

Section 3 would charge the Department of Alcoholic Beverage and Cannabis Control with implementation, operation, oversight, and regulation of the medicinal cannabis program.

Section 4 would establish that a registered or visiting qualified patient or designated caregiver would not be subject to arrest, prosecution, denial of a right or privilege, or civil penalty or disciplinary action, etc. if they have only the amount of medicinal cannabis allowed; a registered qualified patient under 18 may not possess or acquire medicinal cannabis and must have a parent or legal guardian as designated caregiver; would limit the amount that may be purchased by a patient or caregiver.

Section 5 would prohibit a law enforcement officer employed by an agency that receives state or local government funds expending any state or local resources, including the officer's time, to arrest or seize medicinal cannabis, or conduct any investigation, solely on the basis of activity the officer believes constitutes a violation of the federal Controlled Substances Act, 21 U.S.C. sec. 801 et seq, if the officer believes such activity is in compliance with HB 107.

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 that is or may be used to transport people or property, while on a school bus or school grounds, in a correctional facility, or on federal property; also prohibited would be unlicensed cultivation of cannabis, using marijuana if not a registered qualified patient or visiting qualified patient. A cardholder who is under the influence of or who consumes medicinal cannabis while operating or in physical control of a motor vehicle that is or may be used to transport persons or property will have his or her registry identification card revoked in addition to other penalties that may be imposed.

Section 7 of the bill would establish that nothing in HB 107 would require that an employer allow medical cannabis-related activities in the workplace, or prohibit an employer terminating an employee for using 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 would establish that status as a cardholder would not impact the right of a cardholder to child custody or visitation; would require each public or charter school to establish policies within 90 days of the effective date of HB 107 permitting 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; a school would be prohibited from refusing to enroll a student because they are a cardholder; a landlord would be prohibited from refusing to lease to a person solely because the person is a cardholder unless failing to do so would violate federal law and cause the landlord to lose a monetary

or licensing-related benefit; a landlord would be prohibited from including terms and conditions in a rental agreement prohibiting use of medicinal cannabis by a cardholder.

Section 15 would provide that a cardholder who sells, distributes, dispenses, or otherwise diverts medicinal cannabis to a person not entitled shall have his or her registry card revoked and be subject to other penalties, including criminal prosecution and tax penalty assessment in accordance with KRS 138.889.

Sections 22, 23, 24, and 25 would establish that a dispensary, dispensary agent, processor, processor agent, producer, producer agent, safety compliance facility, or safety compliance facility agent shall not be subject to prosecution under state or local law, to search or inspection except by the department pursuant to Section 20, to seizure or penalty in any manner, or be denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a court or business licensing board, for acting pursuant to Sections 1 to 30 and the department's administrative regulations.

Section 26 would establish that 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; if a local government prohibits cannabis operations a public question to allow cannabis operations may be initiated by petition; would establish the duties of the county clerk regarding submission of the question to voters; 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; if a city and the county in which it is located allow cannabis businesses the cannabis businesses located in both jurisdictions would be required to pay only the fee established by the city or the fee established by the county; the fee would be shared between both jurisdictions as negotiated between them.;

Section 27 information developed pursuant to the Act is confidential and not subject to disclosure as an open record; unauthorized disclosure would constitute a misdemeanor punishable by up to 180 days in jail and a \$1,000 fine for a knowing breach.

Section 28 would require the department establish and operate an electronic system for monitoring the medicinal cannabis program by January 1, 2024; among the functions of the electronic system would be enabling law enforcement to verify the validity of registry identification cards.

Section 29 would establish that HB 107 would not require a government medical assistance program, private health insurer, workers' compensation carrier or employer self-funded workers' compensation program or carrier providing worker's compensation benefits 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” would not apply to medicinal cannabis use or possession that complies with the Act.

Section 31 would establish the medicinal cannabis trust fund in the State Treasury; funds would consist of collected registration fees, licensing fees, fines, and penalties established by HB 107, and other money made available for purposes of the trust fund; money in the fund would be applied to operating the medicinal cannabis program established by the Act.

Section 33 would exclude gross receipts from sale of medicinal cannabis from sales and use taxes imposed by KRS 139.470.

Sections 34 and 36 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 37-40 would amend various statutory provisions in KRS Chapter 218A to legalize medicinal marijuana-related activities authorized by HB 107, and to state that any marijuana activities not in compliance with the Act would remain unlawful.

Sections 41 -52 would make conforming changes to relevant statutes.

Section 53 would amend KRS 241.015 to create the Department of Alcoholic Beverage and Cannabis Control, consisting of the Division of Medicinal Cannabis and the Division of Alcohol and Cannabis Enforcement.

Sections 54-70 would make conforming changes to relevant statutes.

Section 72 would identify specific sections of the Act to take effect July, 2024.

HB 107 would have an unquantifiable but likely minimal positive fiscal impact on local governments.

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, 71 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 its 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.

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. If a county prohibits cannabis businesses and a city within the county authorizes them within the city limits, the county may assess a reasonable fee

to compensate for corrections impact caused by approval of cannabis businesses by a city within the county.

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 2021 would have been entitled to a medicinal marijuana defense under HB 107, but that number would represent savings to local jails of approximately \$40.11 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). While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average cost to incarcerate of \$40.11 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 number of arrests or convictions, and therefore incarceration expenses, sufficient to impact local jails or law enforcement, though each such defendant would cost a local jail approximately \$40.11 for each day incarcerated, up to a maximum of 90 days for a Class B misdemeanor.

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 \$40.11 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. There would be some additional programming cost to add a local option question to a ballot.

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 (presently, the maximum allotted to counties by the State Board of Elections is \$255 per precinct).

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. More recently, *In Focus*, a publication of the Congressional Research Service (CRS), in its December 7, 2022 issue titled The Federal Status Of Marijuana and the Expanding Policy Gap with States, the CRS reports that the federal Controlled Substances Act definition of marijuana changed in 2018, resulting in the removal of hemp (cannabis containing no more than a 0.3% concentration of delta-9-tetrahydrocannabinol [delta-9- THC]—the psychoactive component) from the definition of marijuana. That publication also reports that in each fiscal year since FY 2015, Congress has included provisions in appropriations acts that prohibit the Department of Justice from using appropriated funds to prevent certain states, territories, and Washington, D.C. from “implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana” (for the most recent provision, see the Consolidated Appropriations Act, 2022, P.L. 117-103).

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

Part II applies to HB 107 as introduced. There is no prior version for comparison.

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

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