

June 4, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative related to medical marijuana (A.G. File No. 15-0018).

Background

Federal Law. Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, cultivation, or distribution of marijuana generally is illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, possession of less than one ounce of marijuana is an infraction punishable by a fine, while selling marijuana is a felony and may result in a jail or prison sentence.

In November 1996, voters approved Proposition 215, which made it legal under state law to cultivate and possess marijuana in California for medical purposes only. In 2003, the Legislature authorized the formation of medical marijuana cooperatives, which are nonprofit organizations of medical marijuana users that cultivate and distribute marijuana to their members through outlets known as dispensaries. While state law prohibits the establishment of facilities that distribute, sell, or cultivate medical marijuana within 600 feet of a school, it otherwise gives local cities and counties the discretion to regulate the location and operations of such facilities. Currently, local medical marijuana laws vary widely across the state, ranging from complete bans of such facilities in some cities and counties to no restrictions at all in other places. State and local governments currently collect sales tax on medicinal marijuana sales. A small number of cities also impose a supplemental tax on medical marijuana sales. We estimate that the total amount of state and local revenue collected statewide from medical marijuana sales and supplemental taxes likely is in the high tens of millions of dollars annually.

The U.S. Supreme Court ruled in 2005 that federal authorities could continue under federal law to prosecute California patients and providers engaged in the cultivation and use of marijuana for medical purposes. Despite having this authority, the current policy of the U.S. Department of Justice is not to prosecute marijuana users and businesses that act in compliance with state and local marijuana laws so long as those laws are written and enforced in a manner that upholds federal priorities. These priorities include ensuring that marijuana is not distributed to minors or sold in areas that are associated with minors.

Proposal

The measure states that neither the state nor any local agency shall adopt any law that does any of the following:

- Burdens the ability of doctors to recommend marijuana for medicinal or therapeutic purposes, unless the law applies such restrictions equally to other herbal or therapeutic treatments.
- Impedes a patient's ability to obtain, transport, or cultivate marijuana, so long as the method of obtaining, cultivating, or transporting marijuana is consistent with the business practices and/or cultivation practices of other flora in the law's jurisdiction.
- Creates a noncompetitive marketplace for medical marijuana and its derivatives.

Fiscal Effects

State and Local Tax Revenues. This measure seems to limit the ability of state and local governments to enact future laws that prohibit or restrict the cultivation or sale of medical marijuana, as well as preempt similar existing laws. However, certain provisions of this measure could be subject to various interpretations by the courts. For the purpose of this analysis, we assume that the measure would impact future and existing laws. Based on this assumption, the measure could result either in increased or reduced tax revenues. For example, by preempting limits on the number of medical marijuana dispensaries the measure could result in an increase in the number of dispensaries in California. If individuals who now purchase marijuana illegally under state law instead purchased it from the new dispensaries, there could be an increase in aggregate taxable sales and tax revenues for state and local governments, potentially in the tens of millions of dollars. However, the preemption of existing state and local law could also limit the ability of state and local governments to regulate medical marijuana in a manner consistent with federal priorities. For example, it could preempt current state law that prohibits medical marijuana dispensaries from being located near schools. To the extent that this resulted in heightened federal enforcement of federal laws prohibiting marijuana, it could reduce sales and tax revenue for state and local governments, potentially by tens of millions of dollars.

Summary of Fiscal Effects. This measure would have the following fiscal impact:

- Potential change in tax revenue related to sales of medical marijuana of either an increase or a decrease of tens of millions of dollars annually, depending on how the measure is implemented by the state and federal governments.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance