

Section 3 would establish the Division of Medicinal Cannabis in the Department for Public Health; the Department for Public Health (Department) would be responsible for the medicinal cannabis program. A Board of Physicians and Advisors would, among other duties, recommend to the Department qualifying medical conditions for which a medicinal cannabis practitioner may certify cannabis use by a patient; would require the Department submit a comprehensive annual report to the LRC including, for example: the number of applications and renewals for qualified patients and designated caregivers, for cannabis business licenses, and for registry identification cards approved and denied, the effectiveness of licensed safety compliance facilities, the amount of medicinal cannabis sold per month and the total amount of revenue generated from cannabis business licensure and cardholder fees, etc.

Section 4, registered or visiting qualified patients or designated caregivers would not be subject to arrest, etc. if they have only the amount of medicinal cannabis allowed; a patient under 18 may not possess or acquire medicinal cannabis and must have a designated caregiver; would limit the amount that may be purchased by a patient or caregiver.

Section 5 would establish a rebuttable presumption of authorized use of cannabis if a qualified patient, visiting qualified patient, or designated caregiver has a registry identification card or the equivalent, and possesses no more than “an uninterrupted 30 day supply” (at their residence) or “an uninterrupted 10 day supply” (on their person) of medicinal cannabis.

Section 6 would prohibit consuming or being under the influence of marijuana by smoking, or while engaged in certain other activities, for example, while operating a motor vehicle, while on a school bus or school grounds, in a correctional facility, or on federal property.

Section 7 of the bill would establish that nothing in HB 135 GA would require that an employer allow medical cannabis-related activities in the workplace, or prohibit an employer terminating an employee for use or being under the influence of medicinal cannabis if the employer has a policy prohibiting the same; no person would be required to permit medicinal cannabis-related activities on property they own, occupy, or control; an employee fired for using, working while under the influence of, or testing positive for medicinal cannabis or a controlled substance would not be eligible for unemployment benefits if such activity is in violation of an employment contract or established personnel policy.

Section 8, each governing body of a public or charter school would be required to establish policies to permit a pupil who is a registered qualified patient to consume medicinal cannabis on school property, to be administered by a school nurse or appropriate school staff.

Sections 11 and 12 would establish a medicinal cannabis registry identification card program for patients, visiting patients, and designated caregivers, and card application and renewal fees of \$20- \$60.

Section 16, no person may operate a cannabis business in Kentucky without a cannabis business license issued by the Department; license fees would be tiered according to type of cannabis business (ex. cultivator, dispensary, etc.); fees collected would be deposited to the medicinal cannabis trust fund established in Section 31 and distributed to identified state agencies; 13.75% of money in the fund would be distributed to dispensaries for indigent registered qualified patients enrolled in Medicaid, receiving Supplemental Security Income or Social Security disability insurance, or to veterans; initial license fees would range from \$5,000 to \$75,000.

Section 19 would prohibit a cannabis business license issued within 1,000 feet of an elementary or secondary school or a daycare center.

Section 26, a local government may by ordinance prohibit cannabis businesses or may regulate the time, place, and manner of, cannabis businesses in its jurisdiction; a local government may submit to voters the question whether cannabis businesses should be allowed; a local government may assess a fee on cannabis businesses within its jurisdiction to compensate the local government for additional public safety impact from such businesses; 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; where both a city and the county in which it is located have assessed a fee on cannabis businesses, the cannabis business would be allowed to credit a fee paid the city against fees owed the county; **Section 26** establishes the duties of the county clerk regarding submission of the question to voters.

Section 27, information developed pursuant to the Act is confidential and not subject to disclosure as an open record; unauthorized disclosure is a Class B misdemeanor.

Section 29, no insurance program or carrier providing worker's compensation benefits is required to reimburse a person for costs associated with the use of medicinal cannabis.

Section 30, the provisions of KRS 138.870-138.889, titled "Marijuana and Controlled Substances" do not apply to medicinal cannabis use or possession that complies with HB 136 SCS 1.

Section 31 would establish the medicinal cannabis trust fund administered by the state, the proceeds of which would be distributed to various identified state agencies, including 60% to the Department for Public Health

Section 32 would establish the *local* medicinal cannabis trust fund, funded by a portion of excise taxes imposed under Section 33 and distributed to local governments where at least one cannabis business licensed as a cultivator, dispensary, processor, or producer is permitted, and distributed as follows:

The money would be divided into two equal parts and distributed as follows:

1. One-half to cities and counties where at least one cannabis cultivator, processor, or producer operated:
 - a. the city would get an amount equal to 7.5% of the total excise tax revenue collected from all cannabis businesses licensed inside the city territory during the calendar quarter immediately preceding the most recent calendar quarter; or
 - b. if the county where the city sits prohibits cannabis businesses, the city shall receive 10% of such excise tax revenue collected.
 - c. a county that has not prohibited cannabis businesses and where at least one cannabis cultivator, processor, or producer operated during the calendar quarter immediately preceding the most recent calendar quarter shall receive:
 - i. 10 percent (10%) of the total excise tax revenue collected from all cannabis businesses within the county, but outside any city in that county, during the calendar quarter immediately preceding the most recent calendar quarter; and
 - ii. Two and one-half percent (2.5%) of the total excise tax revenue collected from all cannabis businesses inside the territory of an incorporated municipality inside the county during the calendar quarter immediately preceding the most recent calendar quarter.

2. One-half of the money deposited to the local medicinal cannabis trust fund would be distributed to cities and counties where at least one licensed cannabis **dispensary** operated, as follows:
 - a. A city with at least one licensed cannabis dispensary would receive 75% of the city's proportionate share of gross receipts from retail sales of medicinal cannabis products by all licensed dispensaries in the state during the calendar quarter immediately preceding the most recent calendar quarter; or
 - b. If the county where the city sits has prohibited cannabis businesses the city shall receive 100% of such funds,
 - c. A county that has not prohibited cannabis businesses and in which at least one licensed dispensary operated shall receive:
 - i. 100% of the county's proportionate share of gross receipts from retail sales of medicinal cannabis products by licensed dispensaries within the county, but outside any city in that county, divided by the total statewide retail sales of medicinal cannabis products by all licensed dispensaries in the state; and
 - ii. Twenty-five percent (25%) of the proportionate share of gross receipts derived from the retail sales of medicinal cannabis products by licensed dispensaries within all cities in the county, divided by the total statewide retail sales of medicinal cannabis products by all licensed dispensaries in the state.

Money in the local medicinal cannabis trust fund may be used for local enforcement of medicinal cannabis laws, local medicinal cannabis licensing, drug recognition experts

(DRE), advanced roadside impaired driving enforcement (ARIDE) training, local drug addiction rehabilitation projects, or educational activities within local jails.

Section 33 would, effective January 1, 2023, impose an excise tax of 12% on the gross receipts of a medicinal cannabis cultivator, producer or processor from the sale of medicinal cannabis to a dispensary located in Kentucky; **20% of the excise tax revenue would be deposited to the local medicinal cannabis trust fund** established by Section 32; corporate officers with the authority to account for or pay the tax would be personally and individually liable for taxes imposed by Section 33.

Section 34 would amend KRS 139.470 to exclude gross receipts from sales of medicinal cannabis from the sales and use tax imposed in KRS Chapter 139.

Section 35 would exclude medicinal cannabis from the definition of marijuana for purposes of KRS 138.870-138.889 and from the definition of marijuana for purposes of criminal statutes in KRS Chapter 218A.

Sections 37-42 would amend various statutory provisions in KRS Chapter 218A to decriminalize medicinal marijuana-related activities allowed by HB 136 GA, and to state that any marijuana activities not in compliance with the act would remain unlawful.

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

The local medicinal marijuana 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. The Legislative Research Commission, Office of Economic Analysis estimates that, given the timeline for roll-out of a medical marijuana market, there would likely be no revenue realized to the trust fund from the excise tax imposed in Section 33 of the bill before FY 2023-24. HB 136 GA would authorize local governments to assess a fee on cannabis businesses in their jurisdiction to offset increased public safety costs. Local governments that impose these fees may realize indeterminable but minimal revenues from these fees by the end of FY 24.

In local governments that impose an occupational license fee the bill would increase revenue by increasing the number of taxable business units within the jurisdiction. As of September 2021, 137 cities, 70 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 marijuana business to a city would be credited against the 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 2021 there were 10,125 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 (7,582 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 has been set at 45 days. While many first-time or low level marijuana 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, though Kentucky jails report their actual cost to incarcerate is closer to an average of \$45 per day). The ultimate savings to local government resulting from a reduction in prosecutions cannot be quantified.

The bill does create one new Class B misdemeanor, disclosure of confidential information gathered in compliance with the Act. This provision should not result in a sufficient number of arrests or convictions, and therefore incarceration expenses, to impact local jails or law enforcement.

The availability of legal medicinal marijuana 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.

A jurisdiction would incur costs associated with adding a medicinal cannabis question to the ballot in an election. Based on information received in early 2020, Harp Enterprises, a vendor that provides electronic voting machines to almost 100 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 286 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.

If the local option election is held on a day other than a regular election day, the same types of costs would be incurred as those of a regular election. Precinct election workers would

be hired and trained, ballots would be printed, and voting machines would be set up and programmed. Final costs for a county vary greatly depending on the size and nature of the county, the nature of the election, and state cost reimbursement.

However, if the local option election is initiated by petition, and is held on a day other than a regular election day, the person or persons sponsoring the petition drive must reimburse the county for the costs of the local option election.

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 allow 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 not sufficiently 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

Part II applies to HB 136 GA. The adopted House Committee Substitute and adopted Floor Amendments 2, 5 and 10 make no change to the fiscal impact on local governments from the bill as introduced.

The House Committee Substitute makes the following changes to HB 136 as introduced:

1. At Section 1, p. 3 line 26 adds "physician assistant" to the definition of "Medical cannabis practitioner" who may be authorized to provide certifications for the use of medicinal cannabis;
2. Provides for "cannabis consultation agreements" between pharmacists and dispensaries;
3. At Section 2, p 9 at (4) provides that a state licensing board may intervene or take disciplinary action if there is probable cause to believe that a cardholder who is a licensed physician or related medical practitioner, or a nurse, has become impaired by or has abused medicinal cannabis;
4. Allows state licensing boards and the Board of Pharmacy to enforce regulations promulgated pursuant to the Act;
5. Revises the membership of the Board of Physicians and Advisors;
6. Revises language re: fees for authorization to certify use of medicinal cannabis, provide medicinal cannabis consultation services to cardholders, and to enter into cannabis consultation agreements.

HFA 2 makes the following change to HB 136 as amended by the House Committee Substitute:

Adds post-traumatic stress disorder to the list of approved medical conditions for which a practitioner may certify use of medicinal cannabis.

HFA 5 makes the following changes to HB 136 as amended by the House Committee Substitute:

1. Amends provisions related to immunity from civil lawsuit or criminal prosecution of members of the Kentucky Board of Pharmacy and pharmacists;
2. In Section 28, replaces “nausea and vomiting” with “chronic nausea and cyclical vomiting” on the list of approved medical conditions.

HFA 10 makes the following changes to HB 136 as amended by the House Committee Substitute:

Section 28 provides that a regulation promulgated pursuant to HB 136 GA, Section 28 (1)(c)1, which requires the Department to promulgate a regulation containing a list of medical conditions for which a practitioner may certify use of medicinal cannabis, shall not take effect until April 16 of the following year. The regulation shall not take effect at all if, before April 16 of the following year after its promulgation, the General Assembly has prohibited inclusion of that disease or condition on the list.

Data Source(s): Administrative Office of the Courts, Department of Corrections, LRC staff.

Preparer: Mary Stephens (wfb) **Reviewer:** KHC **Date:** 3/23/22