

December 22, 2015

Hon. Kamala D. Harris  
Attorney General  
1300 I Street, 17<sup>th</sup> 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. 15-0103, Amendment #1).

## Background

***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 only, 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. State law also gives cities and counties the discretion to regulate the location and operation of such facilities. State and local governments currently collect sales tax on medical marijuana. A small number of cities also impose additional taxes on medical marijuana sales. We estimate that the total amount of state and local revenue collected statewide from the above taxes likely is in the high tens of millions of dollars annually.

In 2015, the Legislature passed and the Governor signed legislation to regulate the commercial medical marijuana industry, with a new Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs as the lead enforcement agency. Under the legislation (effective January 2016), medical marijuana cooperatives will be phased out within a few years and replaced by state-licensed businesses. In particular, businesses cultivating marijuana will be licensed by the Department of Food and Agriculture (DFA); businesses testing and processing marijuana will be licensed by the Department of Public Health (DPH); and

businesses transporting, distributing, and retailing marijuana will be licensed by the bureau. Local governments will continue to have the authority to regulate the location and operation of such businesses. The legislation also requires the state to set standards for labelling, testing, and packaging medical marijuana products and to develop a system to track such products throughout the supply chain.

***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. 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**

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, use, sell, transport, process, and cultivate marijuana under state law. However, certain marijuana-related activities would remain illegal. For example, it would remain unlawful for individuals to operate a motor vehicle while under the impairment of marijuana or provide marijuana to individuals under the age of 21.

***Regulation of Commercial Marijuana Activities.*** This measure changes the name of the Bureau of Medical Marijuana Regulation to the Bureau of Marijuana Control and grants it additional regulatory authority. Specifically, under the measure, the bureau, as well as other state agencies (such as DPH and DFA), would have the authority to regulate the commercial cultivation, processing, distribution, and sales of marijuana for recreational purposes. This would be in addition to their existing authority to regulate medical marijuana. The division of regulatory responsibilities among these state agencies would be similar to that under the recent legislation related to medical marijuana. Individuals or organizations engaging in commercial cultivation, testing, processing, distribution, or sales of marijuana would be required to obtain a license from the appropriate state agency. For example, businesses cultivating marijuana would be required to obtain a license from DFA. The measure requires each licensing authority to charge license fees that cover their regulatory costs. Under the measure, the system for tracking medical marijuana products throughout the supply chain that must be developed under current law would be expanded to include marijuana cultivated and sold for recreational use. The measure also creates the Marijuana Control Appeals Panel to hear appeals from individuals aggrieved by decisions made by the bureau and specifies that orders of the panel are subject to appeals to the courts.

***Taxation of Commercial Marijuana Sales.*** The measure states that existing state and local sales taxes are to be applied to the sale of recreational marijuana products. In addition, the measure places an excise tax of 15 percent on the retail sale of marijuana products. The measure also places an excise tax on the cultivation of marijuana of \$9.25 per ounce of dried marijuana flowers and \$2.75 per ounce of dried marijuana leaves. However, the measure authorizes the state Board of Equalization to annually adjust the tax rate for leaves to reflect fluctuations in the relative price of marijuana flowers to marijuana leaves. The measure also allows the board to establish other categories of marijuana (such as frozen marijuana) for tax purposes and specifies that these categories would be taxed at their value relative to marijuana flowers. Beginning in 2020, the cultivation tax would be adjusted annually for inflation. The measure exempts from the sales and use tax marijuana sold for medical purposes provided the consumer possesses a valid government issued identification card certifying that they are using marijuana pursuant to a physician's recommendation.

Revenues collected from any marijuana excise tax, as well as certain fines imposed on businesses or individuals who violate regulations established under the measure, would be deposited in a new special fund, the California Marijuana Tax Fund. Monies deposited in the fund would first be used to reimburse certain state agencies, such as the bureau, for any costs of regulating the commercial marijuana industry not covered by license fees. After reimbursing state agencies for implementation costs, the measure would allocate a portion of the remaining revenues for the following purposes (in order of priority):

- \$10 million annually from 2018-19 through 2028-29 to public universities in California to research and evaluate the implementation of the measure.
- \$3 million annually from 2018-19 through 2022-23 to the California Highway Patrol (CHP) to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including by marijuana.
- \$10 million in 2018-19, increasing by \$10 million annually until 2022-23, and \$50 million each year thereafter, to the Governor's Office of Business and Economic Development for a grant program to provide services (such as mental health and substance use treatment) in communities disproportionately affected by past federal and state drug policies.
- \$2 million annually to the University of California San Diego Center for Medicinal Cannabis Research to study the efficacy and adverse effects of the use of marijuana for medicinal purposes.

Any funds remaining after the above allocations would be annually allocated as follows: (1) 60 percent to the state Department of Health Care Services for substance use disorder education and prevention programs for youth; (2) 20 percent to the state Department of Fish and Wildlife (DFW) and the state Department of Parks and Recreation (DPR) for environmental programs designed to clean up and prevent environmental damage resulting from the illegal cultivation of marijuana; and (3) 20 percent to CHP for programs designed to reduce driving under the influence of alcohol, marijuana, and other drugs and to the Board of State and Community Corrections for a grant program designed to mitigate any potential negative impacts

on public health or safety resulting from the implementation of the measure. Under the measure, beginning July 2028, the Legislature could change the above allocations to further the purpose of the measure, subject to certain limitations (such as a requirement that any changes further the purpose of the measure).

