Local Government Mandate Statement
Kentucky Legislative Research Commission
2023 Regular Session

Part I: Measure Information

Bill Request #: **1003**

Bill #: SB 47 GA

Document ID #: 6530

Bill Subject/Title: AN ACT relating to medicinal cannabis.

Sponsor: Senator Stephen West

Unit of Government: **X** City **X** County **X** Urban-County **X** Charter County **X** Consolidated Local **X** Unified Local Government

Office(s) Impacted: Law Enforcement, county clerks, jails

Requirement: _____ Mandatory **X** Optional

Effect on
Powers & Duties: **X** Modifies Existing _____ Adds New _____ Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

SB 47 GA would establish a comprehensive system for state regulation of the cultivation, processing, sale, distribution, and use of marijuana and related activities for medicinal purposes. The bill would exclude medicinal marijuana from the definition of "marijuana" for purposes of Kentucky criminal law in KRS Chapter 218A. Marijuana activities in violation of the Act would remain a crime. Other provisions of SB 47 GA relevant to this local mandate analysis include:

Section 1 would establish definitions applicable to terms in the bill.

Section 2 would create a new section of KRS 218A to establish that activities relating to medicinal cannabis would be lawful if done in accordance with Sections 1 to 30 of the Act and any administrative regulations promulgated, and would not subject the actor to civil or criminal penalty.

Section 3 would charge the Cabinet for Health and Family Services 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, civil penalty or disciplinary action, etc. if they have only the amount of medicinal cannabis allowed.

Section 5 would establish that marijuana exceeding amounts allowed by the Act or unrelated to medicinal use would be subject to forfeiture.

Section 6 would prohibit consuming or being under the influence of marijuana by smoking, and establish that the odor of uncombusted raw plant material would not be evidence of use of cannabis by smoking. The Section also would prohibit consuming or being under the influence of medicinal cannabis while engaged in 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. The Act would not supersede or prevent the enforcement of laws pertaining to driving while intoxicated.

Section 7 would establish that nothing in the Act would require that an employer allow medicinal 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; nor prohibit an employer from determining impairment of an employee who is a cardholder; 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 10 would prohibit the purchase, possession, acquisition or use of medicinal cannabis without first obtaining a registry identification card and would establish eligibility requirements.

Section 14 would provide that a cardholder who sells, distributes, dispenses, or otherwise diverts medicinal cannabis to a person not entitled would have his or her registry card revoked and be subject to other penalties, including criminal prosecution.

Section 15 would require that the cabinet create a separate license for each type of cannabis business – cultivator, dispensary, processor, producer, and safety compliance facility.

Section 18 would prohibit a cannabis business employing, except as a volunteer, anyone convicted of a disqualifying felony offense or who is younger than 21 years; would require a licensed cannabis business implement security measures to prevent theft of medicinal cannabis and unauthorized entrance to areas containing medicinal cannabis; would prohibit a cannabis business located within 1,000 feet of an existing elementary or secondary

school, or a day-care center; would prohibit a cannabis business allowing a person under eighteen to enter or remain on the premises of the cannabis business.

Section 19 would establish the cabinet's authority to inspect cannabis businesses without a search warrant; would authorize the cabinet to suspend for up to 6 months or revoke a cannabis business license after notice and opportunity for hearing for multiple violations, or for a single serious violation of the Act or administrative regulations to be promulgated by the cabinet.

Sections 20 to 24 would make conforming changes to KRS Chapter 218A, Controlled substances.

Section 25 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; establishes the process for and 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 26 would require information developed pursuant to the Act be confidential and not subject to disclosure as an open record or for any purpose other than provided in Sections 1 to 30 of the Act; knowing, unauthorized disclosure by anyone, including an employee or official of the cabinet, another state agency, or local government would constitute a misdemeanor punishable by up to 180 days in jail.

Section 27 would require the cabinet to establish and operate an electronic system for monitoring the medicinal cannabis program by July 1, 2024; among the functions of the electronic system would be enabling law enforcement to verify the validity of registry identification cards, and cabinet and state licensing boards to monitor issuance of written certifications by medicinal cannabis practitioners.

Section 28 would establish that if the Kentucky Center for Cannabis determines that sufficient scientific data exist to demonstrate an individual diagnosed with a specific medical condition is likely to receive medical, therapeutic, or palliative benefits from medicinal cannabis, the center would be required to notify the Kentucky Board of Medical Licensure and the Kentucky Board of Nursing of its determination and the condition or disease would be considered a qualifying medical condition.

Section 29 would establish that the Act 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 would establish that KRS 138.870 to 138.889, Marijuana and Controlled Substances, would not apply to an amount of medicinal cannabis reasonably necessary for use of a license or registry identification card issued by the cabinet or any use that complies with Sections 1 to 30 of the Act or administrative regulations promulgated to implement the Act.

Section 31 would amend KRS 138.870 to exclude medicinal cannabis from the definition of "marijuana" and to make other changes in definitions applicable to KR 138.870 to 138.889.

Section 32 would amend KRS 139.480 to exempt medicinal cannabis from sales and use tax when sold, used, stored, or consumed in accordance with the Act.

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

Section 38 would amend KRS 218A.202 to require monitoring of medicinal cannabis by the electronic monitoring system currently established to monitor Schedules II, III, IV and V controlled substances (though "controlled substance" would not include medicinal cannabis); every practitioner authorized to certify use of medicinal cannabis and every licensed cannabis business would be required to register to use the electronic system; failure of a medicinal cannabis practitioner or dispenser to comply with reporting requirements would be a Class B misdemeanor for a first offense and a Class A misdemeanor for each subsequent offense; data contained in the electronic system would not be a public record; intentional disclosure of medicinal cannabis data contained in the electronic monitoring system would be a Class B misdemeanor for a first offense and a Class A misdemeanor for each subsequent offense.

Section 39 would amend KRS 218A.510 to exclude medicinal cannabis accessories from the definition of "drug paraphernalia."

Section 41 would amend KRS 342.815 to establish that the Kentucky Employers Mutual Insurance Authority (KEMI) is not required to provide coverage to an employer if doing so would subject the authority or its employees to a violation of federal or state law.

Section 42 would provide that Section 2, Sections 4 to 8, Section 10, Sections 12 to 14, Sections 17 to 24, Section 30, Section 32, and Sections 35 to 37 would take effect January 1, 2025.

SB 47 GA would have an unquantifiable but likely minimal positive fiscal impact on local governments.

In local governments that impose an occupational license fee the bill could increase revenue to those jurisdictions that allow medicinal cannabis businesses by increasing the number of taxable business units within the jurisdiction. As of June 2022, 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 law enforcement 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, 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 possession of marijuana 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 SB 47 GA, 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 of $40.11 per day. The ultimate savings to local government resulting from a reduction in prosecutions cannot be quantified.

The bill does create a new Class B misdemeanor, disclosure of confidential information gathered in compliance with the Act. This new misdemeanor 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.

Legalizing the cultivation, production, and selling of medicinal cannabis in compliance with the Act 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. In fact, Kentucky jails estimate their actual cost to incarcerate is closer to $45/day per inmate.

A jurisdiction would incur costs associated with adding a medicinal cannabis question to the ballot in an election. 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 the GA version of SB 47. The GA version adopts SFA 1 to SB 47 SCS 1 and SCS 1 to SB 47. The GA version does not change the fiscal impact of SB 47 as introduced.

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

Preparer: Mary Stephens (JB) **Reviewer:** KHC **Date:** 3/27/23