



October 8, 2019

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the cultivation, sale, and use of cannabis (A.G. File No. 19-0011).

Background

Cannabis. Cannabis refers to a variety of species and subspecies of flowering plants that produce chemical compounds known as cannabinoids. While there are over 100 known cannabinoids, the most well-known are tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is considered to be the main psychotropic component of cannabis that is responsible for the intoxicating “high” reported by cannabis users. In contrast, CBD is generally not believed to be intoxicating. Cannabis plants vary in their levels of THC and CBD. Hemp typically refers to a strain of cannabis that has very low levels of THC.

State Cannabis Law and Regulation. In November 1996, California became the first state to legalize medical cannabis when voters approved Proposition 215. In November 2016, voters approved Proposition 64, which legalized nonmedical use of cannabis (often referred to as “adult” use). Proposition 64 and subsequent regulations made various changes related to cannabis in California, including the following:

- ***Legalized Possession, Cultivation, and Use of Cannabis for Adult Use.*** Proposition 64 authorized individuals 21 or older to possess, process, transport, purchase, obtain, or give away 28.5 grams of non-concentrated nonmedical cannabis, or 8 grams of concentrated cannabis product. The proposition also allowed for the cultivation of up to six plants per residence for personal use, but allowed local governments to impose certain restrictions on this cultivation.
- ***Created a System for Regulating Adult Use Cannabis Businesses.*** Proposition 64 created a regulatory structure for nonmedical cannabis (similar to one previously created by the Legislature for medical cannabis). It also enabled state regulatory agencies to impose fees to cover their reasonable costs. Through regulations, these

agencies have established fees for adult use and medical cannabis businesses varying from under \$1,000 to as much as \$300,000 per license depending on the license type and amount of revenue generated by the business.

- ***Imposed State Taxes on Cannabis and Directed Revenues to Certain Purposes.*** Proposition 64 imposed two state excise taxes on medical and adult use cannabis: (1) an excise tax of 15 percent of retail sales and (2) a cultivation tax of \$9.25 per ounce of dried cannabis flowers and \$2.75 per ounce of dried cannabis leaves. The proposition directed that the revenues from these excise taxes be used for designated purposes (such as programs to discourage substance use by youth and address environmental damage from unlicensed cannabis cultivation). The proposition also excluded medical cannabis sales (with a valid state identification card) from state and local sales taxes.
- ***Authorized Local Governments to Regulate and Tax Cannabis Businesses.*** Proposition 64 provided cities and counties authority to restrict and regulate cannabis businesses located within their jurisdictions, including allowing them to limit the locations of these businesses or ban them altogether. Additionally, the proposition allowed local governments to impose additional taxes and fees on cannabis businesses.
- ***Reduced Various Penalties for Cannabis-Related Crimes.*** Proposition 64 reduced the criminal penalties for many cannabis-related offenses. For example, it made cultivating more than six cannabis plants without a license a misdemeanor generally punishable by up to six months in county jail and/or a fine of up to \$500. (Prior to the proposition, cultivating cannabis for nonmedical purposes was a felony punishable by up to three years in state prison or county jail.)
- ***Authorized Resentencing and Dismissal of Prior Convictions.*** Proposition 64 made individuals serving sentences for activities that were subject to harsher penalties prior to the proposition eligible for resentencing, and it allowed certain individuals to apply to the courts to have their criminal records changed. Subsequent legislation required the court to automatically reduce or dismiss cannabis convictions under certain circumstances.
- ***Legalized Hemp.*** The proposition legalized the cultivation of hemp and excluded it from the cannabis regulatory structure described above.

Federal Cannabis Law. Federal laws classify cannabis as an illegal substance and provide criminal penalties for various activities relating to its cultivation, sale, and use. These federal laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies. Currently, the United States Department of Justice (U.S. DOJ) chooses not to prosecute most cannabis users and businesses that follow state and local cannabis laws if those laws are consistent with federal priorities, such as preventing cannabis from being taken to other states. Federal law distinguishes hemp from cannabis. Under recent legislation, the federal government no longer considers hemp to be an illegal substance.

Proposal

This measure changes state law related to the cultivation, sale, and use of cannabis. We describe some key provisions of the measure below.

Increases the Amount of Cannabis That Can Be Grown for Personal Use. Under the measure, 99 flowering female plants and 12 pounds of dried flower produced per adult (21 or older) per year are assumed to be for personal rather than commercial use. The measure prohibits taxing, permitting, or licensing cannabis for personal use.

