

September 2, 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. 15-0041).

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 for individuals of any age to cultivate and possess marijuana in California for medical purposes specifically with a recommendation from a licensed physician. 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 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 in other jurisdictions. 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 (DOJ) 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 diverted from states that have legalized marijuana to other states.

Proposal

The measure states that any resident age 18 or older has the right to grow, own, purchase, and obtain a permit from the state to sell organic marijuana for medical use, without a recommendation or prescription from a physician.

Fiscal Effects

This measure would affect both costs and revenues for state and local governments. The magnitude of these effects would depend upon (1) how the measure is interpreted and implemented, (2) future consumption by medical marijuana users, and (3) the extent to which the U.S. DOJ exercises its discretion to enforce federal prohibitions on marijuana activities otherwise permitted by this measure. Thus, the potential revenue and expenditure impacts of this measure described below are subject to considerable uncertainty.

Reduction in Various Criminal Justice Costs. Since this measure removes the requirement that medical marijuana users obtain a physician's recommendation, it is unclear how law enforcement officials would differentiate between individuals using marijuana lawfully for medical use and those using it illegally. Accordingly, the measure could limit the ability of law enforcement to enforce existing laws prohibiting the cultivation and possession of non-medicinal marijuana. This could result in reduced costs to the state and local governments by reducing the number of marijuana offenders incarcerated in state prison and county jails, as well as the number placed under community supervision (such as county probation). In addition, it could result in a reduction in state and local costs for the enforcement of marijuana-related offenses and the handling of related criminal cases in the state court system. Such savings would be partially offset by reduced state and local revenues from the collection of the fines established in current law for marijuana offenses and the assets that are forfeited in some criminal marijuana cases. The potential net amount of savings is uncertain and would depend on how the measure is implemented but could reach into the tens of millions of dollars annually. In many cases, however, any savings that are achieved would likely be redirected to other law enforcement and court activities.

Other Fiscal Effects on State and Local Programs. The measure could also have fiscal effects on various other state and local programs. For example, the measure could result in an increase in the consumption of marijuana, potentially resulting in an unknown increase in the number of individuals seeking publicly funded substance use treatment. In addition, the measure would result in costs for the state to issue permits to sell medical marijuana. These costs could vary depending on how the state chooses to implement the permit system but would be unlikely to exceed several tens of millions of dollars annually. To the extent the states levies fees to obtain a permit to sell marijuana, such fees would partially or entirely offset the above permitting costs.

State and Local Tax Revenues. State and local governments could receive additional revenues, such as from sales taxes, primarily due to an increase in the number of people purchasing medical marijuana lawfully at the state level rather than through illegal channels. This measure could increase

the number of individuals purchasing medical marijuana in a couple of ways. First, by removing the requirement that individuals obtain a physician's recommendation to lawfully possess medical marijuana, this measure would likely result in an increase in the number of individuals purchasing medical marijuana. Second, depending on how the measure is interpreted by the courts and implemented by the state, it could result in individuals having greater access to purchasing medical marijuana at legal dispensaries, including in local jurisdictions that currently ban or limit such facilities. In addition to the increased sales tax revenue collected on medical marijuana at legal dispensaries, the measure could increase other state and local tax revenues. In particular, the measure could result in lower marijuana prices which would result in marijuana consumers having additional disposable income to spend on other taxable goods. In total, we estimate that the measure could result in increased tax revenues for state and local governments potentially in the low hundreds of millions of dollars annually.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on (1) how the measure is interpreted and implemented, (2) future consumption by medical marijuana users, and (3) the extent to which the U.S. DOJ exercises its discretion to enforce federal prohibitions on marijuana activities otherwise permitted by this measure.

- Net reduced costs to state and local governments, possibly reaching the tens of millions of dollars annually related to enforcing certain marijuana-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising certain marijuana offenders.
- Potential additional state and local tax revenues, primarily from sales taxes, in the low hundreds of millions of dollars annually.
- Additional state costs of up to several tens of millions of dollars annually to administer permits to sell medical marijuana, which would be offset by any permitting fees authorized by the state.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance