sale of medicinal cannabis except for location signage and business directories.

Section 22 would prohibit selling medicinal cannabis for consumption by vaporizing to anyone under age 21; would prohibit selling medicinal cannabis to a minor, and prohibit selling more medicinal cannabis to a cardholder than they are authorized to purchase.

Section 26 would authorize a local government by ordinance to prohibit, or to regulate the time, place, and manner of, cannabis businesses in its jurisdiction, or to submit to voters the question whether cannabis businesses should be allowed. If a county prohibits all cannabis businesses, a city within the county may approve them within the city by ordinance or by vote of the citizens; **a county prohibiting cannabis businesses may assess**

a fee to compensate for corrections impact caused by approval of cannabis businesses by a city within the county. **Section 26** establishes the duties of the county clerk regarding submission of the question to voters.

Section 27 would establish that information developed pursuant to the Act is confidential; disclosure would be a misdemeanor punishable by up to 180 days in jail and a \$1,000 fine.

Section 28 would require the DPH to establish an electronic system for monitoring the medicinal cannabis program; law enforcement personnel would have access to medicinal cannabis sales data for purposes of enforcement.

Section 32 would establish the *local* medicinal cannabis trust, funded by a portion of excise taxes imposed under Section 33. The revenue collected from the excise tax on gross receipts from sale of medicinal cannabis to a dispensary, and deposited to the local medicinal cannabis trust fund, would be distributed to cities and counties. One half would be distributed to cities and counties with at least one licensed cultivator, processor, or producer of medicinal cannabis, and one-half to cities and counties with at least one licensed dispensary. The percentage distributed to each would depend on whether the surrounding jurisdiction allowed or prohibited cannabis businesses.

Section 33 would impose an excise tax of 12% of the actual price for which a cultivator, processor, or producer sells medicinal cannabis to a dispensary in this state; **20% of the excise tax revenue would be deposited to the local medicinal cannabis trust fund** and distributed as established by Section 32.

Sections 36-39 would amend KRS Chapter 218A to exclude medicinal cannabis from the definition of marijuana for the purpose of Kentucky criminal statutes, and to exempt the cultivating, processing, dispensing, and use of medicinal cannabis in compliance with HB 136 GA from application of that chapter.

Section 41 would amend KRS 216B.402 to establish that, when a person is admitted to a hospital emergency facility for a drug overdose the person shall be informed of available local substance use disorder treatment services; if a qualified patient is admitted to a hospital emergency facility for treatment of cannabinoid hyperemesis syndrome (repeated, severe vomiting) the hospital shall notify DPH within 48 hours.

HB 136 GA would have an unquantifiable but likely minimal positive fiscal impact on local governments.

The local medicinal cannabis trust fund would be a new potential revenue source for local jails and law enforcement. The amount of revenue is unquantifiable since the number of businesses that would seek licensure and the number of jurisdictions that would allow such businesses is unknown. It is also unknown how much revenue might be generated in counties that prohibit medicinal cannabis businesses and assess a fee to cover any increased law enforcement costs due to a city within the county allowing such businesses.

In local governments that allow cannabis businesses and impose an occupational license fee, the bill would increase revenue by increasing the number of taxable business units within the jurisdiction. As of August, 2019, 139 cities, 68 counties, Louisville/Jefferson County Metro Government and Lexington Fayette Urban-County Government impose such fees. A county may impose an occupational license fee of 1%-1.25% depending on the population. A first class city may impose a license fee of up to 1.25% on wages and net profits; home rule cities may levy franchise and license fees with no maximum rate specified. An occupational license fee paid by a medicinal cannabis business to a city would be credited against such a fee levied by the county, so that the business would only pay to the county the difference between the two fees.

The bill should reduce the number of arrests and prosecutions by local law enforcement for marijuana offenses and so reduce those costs to local governments. It should result in fewer persons incarcerated in local jails and so reduce local jail costs, which are a significant expense to local governments. According to the Administrative Office of the Courts (AOC), in CY 2018 there were 12,599 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 (9,507 cases) were for violation of KRS 218A.1422, possession of marijuana, classified as a Class B misdemeanor. Notwithstanding KRS 532.090 which fixes the maximum term of incarceration for a Class B misdemeanor at 90 days, the maximum term of incarceration for violation of KRS 218A.1422 is 45 days. While many first-time or low level offenders are fined or sentenced to a diversion program or other incarceration alternative rather than jailed, any reduction in misdemeanor convictions would represent a savings to local jails since they are responsible for costs of incarcerating misdemeanants who do serve time. It is not known how many of the persons arrested, convicted, and incarcerated for marijuana-related misdemeanors in 2018 would have been entitled to a medicinal marijuana defense under HB 136 GA, but that number would represent savings to local jails of approximately \$31.34 per day/per inmate (using the amount the Kentucky Department of Corrections (DOC) pays a local jail for housing felony defendants as a cost estimate). The ultimate savings to local government resulting from a reduction in prosecutions cannot be quantified.

Those who committed a misdemeanor by violating the prohibition in Section 27 of HB 136 GA against disclosing information developed pursuant to the Act would likely be fined or sentenced to a diversion program rather than incarcerated; violators who are incarcerated, though, would cost local jails approximately \$31.34 dollars per day/per inmate.

The availability of legal medicinal cannabis could result in a reduction in felony marijuana convictions and incarcerations as well. Conversely, a reduction in felony convictions could represent a loss in revenue to local jails, since the DOC pays local jails a per diem and medical expenses of \$31.34 per day for each felon housed in a local jail. 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.

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 registration card; however, distributions from the local medicinal cannabis trust fund would defray at least some of those costs.

A jurisdiction would incur costs associated with adding a medicinal cannabis question to the ballot in an election. According to Harp Enterprises, a vendor that provides electronic voting machines to 96 Kentucky counties, there would be some additional programming cost to add a local option question to a ballot. For example, the cost to add a new category to the ballot for Lexington-Fayette Urban County Government, with 291 precincts, has recently been estimated at between \$3,500 and \$4,500, and for Franklin County, with 44 precincts, the cost has been estimated at between \$1,700 and \$2,500.

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.

States that permit medicinal cannabis cultivation, 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.

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

The fiscal impact of HB 136 GA on local governments is not changed from that of the house committee substitute. The GA version does not create any additional revenue for local governments nor impose any additional duties on them, with the exception of imposing a duty on hospitals to notify drug overdose patients of helpful services and reporting to DPH cases of cannabinoid hyperemesis syndrome. Neither of these duties would have a measureable fiscal impact on local hospitals.

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

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