

August 19, 2009

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the use, possession, and sale of marijuana (A.G. File No. 09-0022).

Background

Federal Law. Federal law classifies marijuana as an illegal substance. The Federal Controlled Substances Abuse Act provides criminal sanctions for various activities relating to marijuana. Federal laws are enforced by federal law enforcement agencies that may act independently or in conjunction with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, use, transportation, or cultivation of marijuana is generally illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, under the state Penal Code, possession of less than one ounce of marijuana is a misdemeanor punishable by a fine, while selling marijuana is a felony and may result in a prison sanction.

In November 1996, voters approved Proposition 215, which legalized the cultivation and possession of marijuana in California for medicinal purposes. Notwithstanding this initiative, the U.S. Supreme Court ruled in 2005 that federal authorities could continue to prosecute California patients and providers engaged in the medicinal cultivation and use of marijuana for violations of federal law. However, the U.S. Department of Justice announced in March 2009 that it would no longer prosecute marijuana patients and providers whose actions are consistent with state medical marijuana laws.

Proposal

This measure proposes to (1) legalize various marijuana-related activities, (2) regulate the commercial production of marijuana, (3) impose and collect marijuana-related fees and taxes, and (4) authorize various criminal and civil penalties.

Legalization of Marijuana-Related Activities. The measure states that it repeals all state statutes that prohibit marijuana possession, sales, transportation, production, processing, or cultivation, as well as removes references to marijuana from all statutes that regulate controlled substances. However, the measure states that it does not repeal existing statutes that prohibit driving under the influence of alcohol or drugs. The measure also specifies that persons age 21 or older may legally possess, transport, use, furnish, sell, cultivate, or process marijuana. In addition, the measure states that any individual's previous convictions for a marijuana offense shall be expunged from criminal records, which would likely cause certain persons currently in prison or jail (or on parole or probation) for such an offense to be released from custody. Moreover, the measure prohibits discrimination against a person for conduct permitted by the measure and provides for the "decriminalization" of industrial hemp. (The measure defines industrial hemp as an agricultural non-psychoactive cannabis plant grown exclusively for its mature stalks, fibers, oils, or seeds.)

Regulation of Commercial Production. The measure allows persons 21 or older to cultivate "reasonable amounts" of marijuana for personal use without being subject to regulation. However, production of marijuana in excess of the amounts allowed for personal use would be subject to commercial regulations adopted by state and local governments. These regulations could apply to the cultivation, production, processing, distribution, or sale of marijuana. Specifically, the measure requires the state to establish regulations to ensure that marijuana businesses prevent harm to the environment and protect minors. Under this measure, any marijuana sold must have a label identifying, among other information, the product's content of tetrahydrocannabinol (more widely known as THC), the psychoactive substance in marijuana. Marijuana produced in California could not be sold outside the state unless such sales were consistent with federal or international law. Local governments would be prohibited from banning establishments that allow smoking and other use of marijuana. The measure requires that both state and local governments enact laws and regulations to promote the production and sale of industrial hemp.

Imposition and Collection of Taxes and Fees. Marijuana cultivated for personal use would not be subject to taxation or fees. However, the measure requires that the Legislature create a system for the taxation of commercial marijuana activities within one year of the measure's passage. (The measure does not specify whether these would be state or local revenues, or both.) It specifies that the Legislature initially set the excise tax at no less than \$50 per ounce of marijuana and that all revenue collected from this tax be spent on public education, health care, environmental programs, public works, and state parks. In addition, the measure requires state and local governments to create a system for the issuance of permits and licenses for the cultivation and sale of marijuana, as well as the collection of associated fees.

Authorization of Criminal and Civil Penalties. The measure specifies that penalties for furnishing marijuana to a minor shall be consistent with penalties for similar alcohol-related offenses, as determined by the Legislature. In addition, the measure allows the Legislature to establish penalties for minors who commit marijuana offenses but prohibits placing such minors in state custody. The measure also specifically does not permit smoking marijuana (1) on a school bus; (2) by the operator of a motor vehicle, vessel, or aircraft during operation; and (3) within 500 feet of a youth shelter or school, unless the school is a college or university or the personal use occurs within a residence. Any violations of the measure (including unauthorized sales) are subject to civil, regulatory, and licensing penalties, as determined by the Legislature. The measure requires that revenue collected from civil penalties be spent on public education, health care, environmental programs, public works, and state parks, but does not require that existing program funding levels for these programs be maintained.

Fiscal Effects

Although the federal government recently announced that it would no longer prosecute medical marijuana patients and providers whose actions are consistent with Proposition 215, it has continued to enforce its prohibitions on non-medical marijuana activities. To the extent that the federal government continued to enforce existing federal marijuana laws, it would generally have the effect of impeding or eliminating the cultivation, possession, transportation, sale, or use of marijuana permitted by this measure under state law.

Moreover, some of the provisions of this measure could be subject to challenge in the courts and found unconstitutional. For example, the way in which this measure proposes to change California's existing marijuana-related statutes could be challenged in the courts. That is because the measure in some cases makes general references to the other laws that are to be changed, rather than directly amending or striking out the specific existing laws relating to marijuana.

Thus, the revenues or expenditures resulting from this measure would be subject to significant uncertainty. The measure could have the following fiscal effects discussed below.

Reduction in State and Local Correctional Costs. The measure could result in significant savings to state and local governments, potentially in the several tens of millions of dollars annually, by reducing the number of marijuana offenders incarcerated in state prisons and county jails. It could also reduce the number of persons placed on county probation or state parole. The county jail savings would be offset to the extent that jail beds no longer needed for marijuana offenders were used for other criminals who are now being released early because of a lack of jail space.

Redirection of Court and Law Enforcement Resources. The measure could result in a major reduction in state and local costs for enforcement of marijuana-related offenses

and the handling of related criminal cases in the court system. However, it is likely that state and local governments would redirect some or all of their resources to other law enforcement and court activities, reducing or perhaps eliminating the savings that could otherwise be realized.

Potential Increased Substance Abuse Program Costs. 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 abuse treatment services. For example, the state Drug Medi-Cal Program could incur increased costs of a few million dollars annually. This measure could also have fiscal effects on state- and locally funded drug treatment programs for criminal offenders, such as drug courts.

Reduction in Medical Marijuana Program. The measure could potentially reduce both the costs and offsetting revenues of the state's Medical Marijuana Program, a patient registry that identifies those individuals eligible under state law to legally purchase and consume marijuana for medical purposes. That is because adults 21 and over would no longer need to participate in the program to obtain marijuana.

Potential New Revenues From the Legalization of Marijuana. As noted earlier, this measure directs the Legislature to adopt an excise tax of no less than \$50 per ounce on commercially produced marijuana. Based on the limited data available, it appears that an excise tax of this level could potentially generate additional state or local revenues of a few hundred millions of dollars annually. The actual amount of revenues generated, however, would depend upon whether the Legislature chooses to adopt an excise tax, the rate of such a tax, and how the measure changed the consumption and sales price of marijuana. State and local governments could realize additional revenues from sales taxes generated by commercial producers of marijuana and from licensing and permitting fees. The state could also realize additional income tax revenues from the production and sale of marijuana. The amount of the various tax and fee revenues that could be generated under this measure would depend considerably on the extent to which the federal government enforces its laws against marijuana in California.

Effects on State and Local Fine Revenues. The measure could reduce state and local revenues from the collection of the fines established in current law for marijuana criminal offenders. However, there could be additional fine revenue generated from the new civil penalties for violators of the measure, such as for selling marijuana commercially without authorization. The net fiscal effect of these changes in fine revenues is unknown.

Increased Costs for Expungement of Records. The measure could result in potentially minor state costs and potentially significant local costs related to expungement of criminal records.

Summary of Fiscal Effects

Given that the federal government continues to enforce federal marijuana laws that do not conflict with state medical marijuana laws, the revenues and expenditures resulting from this measure would be subject to significant uncertainty. In addition, it is uncertain if the measure would withstand state constitutional legal challenges as discussed above. If upheld in the courts, we estimate that this measure would have the following major fiscal effects:

- Savings in the several tens of millions of dollars annually to state and local governments on the costs of incarcerating and supervising certain marijuana offenders.
- Unknown but potentially major new excise, income, and sales tax revenues related to the production and sale of marijuana products.

Sincerely,

Mac Taylor
Legislative Analyst

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Director of Finance