The measure also requires that funding provided to DFW and DPR from the Marijuana Tax Fund not be used to replace other funds currently used by the departments for the purposes described above. As such, the measure requires that General Fund appropriations to DFW and DPR not be reduced below the levels provided in the *2014-15 Budget Act*.

***Local Regulation of Marijuana Businesses.*** Under the measure, cities and counties would continue to have the authority to regulate commercial marijuana businesses in their jurisdiction. For example, cities and counties could require marijuana businesses to obtain local licenses. In addition, cities and counties could set rules for such businesses (such as those related to hours of operation and minimum security levels) and establish restrictions on where they could be located. Cities and counties could also completely ban marijuana-related businesses in their jurisdiction. However, cities and counties could not ban (1) the transportation of marijuana through their jurisdictions or (2) the delivery of marijuana to individuals in their jurisdictions.

***Marijuana Cultivation and Possession for Personal Use.*** Under the measure, individuals over the age of 21 could lawfully (1) possess, process, transport, or give away to individuals over the age of 21, up to 28.5 grams of marijuana and up to eight grams of concentrated cannabis and (2) cultivate up to six living marijuana plants and possess the marijuana produced by the plants within a private residence. Cultivation of marijuana for personal use would only be allowed in a locked area on private property that is not visible from a public place. Under the measure, cities and counties could place “reasonable” restrictions on the cultivation of marijuana for personal use (such as by prohibiting outdoor cultivation) but could not prohibit cultivation within a fully enclosed and secure private residence.

***Authorization of Civil and Criminal Penalties.*** The measure changes existing state penalties related to the use, possession, transportation, cultivation, and sale of marijuana. For example, under current law possession of one ounce or less of marijuana by an individual under the age of 18 is an infraction punishable by a \$100 fine. Under the measure, such a crime would remain an infraction but would instead be punishable by a requirement to attend a drug education or counseling program and complete community service. In addition, it is currently a felony to sell any amount of marijuana for recreational purposes. Under the measure, it would be a crime punishable as an infraction, misdemeanor, or felony, depending on certain factors (such as the prior criminal history of the offender), for individuals over the age of 18 to sell marijuana without a valid license. In addition, individuals engaging in any commercial marijuana activity without a license would be subject to a civil penalty of up to three times the amount of the license fee for each violation.

***Individuals Previously Convicted of Marijuana Crimes.*** Under the measure, individuals currently serving a sentence for marijuana-related crimes that would not have been crimes or would have been subject to lesser penalties had the measure been in place when they were committed would be eligible for resentencing. For example, an offender serving a misdemeanor or a felony sentence for possessing, cultivating, or selling marijuana would be eligible to be

resentenced. However, a court would not be required to resentence an offender if it determined that the offender was likely to commit certain specified severe crimes. Qualifying individuals would be resentenced to whatever punishment they would have received under the measure. Under the measure, resentenced offenders currently in jail or prison would be subject to community supervision for up to one year following their release. However, the measure allows courts to waive the community supervision requirement. In addition, individuals who have already completed their sentences for such crimes could apply to the courts to have their convictions reclassified. The measure also requires the destruction of arrest and conviction records for individuals previously arrested or convicted for certain marijuana-related offenses.

### **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 and tax 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 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. These savings could be partially offset in the first couple of years following the passage of the measure by costs (1) to the courts to process applications from individuals seeking to be resentenced or have their previous crimes reclassified, (2) to destroy records of arrest and conviction for certain marijuana-related crimes, and (3) to supervise offenders resentenced under the measure in the community. In addition, the savings could be partially offset by ongoing costs to operate drug education and counseling programs as required by the measure. 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 would

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 likely be entirely offset by license fees and tax revenues.

The provision of the measure prohibiting the state from reducing General Fund appropriations to DFW and DPR below the levels provided in the *2014-15 Budget Act* could increase General Fund costs, depending on the actual level of General Fund support that would be provided to the department in the absence of the measure. For example, it could result in the state having to allocate more General Fund than it otherwise would for DFW in future years.

***Effects on State and Local Revenues.*** State and local governments would receive additional revenues, such as sales taxes, from recreational marijuana sales permitted under this measure. This is largely 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, the state would receive revenue from excise taxes imposed by the measure on marijuana. As noted earlier, the revenues derived from the excise taxes would be deposited in the California Marijuana Tax Fund to reimburse state implementation costs and to benefit various programs including substance use disorder education, prevention, and treatment. However, since the measure prohibits sales and use taxes on medical marijuana, these revenues would be partially offset by the loss of sales tax currently collected on medical marijuana 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 would increase economic activity in the state to the extent that out-of-state consumers (such as tourists) redirect spending into the state. In total, our best estimate is that the state and local governments could eventually collect net additional revenues that could range from the high hundreds of millions of dollars to over \$1 billion annually. The potential revenues would be less if a significant portion of consumers purchase marijuana for medical rather than recreational use since the measure exempts medical marijuana 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 engaging in unlicensed commercial marijuana activities).

***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 and tax the commercial production and sale of marijuana, (2) future consumption by marijuana users, and (3) the extent to which the U.S. Department of Justice exercises its discretion to enforce federal prohibitions on marijuana activities otherwise permitted by this measure.

- Net 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 potentially ranging from the high hundreds of millions of dollars to over \$1 billion annually related to the production and sale of marijuana. Most of these funds would be required to be spent for specific purposes such as substance use disorder education, prevention, and treatment.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael Cohen  
Director of Finance