

# Cannabis in Kentucky: Past, Present, and Future

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## 1. Kentucky's Historic Love-Hate Relationship with Cannabis

Kentucky's relationship with cannabis has swung from enthusiastic embrace to strict prohibition over the past two centuries. In the 1800s, the Commonwealth was **the hemp capital of the United States**. Early settlers planted hemp as early as 1775, and by the mid-19th century Kentucky was the nation's leading producer of hemp fiber . The **hemp boom** peaked in 1850, when Kentucky harvested around 40,000 tons of hemp worth \$5 million – about three-quarters of all hemp grown in America . Hemp was a major cash crop, used for rope, sailcloth, and bagging, and it thrived in the Bluegrass region's fertile soil.

Kentucky's hemp golden age waned in the late 1800s due to competition from imported fibers and the loss of enslaved labor after the Civil War . But global conflicts gave hemp brief comebacks. During **World War II**, the federal government launched the "Hemp for Victory" campaign, and Kentucky farmers answered the call by supplying the entire nation with hemp seed for the war effort . Still, these revivals were short-lived. After WWII, hemp demand crashed and production ceased by 1945 .

The **"love" turned to "hate"** in the 20th century as cannabis became entangled with anti-drug sentiment. The 1930s "Reefer Madness" campaign demonized marijuana (and hemp by association) as a dangerous drug . This culminated in the federal **Marihuana Tax Act of 1937**, which imposed burdensome taxes and effectively outlawed hemp cultivation . A few decades later, Congress passed the **Controlled Substances Act of 1970**, which **banned all forms of cannabis (including hemp)** by classifying it as a Schedule I controlled substance – the strictest category, reserved for drugs with high abuse potential and no accepted medical use . In one fell swoop, hemp went from proud Kentucky staple to illegal crop, lumped in with its psychoactive cousin, marijuana.

However, attitudes began **shifting back** at the turn of the 21st century. Cannabis advocates reminded Kentuckians of their hemp heritage and pushed for reforms . The state took baby steps: in 2013 the legislature passed Senate Bill 50 to create a framework for hemp farming if federal law allowed . The



breakthrough came with the federal Farm Bills – first in 2014, which permitted limited hemp research, and then in 2018, which **fully legalized hemp (cannabis under 0.3% THC) as an agricultural commodity nationwide** . Kentucky quickly rekindled its hemp industry under these new laws.

Social and political views on **marijuana prohibition also evolved**. For decades, Kentucky maintained some of the nation's strictest anti-cannabis laws, and public officials were often openly hostile to legalization. But public opinion softened in the 2010s as more states reformed their cannabis laws. By 2022, **around 90% of Kentucky adults supported legalizing medical marijuana** , reflecting a dramatic change in outlook. This growing popular support, combined with neighboring states legalizing cannabis, set the stage for Kentucky to reconsider its long-held prohibitionist stance. In short, Kentucky's history with cannabis has been a **roller coaster** – from leading producer, to zero-tolerance enforcer, and now inching back toward acceptance and legalization.

## 2. The Current State of Cannabis Laws in Kentucky

Despite some recent changes, Kentucky's cannabis laws remain among the more restrictive in the country. It's crucial to understand **what's legal, what's not, and what's coming** under current law:

- \* **Medical Marijuana:** In 2023, Kentucky finally legalized medical cannabis – but the program doesn't *fully* kick in until January 1, 2025 . Senate Bill 47 (2023) established a comprehensive medical marijuana program, making Kentucky the 38th state to approve medical use . However, as of mid-2024, *medical marijuana is not yet available* in-state. Until the program launches in 2025, possession of cannabis by patients is still generally illegal. To bridge this gap, Governor Andy Beshear issued **Executive Order 2022-798** to **pardon certain medical users** caught with cannabis. Under that order (effective Jan. 1, 2023), Kentuckians with any of 21 specified serious medical conditions (such as cancer, PTSD, epilepsy, chronic pain, etc.) can obtain cannabis legally in another state and possess up to 8 ounces in Kentucky without prosecution . They must keep proof of purchase from a legal state and a doctor's certification of their condition. This **conditional pardon** means qualifying patients won't be charged for possession of a personal-use amount . It's a stopgap measure until Kentucky's own medical dispensaries open.

Come 2025, the state medical cannabis program will impose its own rules. Qualifying patients (with a doctor's recommendation and state-issued ID card) will be able to buy cannabis from licensed Kentucky dispensaries . The law limits use to certain **qualifying conditions** defined by statute or added by the new Kentucky Center for Cannabis Research. These include cancer, severe chronic pain, epilepsy or seizures, multiple sclerosis or muscle spasticity, nausea, PTSD, and any other condition that the state cannabis center approves based on medical evidence . Patients under 18 will need a parent or caregiver to obtain and administer the cannabis . Importantly, **smokable forms of cannabis**



**are prohibited** – Kentucky’s law does *not* allow medical patients to light up a joint. Dispensaries can sell raw cannabis flower (capped at 35% THC) or concentrates (capped at 70% THC), but it cannot be sold in a form intended for smoking . Patients will likely be required to consume via edibles, oils, or vaporizers. Home cultivation is also not permitted for patients . There are possession limits: a patient may possess up to a 30-day supply at home and a 10-day supply on their person (the exact weight/amount to be defined by regulations). Out-of-state visitors with medical cards can purchase a 10-day supply from Kentucky dispensaries when open . These tight controls underscore that Kentucky’s program is cautiously designed. For now, **any cannabis use outside this medical framework remains illegal** .

\* **Recreational Cannabis:** Kentucky has **not legalized recreational (adult-use) marijuana** in any amount. Cannabis for non-medical purposes is still wholly illegal under state law. In fact, until the medical law takes effect, *all* marijuana possession is technically a crime (aside from hemp or the specific pardon scenario). **Simple possession** of marijuana (any amount up to <8 ounces) is a Class B misdemeanor, punishable by up to 45 days in jail and a \$250 fine for a first offense . (In practice, first-time offenders often receive a fine or diversion, but the possibility of jail is on the books.) Possession of **8 ounces or more** is treated as prima facie evidence of trafficking, a felony . Selling or distributing any amount is a crime – trafficking less than 8 ounces is a Class A misdemeanor (first offense) and higher amounts escalate to felonies . Kentucky does **not** have a decriminalization law that simply imposes a civil fine; even a single gram is a misdemeanor if not covered by the medical exemption. Cannabis paraphernalia (pipes, bongs, etc.) is also unlawful to sell or possess with intent to use (usually a violation or misdemeanor) . In short, outside the narrow medical program, **“just a little weed” can still land you in legal trouble in Kentucky**.

It’s worth noting Kentucky did slightly lessen penalties in the past – for example, the legislature reduced marijuana possession from a Class A to Class B misdemeanor in 2011 . But relative to many states that have eliminated criminal penalties for minor possession, Kentucky’s laws remain harsh. Thousands of Kentuckians are still cited or arrested for marijuana each year under these statutes (more on that in Section 6). As of mid-2024, no provisions exist for lawful personal use cultivation or retail sales for recreational cannabis. **Recreational legalization is simply not in effect** – a stark contrast to Illinois or Missouri, where adults 21+ can walk into a store and buy cannabis products legally.

\* **Federal Law & Neighboring States’ Influence:** Complicating the picture is the overlay of **federal cannabis prohibition**. Under the federal Controlled Substances Act (CSA), marijuana is still classified as a **Schedule I drug**, meaning the U.S. government deems it to have a high potential for abuse and no accepted medical use . Possession, cultivation, or distribution of cannabis remains a federal crime (e.g., 21 U.S.C. §841 makes distribution a felony, and §844 makes simple possession a misdemeanor federally). In the landmark case *Gonzales v. Raich* (2005), the U.S. Supreme Court affirmed that Congress can ban marijuana even within states that legalize it – state laws do not



override the federal ban . In practice, federal authorities have largely adopted a hands-off policy for state-legal medical or adult-use programs, especially via Department of Justice guidance and congressional budget riders that forbid DOJ from interfering with state medical marijuana operations. But the **federal illegality creates challenges**, from banking restrictions (most banks won't handle cannabis money for fear of federal law) to the inability to transport cannabis across state lines. Attorneys must remember that **no Kentucky law can prevent federal prosecution** – although it's rare, it's not impossible.

Kentucky's stance on cannabis is also influenced by what's happening around it. The Bluegrass State is increasingly an **island of prohibition in a region moving forward**. Currently, **five of Kentucky's border states have legalized some form of marijuana** . For example, **Illinois** (to the northwest) legalized medical marijuana in 2013 and recreational marijuana in 2019; by 2022 Illinois was logging over \$1.5 *billion* in annual cannabis sales , with roughly 30% of those sales going to out-of-state customers (including visitors from states like Kentucky) . **Missouri**, just to Kentucky's west, legalized medical cannabis in 2018 and voters approved recreational use in 2022, creating a booming market. **Virginia**, to our east, decriminalized cannabis and then legalized adult possession (up to 1 ounce) in 2021 – Virginians can grow a few plants at home, though retail sales are delayed. **Ohio**, our neighbor to the north, has a medical marijuana program since 2016, and in November 2023 Ohio voters approved a referendum to legalize recreational marijuana (implementation is underway in 2024). **West Virginia** implemented medical cannabis in 2019 (dispensaries opened in 2021). In contrast, **Tennessee and Indiana** (bordering to the south and northwest) remain strict like Kentucky – no medical program (aside from low-THC CBD allowance) and criminal penalties in force.

These differing laws create practical effects. Kentuckians who feel left behind often **drive to Illinois or Michigan to buy legal weed**, then risk violating Kentucky law if they bring it home. Police in Kentucky have noted increased cases of people possessing products with Illinois dispensary labels – a reminder that it's illegal to transport marijuana across the river, even if it was purchased legally elsewhere. The **economic impact** is also significant: neighboring states are **profiting off Kentuckians** who spend money at out-of-state dispensaries, while Kentucky collects \$0 in tax revenue and expends resources enforcing prohibition. As one policy report noted, restrictive states are effectively **“losing potential revenue”** to their legal neighbors . This dynamic is starting to put pressure on Kentucky lawmakers, who see dollars siphoning to Illinois or Michigan. It's a classic case of policy spillover – and it has begun to shift the conversation from moral opposition to **“are we missing out on a cash crop?”**

Finally, we must mention **hemp**, which *is* legal statewide and federally. Under both Kentucky and federal law, “hemp” is defined as cannabis (*sativa* L.) with no more than 0.3% delta-9 THC by dry weight . Kentucky has a robust hemp farming and CBD industry thanks to the Farm Bill changes. Hemp-derived CBD oils, topicals, and other non-intoxicating products are openly sold in Kentucky. But as we'll see next, hemp's legality has opened a backdoor to some *very* marijuana-like substances,



thanks to clever chemistry and loopholes.

### 3. Hemp & THC-A: The Legal Loophole That No One Talks About

While “marijuana” remains illegal in Kentucky, **hemp-derived cannabinoids** have created a confusing gray market that blurs the line between hemp and pot. Perhaps the biggest loophole in current law involves **THC-A**, an obscure cannabinoid that can produce a cannabis high while seemingly staying within the letter of the hemp laws. How is this possible?

\* **What is THC-A?** “THC-A” stands for tetrahydrocannabinolic acid, which is the natural **precursor to THC** found in raw cannabis plants. In plain English, THC-A is **non-psychoactive** until it’s heated. When you smoke, vape, or bake cannabis, THC-A *decarboxylates* (loses a CO<sub>2</sub> group) and turns into Delta-9 THC – the main compound that causes intoxication. So, fresh cannabis flower is loaded with THC-A, which by itself doesn’t get you high; but apply a flame, and voila – you get THC. Why does this matter legally? Because the law (thanks to the 2018 Farm Bill and mirror state statutes) defines hemp purely by the concentration of **Delta-9 THC**. Under Kentucky law, hemp “includes all parts of the Cannabis sativa L. plant” with a delta-9 THC concentration not exceeding 0.3% on a dry weight basis . Notice that only delta-9 is counted. THC-A is *not* explicitly mentioned in the definition . That means a cannabis plant (or product) could have 0.2% delta-9 THC (under the limit) but 10% THC-A, and it still meets the legal definition of hemp! In other words, **a bud that would be considered high-grade marijuana if smoked might be considered legal hemp on the lab report**, as long as its delta-9 content is low prior to heating. This is the **THC-A loophole**.

\* **High-THC Hemp Products Flood the Market:** After hemp became legal, Kentucky and U.S. farmers initially focused on producing CBD (cannabidiol), a non-intoxicating compound used for wellness products . CBD was the hot new supplement around 2018-2019. But CBD prices plummeted due to oversupply, leaving farmers with fields of unsold hemp. Enterprising chemists discovered they could convert surplus CBD into **Delta-8 THC**, a mildly intoxicating isomer of THC. Delta-8 products (gummies, vapes, etc.) exploded in popularity nationwide around 2020-2021, **especially in states like Kentucky that had no legal weed**. Retailers started selling Delta-8 cartridges and candies at gas stations and smoke shops, calling it “legal weed.” This was a **legal gray area**: Delta-8 is not Delta-9, so technically it wasn’t banned by the hemp law; but it is psychoactive, which alarmed regulators. The Kentucky Department of Agriculture at one point opined that Delta-8 was a controlled substance, and law enforcement conducted raids on some vendors in 2021 . The **Kentucky Hemp Association fought back**, suing the state and arguing that Delta-8 derived from hemp is lawful. In 2022, a Boone County Circuit Court **judge ruled in favor of the hemp industry**, declaring that Delta-8 THC products made from hemp are indeed legal under state law . This was a huge victory for hemp businesses – Delta-8 became effectively *de facto* legal in Kentucky (at least pending any higher court or legislative



action).

With Delta-8 legit (for now), the hemp industry didn't stop there. The next iteration was **high-THC-A hemp flower**. Growers began cultivating hemp strains bred to produce lots of THC-A but minimal delta-9. The flower looks, smells, and tastes like regular marijuana – because biologically, it is – except it's harvested and cured in a way that keeps delta-9 below 0.3%. To a chemist, it's hemp; to a consumer with a lighter, it's weed. By 2023, **hemp shops across Kentucky were openly selling THC-A rich flower and pre-rolled joints** under names like “CBD bud” or “THCA hemp.” Some stores even advertise products like “**THC-A diamonds**” (a concentrated form) or **Delta-10 THC** (another semi-synthetic cousin). It's a Wild West for cannabinoids. Shoppers can walk into a wellness store in Kentucky and buy something that will definitely get them high, all under the guise of “hemp.” This is the **loophole no one talks about** – or at least, not loudly in legislative halls.

\* **Legal Gray Area:** How is this allowed? It comes down to the gap between **hemp laws and controlled substance laws**. Federally, the DEA has indicated that “synthetically derived” THC (like lab-converted Delta-8) could still be illegal, but naturally derived compounds from hemp are legal. Kentucky law KRS 218A still outlaws “tetrahydrocannabinols” generally, but it exempts hemp and hemp products produced in compliance with the state hemp program. Kentucky's Department of Agriculture and Cabinet for Health and Family Services have scrambled to respond. In 2023, after the court decision, the legislature passed a bill directing health regulators to **create rules for Delta-8 THC products**, such as **banning sales to anyone under 21**. Those regulations are now in effect – you must be 21 to purchase Delta-8, and packaging/testing standards apply. Essentially, Kentucky chose to **regulate rather than ban** these hemp-derived intoxicants (a path some other states have also taken). As for **hemp-derived THC-A flower**, Kentucky's Department of Agriculture had already prohibited licensed hemp farmers from selling raw hemp flower directly to consumers (by regulation, 302 KAR 50:070). The idea was to require hemp to be processed (e.g. into CBD oil) before sale, partly to prevent diversion to smoking use. Also, under **KRS 260.858**, anyone handling or marketing hemp in Kentucky must be licensed – otherwise it's treated as illegal marijuana. So on paper, selling buds to the public is forbidden. In reality, enforcement is spotty. Some local law enforcement agencies have indeed **raided shops for selling THC-A flower** as recently as 2023. We are aware of reports of Kentucky State Police investigations targeting retailers who stock THC-A products. Sellers argue they're selling “legal hemp” and often source it from out-of-state hemp farms or simply operate until told to stop. It's a *murky situation*, and many businesses are operating in good faith belief that they're within the law. Until clear guidance or a change in law comes, **THC-A exists in a legal grey zone** in Kentucky – not explicitly illegal, but certainly not officially sanctioned either.

\* **The Threat of Crackdowns:** Both state and federal officials are eyeing this loophole and considering closing it. In the Kentucky Legislature, there have been discussions about defining “**total THC**” (to include delta-9 *plus* THC-A) in the hemp definition, which would instantly outlaw these high-THC-A hemp products. A bill in 2025, for example, SB 202, originally sought to impose a temporary



ban on **hemp-derived THC beverages** until better regulations are developed . Lawmakers have publicly acknowledged the proliferation of intoxicating hemp products and the need to “find appropriate regulations for a nascent industry” . While a full ban hasn’t happened yet (and there is pushback from the hemp industry, which wants to keep this lucrative market), there’s a palpable risk that **Kentucky could crack down** on delta-8, THC-A, and similar products in the near future.

Businesses selling these products are on notice: the legal status could change with one legislative session or an adverse court ruling.

Federally, changes are also looming. Congress failed to pass a new Farm Bill in 2023, so the 2018 definitions remain in effect for now. But draft amendments have been proposed that would redefine hemp to include a **“total THC” limit** – counting THC-A and all isomers toward a 0.3% cap . One Senate proposal specifically aimed to **close the THC-A loophole** by measuring THC content on a post-decarboxylation basis (essentially treating THC-A as THC) . If such a provision becomes law, the era of intoxicating hemp products could end swiftly, as anything with significant THC-A would become “marijuana” again (and thus federally illegal, except in regulated state cannabis markets). The DEA has also clarified that while hemp is legal, any **chemically synthesized THC** (which they would argue includes some delta-8 production methods) remains Schedule I. This has not yet been tested in Kentucky courts beyond the hemp association case.

Bottom line: **THC-A is legal – for now – purely by technicality**. Kentucky attorneys should be aware of this quirk because it presents novel issues: What happens if someone on probation uses THC-A hemp flower and fails a drug test? (THC metabolites don’t distinguish source.) Can police establish probable cause from the odor of cannabis if the suspect claims it’s legal hemp? These questions don’t have clear answers yet. We’re living through an unexpected consequence of hemp legalization, one that lawmakers and courts will likely sort out in the next couple of years. Businesses enjoying the **hemp THC boom** should stay alert – the higher this loophole gets, the harder it may fall when new laws inevitably arrive.

## 4. The Economic Highs & Lows of Cannabis in Kentucky

If Kentucky fully embraces legal cannabis, the economic ramifications could be huge – both positive and negative. Let’s explore the **potential highs and lows**:

\* **A Potential Billion-Dollar Market:** Cannabis could be *big business* in Kentucky. By looking at other states and current demand, experts predict Kentucky’s cannabis market (medical and potential recreational) could reach **hundreds of millions in annual sales, even topping a billion dollars in the future**. For context, Illinois – with roughly double Kentucky’s population – saw \$1.5 billion in recreational sales in 2022 . Colorado (with a similar population to Kentucky) has a marijuana market well over \$2 billion annually after several years of legalization. Even our new medical program



alone is expected to grow rapidly: industry analysts forecast Kentucky's medical cannabis sales will generate about **\$135 million by 2026, growing to \$228 million by 2028** . If recreational use were legalized, those numbers could multiply significantly with the influx of casual users and cannabis tourists. Some legislators have openly acknowledged the economic opportunity – as Senator David Yates remarked, marijuana is **“already very much here, most likely our number one cash crop”** in Kentucky (albeit on the black market) . Indeed, Kentucky has long been known (quietly) as a major source of illicit marijuana; our climate and rural terrain have fostered a sizable underground cultivation economy. Legalization would bring that shadow economy into the light, creating legitimate jobs from farm to dispensary, and generating substantial tax revenues. One study by Kentucky's Center for Economic Policy noted that maintaining prohibition means *missing out* on new income for farmers and entrepreneurs, and losing tax revenue to other states' benefit . In short, cannabis could become a **multi-billion dollar industry in Kentucky** within a decade of legalization, between retail sales, cultivation, processing, and ancillary businesses.

\* **Reviving Struggling Agriculture:** Kentucky's agriculture sector could use a new cash crop. Tobacco – once king in Kentucky – has been in decline due to health campaigns and the end of federal tobacco quotas. Many small family farms have searched for alternatives. Hemp was pitched as a savior crop in 2014, and while it had some success, the CBD glut meant not everyone struck it rich with hemp. Cannabis could be a more profitable alternative, if the state allows local farmers to participate. Marijuana is a high-value crop: in states like Colorado and California, wholesale prices for quality cannabis flower can be hundreds or thousands of dollars per pound, far exceeding corn or soy. Kentucky's rich soil and farming expertise position it well to be a leader in cannabis cultivation (just as it was for hemp). There's even historical precedent – during the illicit “Marijuana Belt” era of the 1980s-90s, rural Kentucky counties were notorious for marijuana production, indicating the know-how is there (albeit previously used outside the law). Legal cannabis could **create new markets for farmers**, from large-scale grows to small craft operations. It could also spur investment in rural areas – for example, construction of cultivation facilities and processing plants. Already, with medical legalization, we see companies moving in: multi-state operator Cresco Labs has inked a deal to operate one of Kentucky's largest future cultivation sites (25,000 sq. ft. canopy) for the medical program . That's a \$25 million facility creating 75-100 jobs in Monticello, KY . If full legalization happens, imagine dozens of such facilities or, alternatively, networks of **contract growerships that include local farmers**. Kentucky's thoroughbred industry even mused about converting empty barns into grow houses. And of course, **tax revenue** from cannabis sales could be pumped back into agricultural programs, or into areas hit hard by the downturn of coal and tobacco. It's not hyperbole to say legal cannabis could help **“revitalize” parts of Kentucky's economy**, especially in Appalachia and other struggling regions.

\* **Winners and Losers:** Not everyone stands to benefit equally from a cannabis boom. The way legalization is implemented will determine **who wins and who loses**:



\* **Big Business vs. Small Farmers:** Will legalization be structured to favor a few large corporations or allow broad participation? Some states (like Ohio's initial proposal, or Florida's system) issued only a limited number of licenses, creating a "**Big Cannabis**" scenario where multi-million-dollar companies dominate. Other states (like Oklahoma, with an open medical licensing scheme) flooded the market with hundreds of small licensees. Kentucky's medical law appears to cap licenses and requires significant capital, meaning many licenses are likely going to well-funded out-of-state companies. If that trend continues, **small Kentucky farmers could be boxed out**, relegated to supplying raw material under contract or not participating at all. On the other hand, if the state were to allow, say, a cooperative model or micro-licenses for craft growers, local farmers might directly share in the profits. It's a key policy choice. We could see **MSOs (multi-state operators)** and Kentucky's own big players (perhaps tobacco or bourbon companies diversifying) take the lion's share, while Mom-and-Pop growers struggle with regulatory costs. As lawyers, we may be advising either the aspiring small business or the large corporation – their interests in how regulations are written will differ greatly.

\* **Established Industries:** Some industries might **lose market share** to legal cannabis. For example, the alcohol industry could feel an impact if consumers choose cannabis on a Friday night instead of bourbon or beer. (We've seen some beer/wine/spirits sales dip slightly in states post-legalization, though overall the industries continue to thrive.) Kentucky's signature bourbon industry could face a new competitor for consumers' discretionary income. This has led to speculation that "bourbon barons" might quietly oppose cannabis legalization to **avoid competition** – though interestingly, some alcohol companies elsewhere have invested in cannabis rather than fight it. The pharmaceutical industry could also lose customers if medical cannabis is available as an alternative to prescription drugs (notably opioids, sleep aids, anti-anxiety meds). That might explain why big pharma lobbyists historically have lobbied against marijuana reforms in some jurisdictions. For instance, opioid manufacturers have funded anti-legalization campaigns in other states, fearing cannabis as a pain relief substitute. If Kentucky legalizes, patients might rely less on pills and more on plants, impacting pharma sales (and perhaps saving healthcare costs, which could be a *win* for consumers but a *loss* for pharma companies).

\* **The Black Market:** An often-overlooked player is the **illegal market**. Who would have thought illicit dealers might "lose" from legalization? But they very well could. If Kentucky provides a legal, convenient, and reasonably affordable supply of cannabis, many consumers will shift away from black-market sources. This undercuts illicit traffickers and could reduce criminal activity and related violence. However, if legal cannabis is too expensive (for example, if taxes are exorbitant or regulations drive up costs) or too hard to access (limited licenses, few stores, long drives), the black market will continue to thrive. States like California still struggle with a robust illicit trade due to high taxes and regulatory burdens that keep legal prices high. In Kentucky, a prime concern is that **if only medical use is allowed (with strict rules), recreational users will stick with their dealers**, and if



recreational comes but is highly restricted, a black market may persist in the shadows. Ideally, legalization undercuts illegal operators by competing on price, quality, and convenience – thus **the black market “loses” out**. But if not done right, legalization can create a **two-tier market** where lawful businesses serve one segment, and illicit sellers continue serving those who can’t afford or access the legal stuff. Kentucky policymakers will need to balance taxation and regulation to bring the majority of consumers into the legal fold.

- \* **Economic Downsides and Caveats:** While the upside is big, we should also note some potential downsides or at least challenges:

- \* **Regulatory Costs:** Setting up a whole new industry isn’t cheap. The state will incur costs to establish the regulatory infrastructure – e.g. a Cannabis Control Board, inspectors, lab testing requirements, law enforcement training for DUI detection, etc. Ideally, these are paid for by license fees and taxes from the industry (as envisioned by SB 47’s fee structure for medical cannabis). But there can be short-term budget impacts.

- \* **Market Consolidation:** If Kentucky opens the floodgates too quickly, there’s a risk of **overproduction** and then market crash (as happened with hemp CBD). Prices could plummet, making it unprofitable for farmers and leading to business failures. The state might try to control this with limited licenses or canopy caps, but that, in turn, raises questions about fairness and competition.

- \* **Community Impacts:** Not all communities may welcome cannabis businesses. Even though Kentucky’s medical law has an opt-out referendum provision (where counties/cities can vote to prohibit dispensaries), nearly all local referendums on medical cannabis in 2024 *approved* allowing businesses. But for recreational, some towns might still resist a marijuana store on Main Street. Economic benefit arguments will have to be balanced with community standards. It’s worth noting, though, that many Kentuckians, especially younger generations, now view cannabis stores similarly to liquor stores – a normal part of commerce.

Overall, the economic narrative is a **strong motivator** for legalization. The promise of new jobs, farm income, and tax dollars is enticing in a state that could use all three. Kentucky has a chance to both reclaim its hemp heritage and participate in the modern cannabis economy – but it will need to decide *whose* interests to prioritize (big players vs. local, consumers vs. tax revenue, etc.). Lawyers will undoubtedly be busy with business formations, license applications, compliance, contracts between growers and distributors, and perhaps litigation as the industry shakes out. It’s not often you see a *new* industry born overnight – for Kentucky’s economy, this could truly be a high-growth opportunity (pun intended).

## 5. The Politics of Pot: Who’s Holding Kentucky Back?



If legalizing cannabis were only about economics or public opinion, Kentucky likely would have done it by now. But as any lawyer knows, **politics** can override policy logic. So, **who are the key players and what are their stances** on marijuana in Kentucky?

\* **Lawmakers – The Supporters:** In the past few years, a number of Kentucky legislators have emerged as champions for reform. Notably, **Rep. Jason Nemes (R-Louisville)** tirelessly pushed medical marijuana bills in the House for multiple sessions, finally seeing success in 2023. **Sen. Stephen West (R-Paris)** sponsored the successful SB 47 in the Senate, guiding it through years of tweaks and committee hearings. Even traditionally conservative lawmakers from Eastern Kentucky, like **Sen. Phillip Wheeler (R-Pikeville)**, came around to support medical cannabis, viewing it as a tool to combat the opioid epidemic ravaging their communities. On the Democratic side, leaders like **Sen. Morgan McGarvey (formerly in the state Senate, now in Congress)** and various House Democrats have consistently backed legalization or at least decriminalization. **Governor Andy Beshear (D)** is a vocal supporter – he used executive action to provide limited medical access and has urged the legislature to send him a legalization bill. Beshear even convened a Medical Cannabis Advisory Committee in 2022 to tour the state and report on public sentiment (which was overwhelmingly positive). In short, *there is* a coalition of lawmakers, crossing party lines, who support cannabis reform in Kentucky. They tend to frame it as a matter of compassion (for patients), personal freedom for adults, and economic development. Their work got us medical cannabis; their continued work will be needed for any further reforms.

\* **Lawmakers – The Opponents:** For a long time, the **single biggest obstacle** in Kentucky's legislature was Senate President **Robert Stivers (R-Manchester)**. Stivers has been a **strident opponent** of marijuana legalization in any form. He often cited the need for more scientific research and expressed skepticism about marijuana's medical value. As late as 2023, Stivers was casting doubt, suggesting any pain relief from cannabis might just be placebo effect. He infamously said, *"Recreational marijuana, I could never be for. That is very clear, very plain."* His resistance kept medical bills bottled up in the Senate for years, even after the House passed them. To Stivers' credit, in early 2023 he signaled a slight softening – indicating he might allow **very limited** medical use for end-of-life patients – but he insisted on strict conditions. Beyond Stivers, many Republican legislators (who hold supermajorities in both chambers) have been lukewarm or opposed, often citing moral or public safety concerns. For example, **Senate Majority Floor Leader Damon Thayer** repeatedly refused to advance medical cannabis bills, and **Sen. Max Wise (R)** recently stated he opposes legalizing or decriminalizing recreational use. Opposition isn't strictly GOP though – a few socially conservative Democrats have also voiced concerns in the past, though most Dems now support legalization. **Those "waiting for the right deal"** include lawmakers who aren't philosophically opposed but want to see specific frameworks (for instance, some want assurances that law enforcement can test for DUIs, or that certain tax structures are in place). Some rural legislators may privately be fine with legalization but won't stick their necks out until they know the votes are there.



(not wanting to risk being tagged “pro-pot” in a contentious primary). In essence, **political will has been the missing ingredient**. Until 2023, Kentucky’s leadership simply wasn’t ready to move forward, even as public support grew.

- \* **Influential Interest Groups:** Behind the scenes (and often in public hearings), a number of groups have lobbied either for or against cannabis reforms:

- \* **Law Enforcement:** Traditionally, police and prosecutors have been among the most vocal opponents of legalization. Organizations like the Kentucky **State Police, county sheriffs’ associations, and Commonwealth’s Attorneys (prosecutors)** have frequently testified against medical or recreational bills. Their arguments usually revolve around public safety – concerns that legalization will increase impaired driving, youth access, crime, and burden law enforcement. They also point to the lack of a roadside test for marijuana intoxication and worry about diversion of legally grown marijuana to illegal markets. In Kentucky’s debates, one could often find the **Kentucky Narcotics Officers Association** or similar groups lining up to maintain the status quo. It’s worth noting some law enforcement attitudes have started to shift (especially for medical cannabis), but by and large, police unions and prosecutor groups remain hurdles. They exert influence on legislators, especially Republicans who run on law-and-order platforms. Even after medical cannabis passed, one can expect these groups to strongly oppose recreational bills or push for tight restrictions (like low possession limits, no home grow, etc.). They’ve also fought efforts to decriminalize possession, because some genuinely believe any easing of penalties could lead to more drug abuse. On the flip side, **former law enforcement officials** in other states have become advocates for regulated legalization, arguing it frees up police resources for serious crimes – but we haven’t seen much of that yet among Kentucky’s top cops.

- \* **“Big Pharma”:** The pharmaceutical industry’s role is less visible but often alluded to. Pharmaceutical companies have a stake in this issue because cannabis can substitute for various medications (painkillers, anti-inflammatories, anxiety meds). While no Kentucky-specific revelations have come out, it’s known that in other states and federally, pharmaceutical lobbyists have sometimes opposed marijuana reforms. For instance, a few years ago, a major opioid manufacturer funded anti-legalization ads in Arizona **【common knowledge in industry】**. In Kentucky, one could surmise that pharmaceutical interests (and the medical establishment to some extent) were not enthusiastic about medical marijuana – perhaps fearing a dent in prescription drug sales or simply the unpredictability of a non-FDA-approved treatment. The Kentucky Medical Association historically did not endorse medical cannabis, citing the need for more research (though many individual doctors support it). Now that medical is law, some pharma opposition might pivot to ensuring regulations benefit pharmaceutical-like models (e.g., perhaps favoring cannabis-derived pills made by companies over home-grown plant access). It’s a quieter part of the debate, but **pharma and healthcare lobbies** do hold sway in Frankfort and could be slowing progress in subtle ways.

- \* **Bourbon and Alcohol Industry:** Kentucky’s bourbon distillers are titans of the state



economy and politics. While there's no official stance from the Kentucky Distillers' Association on cannabis, there's often speculation that **Big Alcohol doesn't want competition** from legal weed. After all, both bourbon and bud are competing for consumers' leisure spending. If people start substituting cannabis cocktails for bourbon neat, that could affect sales. However, it's also possible the industries could coexist or even collaborate (cannabis tourism could boost overall tourism, possibly benefiting distilleries). We haven't seen open lobbying by the bourbon industry against cannabis – they tend to focus on their own issues (like taxes and tariffs). But in a state as small-political as Kentucky, major players might speak privately to legislators about their preferences. It wouldn't surprise anyone if some of the **“bourbon barons” quietly prefer to delay cannabis legalization**, at least until they figure out if/how they want to participate or compete. The same goes for the **gaming/gambling industry** (recently expanded sports betting) – although that's a different vice, legislators only have so much appetite for expanding vice industries at a time, and priorities can conflict.

\* **Advocacy and Public Interest Groups:** On the pro-legalization side, groups like **Kentucky NORML (National Organization for Reform of Marijuana Laws)**, the **Kentucky Cannabis Freedom Coalition**, and patient advocacy groups have been active. They rallied public support, organized lobby days, and kept the issue alive. Veterans' groups also played a role in advocating medical cannabis to help with PTSD and chronic pain for vets. Even the Kentucky Baptist Convention and some other civic groups weighed in (often against, on moral grounds). The **religious conservative lobby** in Kentucky, including some church groups, have historically been anti-marijuana (viewing it as a vice similar to gambling or alcohol which they often oppose). Their influence, especially among older or more conservative lawmakers, is not negligible.

\* **Kentucky vs. Its Neighbors:** Politically, Kentucky's reluctance to legalize stands in contrast to many neighboring states that moved faster. Why are we **lagging behind**? A few reasons:

\* **No Ballot Initiative Process:** Unlike states such as Missouri or Michigan, Kentucky does not allow citizen-initiated ballot referendums to directly legalize marijuana. In many states, voters bypassed reluctant legislatures via ballot measures (that's how recreational marijuana became law in Colorado, California, Alaska, Michigan, Missouri, and more). In Kentucky, only the legislature can put a constitutional amendment on the ballot. So, there hasn't been a direct route for popular will to force the issue. We rely on elected officials to act, and if they don't, the law doesn't change. That inherently makes change slower in Kentucky.

\* **Conservative Political Leadership:** Kentucky's government has been dominated by socially conservative Republicans in recent years (even though the current governor is a Democrat, the legislature can override vetoes). Many of these legislators come from districts where marijuana still carries a stigma, or where they fear being seen as “soft on drugs.” Culturally, Kentucky is part of the Bible Belt and also has a history of tough anti-drug policies (recall the “Operation UNITE” task forces in Eastern KY to fight opioids, etc.). So the political calculus for GOP leaders was long that supporting



marijuana could be politically risky. This is changing as public opinion changes, but it takes time. By contrast, **Illinois and Virginia** had periods of Democratic trifecta control that enabled swift legalization. **Ohio** put it to voters. **Missouri's** voters passed it via initiative. Kentucky's mechanism for change is slower and more consensus-driven in the legislature.

\* **Key Personalities:** Sometimes it boils down to a few key people in power – and in Kentucky, those people were, until recently, against it. As mentioned, Senate President Stivers was a brick wall. House leadership under former Speaker David Osborne also wasn't keen to champion the cause until the Senate showed signs of life. Without leadership buy-in, bills languished. Compare that to e.g. Virginia in 2021 – their incoming Speaker championed legal pot and got it done. In Kentucky, the champions were not in leadership (aside from Gov. Beshear, who can't introduce bills himself). That mismatch slowed progress.

\* **Influence of External Entities:** Kentucky's identity as a major thoroughfare for illicit drug trafficking (I-75 is a known corridor) possibly made law enforcement more averse to legalization, fearing it'd worsen trafficking issues. There's also a historical memory of the pill mill crisis and opioid scourge, making some lawmakers very hesitant to legalize *another* drug (even though cannabis is far different, the “drug is a drug” mindset persists for some).

All these factors combined to **hold Kentucky back** on cannabis reform, even as most of America marched forward. That said, the **political winds are shifting**. The fact that a medical cannabis bill passed in 2023 – with bipartisan support – signals a new era. Some opponents have retired or moderated. The economic and border-state pressures are harder to ignore each year. We're likely nearing a political tipping point. The question might not be *if* Kentucky legalizes further, but *when* and *how*. And that brings us to the final section: looking ahead.

## 6. The Impact of Legalization (or Lack Thereof) on Kentuckians

How does Kentucky's stance on cannabis affect everyday people? Whether we legalize or maintain prohibition has real consequences for **criminal justice, public health, and even tourism**. Let's break down some key impacts:

\* **Criminal Justice Reform:** Kentucky's marijuana laws have resulted in **hundreds of thousands of criminal charges** over the years, mostly for simple possession. In a 20-year period (2002–2022), over **303,000 people in Kentucky were charged with some kind of cannabis offense** – an astonishing number when you think about the resources involved. The vast majority of these are for possession, not trafficking. Although possessing under 8 ounces is a misdemeanor, a conviction (or even a charge) can have lasting effects: a criminal record that can hinder employment, housing, student loans, and professional licenses. This burden has fallen disproportionately on certain



communities. **Racial disparities** are stark – for example, Black Kentuckians are almost *10 times more likely* to be arrested for marijuana possession than white Kentuckians, despite similar usage rates . That reflects a nationwide trend where cannabis prohibition has been enforced unevenly, contributing to systemic inequality.

If Kentucky legalizes or even decriminalizes cannabis, one crucial component will be **addressing past convictions**. Many states that legalized recreational use also created mechanisms for **expungement or sealing of past low-level marijuana offenses**. For instance, Illinois' legalization law included automatic expungement for minor possession convictions , and states like California and New York have done similar. Kentucky does have an existing expungement law (you can petition to expunge a misdemeanor after 5 years with a clean record, and certain Class D felonies after a period, per KRS 431.078 and KRS 431.073). So, a person with a past pot conviction *can* seek expungement under current law, but it's not automatic and costs money in fees, etc. Advocates argue that if we legalize, **justice requires clearing the records** of those who were penalized under the old laws. We'd likely see legislation to streamline expungements for possession, and perhaps even offer pardons or commutations for those still incarcerated on marijuana-related charges (though in Kentucky, prison sentences for marijuana alone are relatively rare, usually it's tied with other offenses or large trafficking quantities).

Until that happens, the **lack of legalization means continued enforcement**: roughly 5,000–8,000 marijuana arrests or citations in Kentucky each year . These occupy police, prosecutors, public defenders, and courts. Some jurisdictions have tried to **soften the impact** – for example, the Louisville/Jefferson County Attorney announced a policy a couple years ago of not prosecuting small possession cases, and some local police deprioritized weed. But without a change in state law, many Kentuckians (especially in more rural counties) still face the brunt of prohibition.

Legalization would free up law enforcement resources. Police could redirect time and effort to serious crimes instead of chasing minor pot offenses. It would also reduce tensions between police and young people or communities of color, where these low-level drug interactions sometimes escalate. Moreover, legalization could bring about **criminal justice reform measures** like directing tax revenue to communities harmed by past enforcement (Illinois, for example, earmarks 25% of cannabis tax to redevelopment in disproportionately impacted areas ). Kentucky could consider similar restorative justice components.

**Expungement** is a key part of that restorative justice. As lawyers, we should be prepared: if/when Kentucky legalizes, there may be a flood of individuals seeking to clear old convictions. It's an opportunity to provide pro bono or low-cost services to help clients start with a clean slate, removing the stigma of a marijuana record. Governor Beshear has already shown an inclination for mercy on this front; in late 2022, he used his pardon power to pardon anyone convicted of simple possession of marijuana under state law (as long as it was not coupled with other offenses) . This was in response to President Biden's call for states to forgive simple possession offenses. Those pardons help, but an



**automated expungement process** would go further by *erasing* the conviction entirely, not just forgiving it.

\* **Public Health Considerations:** Opponents of legalization often raise public health alarms: Will teen use skyrocket? Will DUIs increase? What about addiction and mental health? Fortunately, we have data from other states to inform these concerns. On **youth usage**, numerous studies (including data reviewed by the National Institute on Drug Abuse) have found **no significant increase in adolescent marijuana use** after states legalize – if anything, rates have stayed flat or even declined in some cases . For example, a comprehensive JAMA study of over 1.4 million U.S. teens found no rise in teen use attributable to medical or recreational marijuana laws . In fact, recent federal survey data show a **decline in teen marijuana use nationally from 2011 to 2021** , a period during which many states legalized. The theory is that regulated stores ask for ID, whereas illegal dealers do not; plus, legalization often comes with education campaigns about youth risks, etc. So the fear that “legalization will turn all our kids into potheads” isn’t backed by evidence so far. Of course, vigilance is needed – preventing youth access and educating teens remains important (just as with alcohol and tobacco).

Regarding **impaired driving**, this is a legitimate concern. Cannabis can impair motor skills and reaction time, and unlike alcohol, there’s no simple breathalyzer or per se legal limit universally agreed upon. Some states set arbitrary blood THC limits for DUI, others rely on field sobriety and evidence of impairment. Kentucky law currently prohibits driving under the influence of any impairing substance, including marijuana (KRS 189A.010). Legalization wouldn’t change that – driving stoned remains illegal. States that legalized haven’t seen drastic increases in traffic fatalities overall, though there is some data showing more drivers in accidents test positive for THC (which can be tricky to interpret, since THC lingers days after use). If Kentucky legalizes, expect investment in training **Drug Recognition Experts (DREs)** in police departments to better detect drugged driving. Also, public health education would need to stress that legalization is not a free pass to drive high. From a public health perspective, it will be important to monitor DUI rates and perhaps fund research into better THC impairment testing.

**Addiction and health effects:** Cannabis is not harmless – about 9% of users may develop cannabis use disorder (higher if one starts young). There are mental health correlations (heavy use can correlate with anxiety, and in some cases trigger psychosis in vulnerable individuals). Smoking anything (including cannabis) can affect lung health (though cannabis smokers generally smoke far less volume than cigarette smokers). These are real issues, but they exist whether cannabis is legal or not. One could argue legalization allows for better public health interventions: regulated products (so users know THC potency and can dose more carefully), lab testing (to avoid contaminants like fentanyl-laced illicit product – a rare but scary occurrence), and funding for treatment programs from cannabis tax revenue. For instance, some states allocate a portion of cannabis taxes to substance abuse treatment and education. If Kentucky remains prohibitionist, it’s not as if no one uses cannabis



– they just use it in an unregulated environment with no controls or education. Thus, many public health experts favor a regulated market with strong **education on responsible use**. Think of how we handle alcohol: legal but with age limits, warnings, and treatment for abuse available.

Also, **medical benefits** are a public health factor. Keeping cannabis illegal denies some patients a potentially effective treatment. We know cannabis (or cannabinoids) can help with chronic pain, chemotherapy-induced nausea, seizure disorders, etc. Kentucky's stance until now forced patients to either go without, or risk legal consequences or travel out of state. That in itself was a public health negative. The new medical law will ameliorate this for some patients. And if eventually adult-use comes, even more people might use cannabis as an alternative to more dangerous substances. There's even evidence from some states of a drop in opioid prescription rates and opioid overdose deaths after medical marijuana laws – suggesting cannabis can be a substitute for opioids for pain management . Senator Wheeler from Pikeville directly cited seeing the devastation of opioids and hoping cannabis could be a safer alternative for pain relief . This could be significant in Kentucky, which has one of the nation's highest rates of opioid overdose. So legalization (with proper controls) might actually be a net positive for public health: fewer opioid addictions and deaths, and no increase in youth drug problems.

Of course, regulators will have to watch for unintended consequences – e.g. an uptick in emergency room visits for toddlers accidentally ingesting marijuana edibles (which happened in some states). Packaging and labeling rules (child-resistant containers, clear THC labels) mitigate much of that risk. Public health campaigns can also inform new users about not overdoing edibles (to avoid those panicky ER visits from consuming too much).

\* **Cannabis Tourism:** Kentucky is famed for bourbon and horses – could **weed join bourbon as a tourism draw**? It's possible. If recreational cannabis becomes legal, Kentucky might see a boost in tourism from folks in states where it remains illegal (looking at you, Indiana and Tennessee). Already, states like Colorado and Nevada actively promote cannabis tourism (from dispensary bus tours to cannabis-friendly hotels). Given Kentucky's established tourism infrastructure with the **Bourbon Trail**, one could envision adding a **"Cannabis Trail"** or integrating the two ("Bourbon and Buds" weekend package, anyone?). Some entrepreneurs might open cannabis lounges or cafes in cities like Louisville or Lexington (if allowed by law, as social use venues). We might see dispensaries pop up near state borders to capture out-of-state traffic, similar to how Illinois has shops strategically located near the Indiana/Kentucky borders .

On the flip side, as long as Kentucky remains illegal and neighbors legal, **Kentuckians will be the cannabis tourists elsewhere** – which is currently the case. A lot of Kentuckians drive to Illinois or Michigan to purchase marijuana. Those dollars go into Illinois gas stations, Illinois hotels, etc., not Kentucky's economy. Legalizing here would keep that spending at home and perhaps attract visitors from prohibition states. Imagine folks from Nashville driving an extra hour north to visit a Louisville dispensary for the weekend. **Cannabis festivals or events** could also become a thing, much like hemp



festivals already occur. Since cannabis and bourbon both have cultural elements (craft production, connoisseur communities), Kentucky could capitalize on a unique niche of tourism that combines them – picture a tourist itinerary that includes touring a distillery in the morning and a cannabis cultivation facility in the afternoon, then dinner with a CBD-infused cocktail or a THC edible paired with bourbon (responsibly separated in time, of course!). This might sound fanciful now, but in states like California, upscale pairing dinners of cannabis and wine are already a reality.

That said, Kentucky would need to tread carefully to ensure traditional tourism isn't alienated. Some more conservative visitors might be put off if cannabis is too visible. But likely it could be balanced – those not interested in cannabis might hardly notice its presence, just as a teetotaler can tour Kentucky without ever stepping foot in a bar if they choose. Meanwhile, those *interested* in cannabis will have another reason to visit Kentucky beyond horses and bourbon.

One more aspect: **conferences and conventions**. Cannabis is a burgeoning industry with trade shows, expos, and business conferences. Post-legalization, Kentucky (especially Louisville with its convention center) could host regional or national cannabis conventions, bringing in professionals from around the country (much as it hosts farm equipment expos or the Bourbon Classic). This secondary tourism effect could be lucrative as well.

In summary, the **impact on Kentuckians of legalization vs prohibition** is profound. Continuing the ban means continued arrests, persistent black-market activity, lost economic opportunities, and forcing patients and consumers to break the law or travel. Moving toward legalization (with smart regulation) promises criminal justice relief (expungements, fewer incarcerations), better public health oversight, economic windfalls, and perhaps a new element to Kentucky's identity (imagine Kentucky being known for bluegrass music *and* Bluegrass bud!). As attorneys and citizens, understanding these impacts helps inform our advocacy and how we advise clients. Whether one personally is pro- or anti-legalization, the trends are clear that change is on the horizon, and the goal should be to maximize benefits and minimize harms to the public.

## 7. The Future of Cannabis in Kentucky: Are We Ever Gonna Get There?

After all this history and debate, the big question remains: **What does the future hold for cannabis legalization in Kentucky?** Are we on the cusp of broader legalization, or will it be a slow grind? Let's examine the road ahead:

\* **The Push for Full Legalization:** With medical cannabis now law (taking effect 2025), advocates are turning their attention to **adult-use (recreational) legalization**. Public opinion in Kentucky favors it more than ever – recent polls have shown a majority (around 60% or more) of Kentuckians support legalizing recreational marijuana in addition to medical. The success of the



medical bill has also built a bipartisan consensus that the sky doesn't fall when cannabis laws are loosened. Governor Beshear has hinted that **recreational could be the next step**, noting that once the medical program is running, it could demonstrate cannabis can be handled safely and might pave the way for full legalization. He's also highlighted the potential tax revenue Kentucky is leaving on the table while others move ahead. Surrounding states like Missouri and Illinois are raking in money and providing real-world examples that Kentucky lawmakers cannot ignore forever.

So, *how close are we?* It's unlikely (barring a surprise special session) that recreational legalization will happen in 2024 – the short legislative session and ongoing caution among GOP leaders make that a long shot. However, **2025 could be interesting**. Already in the first week of the 2025 session, several **bills were filed to legalize possession and personal cultivation for adults**. Notably, **Senate Bill 36 and House Bill 105 (2025)** propose a **constitutional amendment** that would let Kentucky voters decide in 2026 whether to legalize adult use. These identical bills would put a question on the ballot asking voters if adults 21+ should have the right to possess up to 1 ounce of cannabis and grow up to 5 plants at home for personal use. The thinking here is: if the legislature itself is reluctant, let the people decide directly (since polling suggests it would likely pass). By packaging it as a constitutional amendment, it also potentially gives political cover to lawmakers – they're not "legalizing weed," they're "letting the people vote," as Sen. Yates explained. However, to get on the ballot, those bills still need a 60% vote in the legislature, which means significant Republican buy-in.

Additionally, **Senate Bill 33 (2025)** was introduced to straight-up **decriminalize marijuana by statute** – eliminating penalties for possession, cultivation, or sale of up to 8 ounces or 5 plants. This is essentially a full decrim bill (and interestingly, the same thresholds – 8 ounces/5 plants – appear as the limits in the proposed constitutional amendment). SB 33 would mean you could have half a pound and it's no crime at all, which is quite progressive relative to current law! The fact a bill like that was filed shows how far the conversation has come. Only a few years ago, such a proposal would be DOA; now it at least gets a mention in the Courier-Journal and consideration in committee. We also see bills like **HB 22 (2024)** (hypothetical example) that might try to set up a regulatory structure for commercial sales, anticipating future legalization. In short, **there is legislative momentum building** for something beyond just medical.

The realistic near-term scenario may be **incremental steps**: perhaps in 2024 or 2025 the legislature might further **relax penalties** (maybe make possession of small amounts a citation fine only, or expand medical use allowances). They may consider **allowing home cultivation for medical patients** as a next step – many states permit a few plants for patients, which Kentucky's current law forbids. Full commercial recreational sales might be 2-3 years out, unless that constitutional amendment approach gains steam.

\* **Legislation and Developments to Watch (2024 and Beyond):** We should keep an eye on several fronts:

\* **Implementation of Medical Cannabis (2024-2025):** The Cabinet for Health and Family



Services is in the process of issuing regulations and licenses for the medical program. By mid-2024, they filed 17 administrative regulations to set the rules for growers, processors, dispensaries, etc. . A successful rollout (i.e., businesses opening on time in 2025, patients getting access smoothly) will strengthen the case that Kentucky can handle more. Any snags or controversies (e.g., licensing lawsuits, product shortages, or, heaven forbid, a scandal) could give opponents ammunition. As lawyers, some of us may be directly involved in helping clients apply for licenses or comply with these new regs – so we'll be “watching” by default.

\* **Local Opt-Out/Opt-In Actions:** Kentucky's medical law automatically “opts in” all local governments to allow cannabis businesses, but gives them a chance to opt out via referendum. In the 2024 general election, a number of counties and cities had medical cannabis on the ballot (advisory referendums). According to news reports, **every single one** of the 106 local measures on medical cannabis passed – not one community voted to ban it . That is a stunning show of support across urban and rural areas. This tells lawmakers that their constituents, even in conservative counties, are not opposed to cannabis businesses. If the trend continues (and localities welcome the economic opportunity), it bodes well for expanding to recreational sales which would likewise rely on local buy-in.

\* **Federal Rescheduling or Legalization:** On the federal level, big changes could occur that would impact Kentucky. In late 2023, the U.S. Department of Health and Human Services formally recommended that the DEA **reschedule marijuana from Schedule I to Schedule III** of the CSA . If the DEA follows through (potentially in 2024 or 2025), marijuana would no longer be in the same category as heroin – it would be recognized as having medical use and a lower abuse potential. This wouldn't legalize marijuana federally, but it would reduce some federal penalties and remove the horrendous 280E tax issue that plagues cannabis businesses (currently they can't deduct expenses because their trade is federally illegal). Rescheduling to III could also allow more research and perhaps the FDA to regulate cannabis-derived medicines more easily. If this happens, the **stigma at the federal level lessens**, possibly giving Kentucky lawmakers more confidence to act. There are also federal bills like the **SAFE Banking Act** (to allow banks to work with cannabis businesses) and various legalization bills floating in Congress. While federal full legalization may be some years away, each incremental federal move (like allowing banking, or passing the MORE Act to remove cannabis from the CSA entirely) will make it easier for states like Kentucky to proceed, since one common excuse – “it's federally illegal” – becomes a weaker argument.

\* **Elections and Political Turnover:** The makeup of Kentucky's legislature post-2024 elections will matter. If more pro-cannabis candidates (from either party) win seats, the chances of reform increase. Conversely, if opponents solidify power, it slows things. The 2023 governor's race saw Beshear (pro-medical, open to recreational) win reelection over a challenger (Daniel Cameron) who was less enthusiastic about marijuana reform. Voters didn't punish Beshear for his stance – if anything, it may have helped energize some young voters. That sends a message to other politicians



that being pro-cannabis is not a career-ender in Kentucky; it might actually be popular. Future leaders in the GOP might take note that a libertarian stance on marijuana could attract younger constituents. Indeed, nationally we've seen Republicans like Congressman Thomas Massie (KY's 4th District) vote in favor of federal legalization efforts. Cannabis is becoming less partisan overall.

- \* **Farm Bill 2024 (or 2025):** As mentioned in Section 3, Congress's eventual new Farm Bill might tighten hemp definitions (closing the delta-8/THC-A loopholes) . If that happens, Kentucky's hemp-derived market will shift. We may see the state then face more pressure to allow regulated marijuana, because the "hemp loophole" option that currently provides quasi-legal highs could disappear, leaving outright legalization as the way to satisfy consumer demand. In a sense, closing the loophole might **force Kentucky's hand** to address cannabis more directly.

- \* **What YOU Can Do:** As an attorney and engaged citizen, **how can you be involved in shaping or taking advantage of these changes?**

- \* **Advocacy:** Lawyers carry credibility and can be powerful advocates for sensible law reform. You can join or support groups like *Kentucky NORML* or the *Kentucky Cannabis Chamber of Commerce* or other advocacy coalitions that lobby the legislature. Consider reaching out to your state representatives and senators – a professional yet personal letter explaining why you support reform (whether it's for social justice, economic, or personal reasons) can make a difference. If you have clients who have been negatively impacted by cannabis prohibition (for example, a military veteran client who can't legally use cannabis for PTSD), tell their story (with permission) to lawmakers. Sometimes real-life examples sway votes more than abstract arguments. **Testifying at hearings** is another avenue – legislative committees often have public comment on these bills, and hearing from attorneys who can articulate legal frameworks or compare other states' laws can educate lawmakers.

- \* **Education:** This CLE and handout itself are part of the educational mission. Take what you've learned and share facts with colleagues, clients, and community members. Dispel myths (e.g., "marijuana isn't the devil's lettuce that D.A.R.E. might have implied"). The more the public is informed, the more rational our policy outcomes will be. As attorneys, maybe volunteer to speak at local civic clubs or write an op-ed in a newspaper about cannabis law – helping normalize the conversation. Also, **educate your clients** who might be interested in the cannabis space: entrepreneurs thinking of starting a CBD or hemp business, farmers curious about future opportunities, or even just individuals who want to understand their rights. Right now, many people don't realize, for example, that possessing delta-8 vapes is legal in Kentucky (subject to age 21+) but possessing delta-9 flower is not; or that come 2025, they might be able to get a medical card for their condition. By keeping clients informed, you help them stay on the right side of the law and prepare for coming changes.

- \* **Business Opportunities:** If you have clients in agriculture, healthcare, or retail, **help them position for the emerging cannabis market.** This could mean assisting a farm client in obtaining a hemp license or positioning themselves to apply for a medical cultivation license. Or working with a pharmacy or healthcare provider who wants to participate in dispensing medical cannabis. There will



be a need for legal expertise in regulatory compliance, licensing, real estate (zoning for dispensaries/grows), contracts (partnerships between Kentucky entities and out-of-state cannabis companies), and intellectual property (branding, trademarks – note that federal trademarking for cannabis is still tricky due to federal illegality, but state trademarks or ancillary product trademarks are possible). **If recreational legalization looks likely, savvy entrepreneurs will start early** – perhaps setting up CBD stores that can convert to dispensaries, or acquiring property in commercially zoned areas that would be prime for a cannabis retail location. Attorneys can guide these clients through entity formation, funding, and navigating the patchwork of current law (for instance, how to operate a delta-8 business without running afoul of any state rules).

\* **Compliance and Legal Services:** Even without recreational legalization, the new medical law will require compliance advice. The regulations cover everything from security measures to packaging to seed-to-sale tracking. Lawyers can develop a niche in **cannabis compliance law**, ensuring that the new operators follow Kentucky’s rules to a T – this helps them avoid risking their license or sanctions. Similarly, employment law is touched: employers maintain the right to drug-free workplace policies under the medical law, so advising employers on how to handle an employee who is a registered medical cannabis patient will be an emerging issue (e.g., no using at work, but can you fire them for testing positive if they’re a legal patient? The law doesn’t require accommodation, but there may be conversations to be had, especially if federal law changes). As the field develops, we might also see **litigation** – for example, challenges to zoning decisions, disputes between cannabis business partners, or administrative appeals if a license application is denied. Attorneys with knowledge in this area will be in high demand.

\* **Voting Power:** Ultimately, elected officials need to know this is an issue that voters care about. If a constitutional amendment for recreational cannabis makes it to the 2026 ballot, *vote*, and encourage others to vote. In local elections, consider candidates’ stances on criminal justice and drug policy. It’s not about partisan labels – there are pro-cannabis Republicans and anti-cannabis Democrats. It’s about choosing representatives who align with a sensible approach. The more that pro-reform candidates win, the faster change will come. And even before then, turnout for any advisory referendums or public forums can demonstrate the electorate’s will.

In closing, **Kentucky is inching toward a greener future, but it will take active involvement to “get there.”** The progress from absolute prohibition to a medical program has been slow and hard-fought – as lawyers, many of you have been part of that fight or will be part of implementing the new laws. The next horizon is full legalization, which appears increasingly likely within a few years. With neighboring states lighting up and Kentuckians demanding change, it’s a matter of “when” not “if.” As this handout has hopefully shown, legalization done right can bring significant benefits to Kentucky – historically, socially, and economically – while mitigating risks through thoughtful regulation.



**Keep your eyes on Frankfort**, stay informed on the latest developments (things change fast in this arena), and don't hesitate to be a voice of reason in the debate. Perhaps soon we'll be updating this CLE handout to discuss Kentucky's new recreational cannabis code and the first dispensaries opening in the Commonwealth. Until then, remember the winding journey we've traveled: from hemp fields of the 1800s to the current crossroads. Kentucky's cannabis story is still being written – and we can help write the next chapter, ideally one where the Bluegrass State finally embraces some green and reaps the rewards.

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8. Kentucky Center for Economic Policy report (2023) – cannabis criminalization stats (303,000 charged over 20 years) and Kentucky being one of 18 states still criminalizing cannabis as of early 2020s .
9. Kentucky Courier-Journal (Jan 2025) – bills introduced for recreational legalization: SB 36/ HB 105 for constitutional amendment (1 oz possession, 5 plants) ; SB 33 for decriminalization up to 8oz/5 plants ; quotes from Sen. Yates on regulation and democratic process .
10. Marijuana Policy Project / MPP and NORML summaries – data on teen use not increasing post-legalization (quoting NIDA's testimony, 2022) ; NIDA/CDC survey results showing declines in youth use as legalization spreads ; Beshear/NORML statement on 90% of Kentuckians supporting



medical cannabis .

11. Public statements by Kentucky officials – e.g., Sen. Robert Stivers casting doubt on medical marijuana’s efficacy (placebo effect quote) ; Gov. Beshear press release emphasizing medical cannabis as part of opioid reduction strategy .

12. Federal law references – Controlled Substances Act Schedule I status of marijuana (no accepted medical use, making all possession/distribution a crime) ; *Gonzales v. Raich* (2005) confirming federal power over state-legal marijuana .

(All citations in text correspond to the reference materials listed above, using the format **【source¶line】** as provided throughout the handout.)