

October 23, 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. 15-0058).

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 (including synthetic marijuana products) generally is illegal in California. (Synthetic marijuana products are drugs that typically contain dried shredded plant material with chemical additives similar to the psychoactive components of the marijuana plant.) 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 only, specifically with a recommendation from a licensed physician. 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 other states. 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 (including synthetic 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, manufacture, and cultivate marijuana products under state law. These provisions would take effect immediately following the passage of the measure. However, it would remain unlawful for individuals to operate a motor vehicle while under the impairment of marijuana or provide recreational marijuana to individuals under the age of 21.

Regulation of Marijuana. This measure establishes the California Cannabis Commission within the Department of Consumer Affairs to recommend to the Legislature regulations governing the commercial cultivation, processing, transportation, and sale of marijuana. For example, the measure requires the commission to recommend procedures for the issuance of licenses to engage in commercial marijuana-related activities. The measure requires the commission to issue such recommendations by January 1, 2018, which could be adopted by the Legislature with a majority vote. However, the Legislature could also adopt with a two-thirds vote alternative laws that regulate marijuana before or after the commission issues its recommendations. The measure authorizes cities and counties to regulate the time, place, and manner of possession, cultivation or consumption of marijuana so long as such regulations do not prohibit the private cultivation, possession, or use of marijuana by individuals age 21 or older. In the absence of local regulation, the measure specifies that the consumption of marijuana by adults is subject to the laws regulating the use of tobacco in public.

Taxation of Commercial Marijuana Sales. Under the measure, the state's portion of sales and use taxes collected from the sales of marijuana for recreational use would be deposited in a fund created by the measure—the California Cannabis Education and Research Fund. Of the amount deposited in the fund, one-third would be allocated for each of the following: (1) preschool and K-12 education, (2) substance abuse counseling and education services, and (3) the regulatory and research activities of the California Cannabis Commission. The measure states that the above provisions related to the allocation of sales and use taxes on recreational marijuana shall remain in effect until January 1, 2027, unless extended by the Legislature. The measure also states that existing sales and use taxes shall not be applied to marijuana sold for medical use. The measure, however, authorizes the Legislature to impose new excise taxes on marijuana sold for recreational or medical use.

Authorization of Civil and Criminal Penalties. Under the measure, it would be a misdemeanor crime to unlawfully provide non-medicinal marijuana to an individual under the age of 21. It would also be a misdemeanor crime for an individual under the age of 21 to possess, cultivate, or transport marijuana for non-medicinal purposes.

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) how, and to what extent, state and local governments choose to regulate the commercial production and sale of marijuana; (2) future consumption by 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. The measure would result in lower 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, we estimate that the reduction in state and local criminal justice costs from the above changes 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 use treatment. However, any additional costs could be partially or entirely offset by additional funding that would be available for substance use treatment under the measure. 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 could result in costs for the state to regulate the commercial production and sale of marijuana. These costs would vary depending on how, and to what extent, the state chooses to regulate marijuana but would be unlikely to exceed several tens of millions of dollars annually. Eventually, these costs would be at least partially offset by revenues from sales and use taxes on recreational marijuana.

Effects on State and Local Revenues. Assuming passage of the measure does not result in a significant change in the federal government's enforcement activities, the measure would result in increased governmental revenues. 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. As noted earlier, the revenues derived from such sales taxes would be deposited in the California Cannabis Education and Research Fund at least until 2027 to support the costs of regulating the marijuana industry as well as various programs. Since the measure prohibits sales and use taxes on medical marijuana, the above revenues would be partially offset by the loss of such taxes currently being collected.

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 would increase economic activity in the state to the extent that out-of-state consumers (such as tourists) 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, the state and local governments could eventually collect net additional revenues of up to the low hundreds of millions of dollars annually. To the extent that the state or local governments impose excise taxes on marijuana, this amount would increase. To the extent that a significant

amount of marijuana is purchased for medical rather than recreational use, this amount could be substantially less since the measure exempts medical marijuana transactions from sales and use taxes.

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 the new penalties created by the measure (such as for selling marijuana to individuals under the age of 21).

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

- 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 the low hundreds of millions of dollars annually related to the production and sale of marijuana, some of which would be required to be spent for specific purposes including regulating the marijuana industry and education, research, and substance abuse counseling and education services.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance