

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 statutory initiative related to the cultivation, use, possession, and sale of marijuana (A.G. File No. 15-0017).

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 legalized under state law the cultivation and possession of marijuana in California for medical purposes. State law also authorizes cities and counties to regulate the establishment of medical marijuana dispensaries in their jurisdictions. The U.S. Supreme Court ruled in 2005, however, 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 those that have not. State and local governments currently collect sales tax on medicinal marijuana sales.

Proposal

This measure changes state law to legalize the possession, cultivation, and sale of marijuana. Despite these changes to state law, activities related to the use of marijuana would continue to be prohibited under federal law.

State Legalization of Marijuana-Related Activities. Under the measure, individuals age 21 or over could legally possess, sell, transport, process, and cultivate marijuana under state law. As discussed below, the production and sales of specified amounts of marijuana for recreational and medical purposes would be subject to regulation by the state and local governments. Although the measure would generally legalize marijuana, it would remain unlawful for individuals to (1) operate a motor vehicle while under the impairment of marijuana, (2) divert marijuana to another state, or (3) provide marijuana to individuals under the age of 21. In addition, the measure allows for restrictions on the possession or consumption of marijuana in public places.

Regulation of Marijuana Activities. The measure allows the cultivation of up to six marijuana plants per person for personal use so long as the plants are grown on private property and that reasonable measures are taken to prevent the plants from being seen or smelled by neighbors. However, production of marijuana in excess of the amounts specified for personal use or for commercial purposes would be subject to regulations adopted by a new commission established in the measure—the California Cannabis Commission. This commission would also be authorized to regulate the processing, distribution, and sales of marijuana. For example, individuals or organizations would need to obtain a license from the commission in order to cultivate more than six plants, or engage in the processing or sale of marijuana. Specifically, the commission is authorized to issue licenses for: (1) marijuana retail stores, (2) processors of edible and concentrated marijuana products, and (3) commercial marijuana cultivators. The measure authorizes the commission to establish fees for such licenses and impose fines on license holders. The measure also requires the commission to establish and maintain a repository of all reasonably available genetic strains of the marijuana plant.

Taxation of Commercial Marijuana Sales. The measure states that existing state and local sales and use taxes shall be applied to marijuana sold for recreational use. However, the measure states that marijuana sold for medical purposes shall be exempt from such sales and use taxes. As well as any other state or local tax. In addition, the measure states that the Legislature could place additional taxes on the processing and sale of recreational marijuana products. However, the measure states that the cumulative taxes cannot exceed 30 percent of the retail market value of the products sold. The measure also allows the Legislature to place additional taxes on businesses cultivating more than 99 marijuana plants.

Zoning Restrictions for Marijuana Businesses. The measure prohibits the establishment of (1) retail marijuana businesses on property not zoned for commercial use, (2) outdoor commercial marijuana cultivation on land zoned primarily for residential use, and (3) indoor commercial marijuana cultivation on land not zoned for industrial use. The measure allows local governments to provide further zoning regulations for retail marijuana businesses and for marijuana cultivators growing less than 100 plants as long as those regulations do not ban such businesses.

Authorization of Criminal Penalties. Under the measure, providing marijuana to an individual under the age of 21 for nonmedical purposes would be a misdemeanor. In addition, possession of marijuana by individuals under the age of 21 for nonmedical purposes would be an infraction punishable by a fine of up to \$100 or by a requirement to provide community service for up to 30 days.

Fiscal Effects

The provisions of this measure would affect both costs and revenues for state and local governments. The magnitude of these effects would depend upon (1) the extent to which the U.S. DOJ exercises its discretion to enforce federal prohibitions on marijuana activities otherwise permitted by this measure and (2) how, and to what extent, state and local governments choose to regulate and tax the commercial production and sale of marijuana. Thus, the potential revenue and expenditure impacts of this measure described below are subject to considerable uncertainty.

Reduction in Various Criminal Justice Costs. The measure would result in reduced costs to the state and local governments by reducing the number of marijuana offenders incarcerated in state prison and county jail, as well as the number placed under community supervision (such as county probation). In addition, the measure would 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. In total, these reduced costs could range from the tens of millions of dollars to potentially exceeding \$100 million annually. In many cases, however, these resources 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 abuse treatment. This measure could also 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. This is because individuals could legally possess marijuana under the measure without participating in the Medical Marijuana Program. In addition, the measure would result in costs for the state to regulate the commercial production and sale of marijuana and to establish and maintain a marijuana genetic repository. These costs could vary depending on how, and to what extent, the state chooses to implement the above regulations but would be unlikely to exceed several tens of millions of dollars annually. Eventually these costs could be largely or entirely offset by registration fees authorized by the measure to be levied on marijuana-related businesses.

Effects on State and Local Revenues. State and local governments could receive additional revenues, such as sales taxes from marijuana sales permitted under this measure. This is because many individuals who are currently purchasing marijuana illegally could begin purchasing it legally under state law at businesses that collect sales taxes. In addition, state and local governments could also receive revenue from excise taxes, if such taxes were enacted by the Legislature. However, since the measure prohibits sales and use taxes on medical marijuana

products, these revenues would be partially offset by the loss of sales tax currently collected on such sales.

In addition, the measure could result in an increase in taxable economic activity in the state, as businesses and individuals currently producing and selling marijuana illegally could begin doing so legally under state law and pay personal income and corporation taxes. Moreover, the measure could increase economic activity in the state to the extent that out-of-state consumers redirect spending into the state. The magnitude of the net increase in economic activity is unknown and would depend considerably on the extent to which the federal government enforces marijuana laws in California.

In total, our best estimate is that the state and local governments could eventually collect net additional revenues of up to several hundred million dollars annually.

Effects on Fine and Asset Forfeiture Revenues. The measure could reduce 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. We estimate that these revenues could amount to millions or low tens of millions of dollars annually. This could be somewhat offset, however, by additional fine revenue generated from new penalties created by the measure or from fines imposed by the commission.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on (1) future actions by the federal government to enforce federal marijuana laws and (2) how, and to what extent, state and local governments choose to tax and regulate the production and sale of marijuana.

- Reduced costs ranging from tens of millions of dollars to potentially exceeding \$100 million annually to state and local governments related to enforcing certain marijuana-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising certain marijuana offenders.
- Net additional state and local tax revenues of potentially up to several hundred million dollars annually related to the production and sale of marijuana.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance