

**Local Government Mandate Statement  
Kentucky Legislative Research Commission  
2018 Regular Session**

**Part I: Measure Information**

**Bill Request #:** 906

**Bill #:** SB 80

**Document ID #:** 2266

**Bill Subject/Title:** AN ACT relating to the regulation of cannabis.

**Sponsor:** Senator Dan "Malano" Seum

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

**Office(s) Impacted:** Jailer, police department, county attorney

**Requirement:**  Mandatory  Optional

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

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

Sections 1 – 17 of SB 80 would establish a new KRS Chapter 245 as the Cannabis Control Act for regulation of the cultivation, distribution, sale, and use of marijuana in Kentucky. **The fiscal impact of SB 80 on local governments is indeterminable and likely to be both positive and negative.**

**Section 1** would establish definitions for the new KRS Chapter 245. The section defines cannabis, cannabis accessories, cannabis cultivation facility, cannabis establishment, cannabis product manufacturing facility, cannabis products, cannabis testing facility, consumer, locality, local regulatory authority, possession limit, public place, retail cannabis store, and unreasonably impracticable. "Possession limit" is further defined and would establish different limits for different forms of cannabis - 1 ounce in plant form, 5 grams in concentrated cannabis, and 5 cannabis plants.

**Section 2** would establish that possessing, consuming, growing, cultivating, using, processing, purchasing, or transporting cannabis in an amount not exceeding the possession

limits or otherwise in conformance with the Act would be lawful for persons 21 years and older.

**Sections 3, 4, 7, and 9** would establish violations and would establish penalties for those violations. **Section 3** would prohibit smoking cannabis in public, with a flame or heat source, punishable by up to a \$100 fine. **Section 4** would prohibit consuming cannabis while operating a motor vehicle and would establish fines and driver's license suspension for violations; that section would also establish that it does not supersede laws relating to driving while intoxicated nor prevent their enforcement. **Section 7** would establish that possession of cannabis in amounts under the possession limit by persons under age 21 is a violation subject to a maximum fine of \$100. **Section 9** would establish conditions for cultivating cannabis for personal use and a \$500 fine for their violation. **Section 8** would establish that a person under 21 years who knowingly and unlawfully cultivates up to 5 cannabis plants is guilty of a Class B misdemeanor.

**Section 5** would prohibit law enforcement officers expending resources on the sole basis of activities that the officer believes to constitute a violation of the federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.). **This prohibition and the general legalization of marijuana activities could represent a significant savings to local law enforcement.**

The Federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.) stipulates that marijuana cultivation, sale, and possession are all illegal, though the enforcement of that Act in states that have legalized marijuana has been a bit unpredictable. The most recent communication on the subject 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. The Memorandum references previous "well-established" principles governing prosecutorial discretion, established in 1980 and found in the U.S. Attorneys Manual. With regard to states that permit marijuana production, distribution, and possession, these states 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.

**Section 6** would prohibit individuals between ages 18 and 21 engaging in the following activities:

- Entering any cannabis establishment (some exceptions)
- Possessing or purchasing cannabis or cannabis product.
- Misrepresenting the individual's age
- Using false documentation to purchase or attempt to purchase cannabis or cannabis product.

Violation of these prohibitions would be either a status offense (if violator is under 18) or a Class B misdemeanor.

**Section 10** would establish the Department for Cannabis Enforcement in the Public Protection Cabinet.

**Section 11** would establish that separate licenses are required for cultivating, manufacturing, testing, and selling cannabis, and establish a \$5,000 initial and renewal license fee. **Section 12** would require submission of an application to operate a cannabis establishment along with a \$2,000 application fee; would establish which persons are not eligible for a license, and would establish a civil penalty of \$500 and \$1,000, respectively, for a licensee who violates Chapter 245 or administrative regulations promulgated pursuant to that Chapter, or who fails to keep and submit written records. **Section 13** would establish a priority for issuing licenses to persons who have resided in Kentucky for 3 years immediately preceding their application submission date. **Section 16** would establish that the licensing fees collected pursuant to Section 10 and administrative fees imposed by the Department of Cannabis Control pursuant to Section 11 of the Act are to be deposited to a revolving trust and agency account for the Department, and would establish that money in that account necessary to support regulation of cannabis would be used only for administration and enforcement of Chapter 245.

**Section 15** would authorize local governments to prohibit certain activities related to cannabis within their jurisdiction, on vote of their citizens. There are additional programming costs associated with adding a new category to a ballot. According to Harp Enterprises, a vendor that provides electronic voting machines to 97 Kentucky counties, the costs would range from \$14 per precinct for larger counties such as Fayette with 291 precincts (\$4,074) to \$45 per precinct for counties such as Franklin with 44 precincts (\$1,980).

Local governments would also be authorized to enact ordinances governing the time, place, manner, and number of cannabis operations within their jurisdiction, and may establish civil penalties for their violation. Local governments may designate a local regulatory authority to issue, suspend, and revoke a registration to operate a cannabis establishment within its jurisdiction, and may assess reasonable annual fees for such establishments.

**Section 17** of the Act would create the Kentucky Cannabis Regulation Fund as a restricted fund. That section would recommend that money in the Fund be distributed as follows:

- One percent to the Office of Drug Control Policy for grants to substance abuse treatment programs;
- One percent to the Department for Public Health for youth education about the health and safety risks of alcohol and cannabis;
- Three percent to the Kentucky Law Enforcement Council for Advanced Roadside Impaired Driving Enforcement and Drug Recognition Expert training; and
- Ninety-five percent to the general fund.

**Section 18** would create a new section of KRS Chapter 138 to impose an excise tax of varying amounts and adjusted by the Department of Cannabis Enforcement, on gross receipts derived from the sale or transfer of cannabis flowers and plants.

**Section 19** would create a new section of KRS Chapter 139 to require that all sales and excise tax receipts and all penalties resulting from the sale of cannabis, cannabis products, and immature cannabis plants be deposited to the Kentucky Cannabis Regulation Fund established in Section 17.

**Based on tax revenues reported by other states and local governments that have legalized marijuana, the fiscal impact on local governments would be significant.** The State of Colorado legalized recreational marijuana in 2014. From the Colorado Department of Revenue, the **table below** shows medical and retail marijuana tax and fee collection totals in Colorado by calendar year.

**Marijuana Taxes, License, and Fee Revenue**

<b>Calendar Year</b>	<b>Total Revenue</b>
2014	\$67,594,323
2015	\$130,411,173
2016	\$193,604,810
2017 (Jan-Dec)	\$247,368,473

Updated January 2018

Colorado collects 3 separate state taxes on marijuana products and activities which include the general state sales tax of 2.9% and a 10% special sales tax. Fifteen percent of the special sales tax is allocated to local governments, based on the percentage of marijuana sales revenue generated within the boundaries of the local government.

Colorado cities and counties also may legalize retail sales of marijuana. Aurora, Colorado expected to collect approximately \$8.1 million in sales taxes and fees on marijuana from October 2014 to the end of 2016. Wheat Ridge, Colorado, population approximately 31,000, realized approximately \$530,105 in sales taxes and fees associated with marijuana in 2015. The city of Denver collected \$29,000,000 in marijuana sales taxes and licensing fees in 2015.

The State of Washington, from July 2015 to June 2016, collected \$3,600,000 in local sales taxes on \$157,000,000 in retail sales.

States that have legalized marijuana typically impose higher taxes on marijuana sales and related activities. In a 2016 article titled, *Marijuana Legalization and Taxes: Lessons for Other States from Colorado and Washington* (Joseph Henchman and Morgan Scarboro, May 12, 2016), the Tax Foundation estimated the potential sales tax revenue that would be generated by legalized marijuana for each state. The authors calculated the potential revenue at 3 different sales tax rates, based on sales per capita observed in Colorado and Washington. For Kentucky, the authors estimated the sales tax revenue at a 15% sales tax rate to be \$73,000,000; at a 20% sales tax rate, \$97,000,000; and at a 25% sales tax rate, \$122,000,000.

Section 17 of the Act would recommend that 3% of sales and excise taxes collected on the sale of cannabis and cannabis products and held in the Kentucky cannabis regulation fund be distributed to the Kentucky Law Enforcement Council (KLEC) for training in and enforcement of advanced impaired driving and drug recognition. Raising Kentucky's sales tax to 15% on marijuana (states that have legalized marijuana, tax it at rates considerably above their general state sales tax rate) would generate \$73,000,000 in sales tax revenue as estimated by the authors, above, and at a distribution rate of 3%, would generate \$2,190,000 available for distribution to KLEC. This calculation is based on revenue from sales tax only. If the provision's recommendation were followed, additional funds would also be available for distribution to KLEC from excise tax receipts.

Sections 24-26 of the bill would amend KRS 218A.1421 - 218A.1423, which establish the crimes of trafficking, possession and cultivation of marijuana, to include as an element of each of those crimes an amount trafficked, possessed, or cultivated more than the lawful possession limit established in Section 1 of the bill. Sections 24-26 would exempt from application of those criminal statutes, licensed cannabis establishments and persons over 21 acting as an owner, employee, or agent of a licensed establishment. Cultivation of marijuana above the possession limit of 5 plants would be re-classified a Class A misdemeanor for a first offense and to a Class D felony for a second or subsequent offense.

According to the Administrative Office of the Courts (AOC), in CY 2017 there were 12,722 convictions in Kentucky circuit and district courts for marijuana-related charges at the Class D felony, Class A misdemeanor or Class B misdemeanor levels. Possessing, trafficking, or cultivating marijuana in violation of KRS Chapter 245 would remain a crime subject to penalties in accordance with KRS 218A.1421 – 218A.1423. Undoubtedly, there would be a decrease in marijuana-related criminal convictions. However, if a reduction in felony charges and convictions results in an increase in misdemeanor charges and convictions, costs for local jail could increase as they are responsible for costs of incarcerating misdemeanants. However, many first-time or low level marijuana offenders are now, and no doubt would continue to be, fined rather than jailed, or are sentenced to a diversion program or other incarceration alternative.

**For individuals convicted of a violation of this Act, or if a crime is re-classified from a felony to a misdemeanor or a mere violation, then the following paragraphs describe the potential positive or negative impact to local jails.**

A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. 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.

When a court denies bail to a Class C felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays local jails \$31.34 per day to house these Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

SB 80 does not make any amendments to statutes that prohibit driving while intoxicated. Driving while intoxicated by marijuana would continue to remain illegal. The Kentucky County Attorneys Association reports local county attorneys already expend a large percentage of resources on prosecution of drugged drivers for drugs not listed in KRS 189A.010(12), for which there is a presumption of impairment. Since legalization is likely to increase marijuana use, it is possible that SB 80 would result in an increase in drugged driving prosecutions. Prosecution of cases involving driving under the influence of drugs **not** listed in KRS 189A.010(12) – and marijuana is not included in that list – is often more resource intensive for local county attorneys.

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

Part II pertains to the bill as introduced and there are no prior introduced versions of the bill.

**Data Source(s):** Kentucky Department of Corrections; Kentucky County Attorneys' Association; Kentucky Administrative Office of the Courts; online sources; Harp Enterprises

**Preparer:** Mary Stephens      **Reviewer:** \_\_\_\_\_      **Date:** \_\_\_\_\_