

**COMMONWEALTH OF KENTUCKY FISCAL NOTE STATEMENT  
LEGISLATIVE RESEARCH COMMISSION  
2020 REGULAR SESSION**

**MEASURE**

2020 BR NUMBER 272

HOUSE BILL NUMBER 148

**TITLE** AN ACT relating to the regulation of cannabis and making an appropriation therefor.

**SPONSOR** Representative Cluster Howard

**FISCAL SUMMARY**

STATE FISCAL IMPACT:  YES  NO  UNCERTAIN

OTHER FISCAL STATEMENT(S) THAT MAY APPLY:  ACTUARIAL ANALYSIS  
 LOCAL MANDATE  CORRECTIONS IMPACT  HEALTH BENEFIT MANDATE

APPROPRIATION UNIT(S) IMPACTED: Alcohol Beverage Control, Department of Revenue, Department of Corrections, Kentucky Court of Justice, Kentucky State Police

FUND(S) IMPACTED:  GENERAL  ROAD  FEDERAL  RESTRICTED various

FISCAL ESTIMATES	2019-2020	2020-2021	2021-2022	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES			Indeterminable	Indeterminable
EXPENDITURES		Indeterminable	Indeterminable	Indeterminable
NET EFFECT		(Indeterminable)	(Indeterminable)	Indeterminable

( ) indicates a decrease/negative

**PURPOSE OF MEASURE:** The purpose of this measure is to allow cannabis to be grown, manufactured, produced, and sold in Kentucky to persons aged twenty-one years or older.

**FISCAL EXPLANATION:** A newly created Division of Cannabis under the Department of Alcoholic and Beverage Control (ABC) would promulgate administrative regulations, issue licenses and permits, and administer trafficking laws. For previously proposed medical marijuana legislation, ABC has estimated approximately \$2.5 million in implementation costs (IT/vehicles/equipment) and \$5.5 million in annual expenses (personnel/operating) based on a projected number of business licenses. Presumably, allowing recreational marijuana would generate a higher volume of permits and increase the eligible consumer pool, which could drive administrative and enforcement expenses up. However, this bill limits the number of retail licenses to one per every 2,300 persons residing in a county, but no county shall have fewer than two retail licenses available for issuance, and may keep the projected license amounts comparable to the medical estimates. Additionally, there may be a decrease in expenditures compared to medical considering fewer monitoring requirements and a potentially less complex IT system. Historically, no state has legalized recreational marijuana without first legalizing medical marijuana. Without precedence, the implementation and annual costs for ABC are indeterminable.

The Department of Revenue (DOR) is designated to collect the tax from cannabis and estimates the need of one to two additional staff for development and infrastructure of the new tax type within DOR's new electronic tax model. The projected cost is \$1 million.

The Department of Corrections would anticipate a decrease in incarceration rates from the passage of this bill, which would contribute to inmate cost savings. Additionally, any person who has been convicted of a marijuana-related misdemeanor may petition for expungement of his or her record. Initially, the Kentucky Court of Justice and the Kentucky State Police may anticipate a backlog of petitions, but should not require additional staff as the increased workload would be temporary.

There are five potential sources of revenue in BR 272. However, it has been observed that the design and implementation process for both medical and recreational cannabis programs has taken up to two or more years in other states. Revenue from business licensing and application fees is expected to be positive by fiscal year 2022, but the amount is indeterminable as staff are unable to estimate the number and types of businesses that will apply for a business license in the short-term. Wholesale tax revenues are not anticipated in either fiscal year 2021 or 2022 as time is needed to establish regulations, tracking systems, and cultivate the product. See the attached memo from the Office of Economic Analysis for additional information regarding revenues.

Due to the lack of comparable data and precedence, the unique geography and population of Kentucky, and the inability to accurately predict the implementation time frame, the overall fiscal impact of this measure is indeterminable at this time.

**DATA SOURCE(S): LRC Staff, Public Protection Cabinet-ABC, Department of Revenue, Kentucky State Police**  
**PREPARER: Sara Rome NOTE NUMBER: 18 REVIEW: JAB DATE: 12/13/2019**

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MEMORANDUM

To: Sara Rome  
Legislative Fiscal Analyst

From: Jonathan Roenker  
LRC Chief Economist

Katie Scott  
LRC Staff Economist

Subject: Potential Fiscal Impact of 20 RS BR 272

Date: December 11, 2019

This memo examines the potential fiscal impact of 20 Regular Session BR 272.

There are five potential sources of revenue under 20 RS BR 272, although one of the revenue sources is local revenue: (1) application, license, and renewal fees for recreational cannabis businesses, which include cultivators, processors, testing facilities, retailers, and home growers; (2) a 15 percent wholesale tax on sales of cannabis from cultivators to processors to be paid by the cultivator; (3) a 15 percent wholesale tax on sales of cannabis from processors to retailers to be paid by the processor; (4) sales tax on the final sale of recreational cannabis in retail establishments; and (5) a 5 percent of gross revenue licensing fee that cities, counties, urban-county governments, charter county governments or unified local governments can assess on any cultivator, processor, testing facility or retail cannabis location within its jurisdiction. The design and implementation of the recreational cannabis program proposed in 20 RS BR 272 affects the timing of revenue collection from these sources. The bill will require Kentucky to create new processes to implement and monitor the proposed recreational cannabis program. This includes all of the regulatory structure to needed to oversee a recreational cannabis program in the state.

Staff have observed that the design and implementation process for both medical and recreational cannabis programs has taken up to two or more years in other states. For example, Colorado passed recreational cannabis in November of 2012 but did not see tax revenue collections until February of 2014. Colorado was also a state that had a long history with medical cannabis and presumably had significant regulatory infrastructure in place, yet the state did not see significant revenue collections until nearly 18 months after passage. Both Oregon and Washington state, like Colorado, also had medicinal cannabis programs in place before the passage of recreational cannabis likely accelerating the timeline for revenue collection in those states. In Washington, for example, ballot initiative I-502 was approved in November of 2012, but the first retail cannabis stores did not open in Washington until July of 2014. Kentucky has no experience with either recreational or medical cannabis.

West Virginia adopted medical cannabis in 2017 but experienced a delay in securing a banking solution for its program. As a result, business permit applications have not even been accepted at the time of this memo.<sup>1</sup> Assuming that business applications are accepted before the end of calendar year 2019, this marks nearly 32 months since medical cannabis was passed in West Virginia. Arkansas adopted medical cannabis in 2016 but did not have an operational dispensary until May of 2019. Michigan adopted medical cannabis in 2008 but did not agree on a tax structure until 2016. It is expected that Kentucky would follow a similar trajectory in terms of program development and implementation when adopting recreational cannabis since there is no existing medicinal cannabis infrastructure in place.

Staff expect the four sources of potential revenue to be collected at different points in time. The first phase of revenue is expected from business licensing and application fees. Staff expect the revenue from business licensing and application fees to be positive by fiscal year 2022. RS 20 BR 272 establishes a tiered system of business licensing fees based the size and type (indoor versus outdoor) of cultivator in addition to licenses for processors, testing facilities, retailers, and home growers. The amount of application and licensing fee revenue is indeterminable as staff are unable to estimate the number and types of businesses that will apply for a business license in the short-term, and it is not certain, given what staff observe in other states, that the regulatory structure will be in place in order to process cannabis business licenses in the upcoming biennium.

Staff estimate that the state will receive no revenue in fiscal years 2021 and 2022 from the wholesale tax on cultivators and processors or the sales tax on the retail sale of recreational cannabis. Revenue from these three taxes can only be collected after the proposed recreational cannabis program is fully operational. This happens after the Department of Alcoholic Beverage Control has promulgated all regulations, established all tracking systems, and recreational cannabis business licenses have been approved. In addition, with cannabis being an agricultural product, there will be a lag between the regulatory structure being put into place and actual cannabis product being grown, processed, tested and making its way into the retail stream.

Please contact me at ext. 798 with questions or if I can be of further assistance.

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<sup>1</sup> As of the date of this memo, the Office of Medical Cannabis in West Virginia indicates that applications for medical cannabis businesses can be accepted by the office starting December 19, 2019.