Changes Regulation of Adult Use Cannabis and Limits Its Taxation. The measure requires that the production of cannabis products for adult use be regulated and enforced in a manner analogous to, and not more onerous than, the regulation of California's beer and wine industries. Additionally, the measure limits the excise tax on the sale of adult use cannabis products to no more than 10 percent of the retail price of the products. Under the terms of the measure, half of the excise tax revenues collected would be provided for research, development, and promotion of cannabis industries in the state. The initiative also places a limit of no more than \$1,000 on licensing or permit fees the state can impose on adult use cannabis businesses.

Changes Regulation of Medical Use Cannabis and Prohibits Its Taxation. The measure prohibits taxation of medical cannabis, which is defined as any cannabis that is designed, intended, or used for treatment of any medical condition or healing purpose. It also states that licensed physicians shall not be penalized for or restricted from approving or recommending cannabis to any patient.

Limits Local Restrictions on Cannabis Businesses. Currently, many cities and counties restrict where cannabis businesses can operate or prohibit them altogether. This measure requires that sufficient adult-use and medical retailers be allowed to provide people with "reasonable" access to cannabis. Also, as discussed above, it requires that cannabis regulations be no more onerous than those in place for beer and wine. In so doing, the measure would limit the ability of cities and counties to ban or place restrictions on the establishment of cannabis businesses.

Limits Enforcement Actions Related to Cannabis. The measure limits the arrest and prosecution of individuals and businesses for activities related to cannabis. For example, it would no longer be a crime to cultivate more than six plants without a license. The measure also provides that the manufacturing, marketing, distribution, or sale between adults of equipment or accessories associated with cannabis shall not be prohibited. In addition, the measure bars the use of California law enforcement personnel or funds to assist in the enforcement of federal laws relating to cannabis. Finally, the measure provides that any person who "threatens the enjoyment" of the provisions of this measure is guilty of a misdemeanor.

Requires Release of Current Cannabis Offenders. The measure requires the release of people in prison or jail, or on state parole or county probation, convicted under current criminal statutes for cannabis-related activities that would be made legal under this measure. In addition, the measure requires the deletion of cannabis-related criminal records for all persons who have been charged with or convicted of crimes related to cannabis. The measure limits courts from charging an administrative fee of greater than \$10 for individuals to apply for these changes to their records.

Limits Drug Tests for Past Cannabis Use. Under the measure, private businesses and agencies in California would be limited in the types of tests they could use to detect cannabis usage for the purposes of making decisions about hiring or terminating employees and for determining insurance eligibility. Specifically, they could only test for current intoxication rather than past drug use.

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 cannabis activities otherwise permitted by this measure, (2) the specific regulatory structure that the state ultimately implements pursuant to the measure, and (3) how individuals and businesses respond to this regulatory structure. Thus, the potential revenue and expenditure impacts of this measure described below are subject to considerable uncertainty.

Reduction in State and Local Tax Revenues Due to Limits on Taxes. The measure would result in lower state and local tax revenues, likely in the mid-to-high hundreds of millions of dollars annually. This net reduction in tax revenue is driven primarily by two factors. First, the measure limits the excise tax rate on adult-use cannabis to no more than 10 percent of retail sales. Currently, the excise taxes on cannabis vary by jurisdiction. On average, we estimate that state and local excise taxes total about 30 percent of retail sales. Second, the measure prohibits any taxation of cannabis for medical or personal use, and defines medical and personal use more broadly than current law. Accordingly, it is likely that a greater share of consumption of legal cannabis would occur outside of the adult-use market, thus avoiding state and local sales and excise taxes. As previously indicated, under the measure half of the excise tax revenues collected would be provided for research, development, and promotion of cannabis industries in the state. This will leave less money available for the purposes identified under Proposition 64.

Reduction in State and Local Fee Revenues and Regulatory Costs. The measure would result in lower state and local license fee revenue—likely in excess of \$100 million annually—because it would limit state license fees for cannabis businesses to no more than \$1,000. At the same time, the measure’s changes to the regulation of cannabis would likely reduce licensing workload. To the extent that license fee revenues were not sufficient to fully support regulatory costs, it could result in some of these costs being supported from other fund sources (such as the state General Fund).

Increase in State and Local Costs for Resentencing and Criminal Record Destruction. The measure would result in one-time state and local court and law enforcement costs related to resentencing individuals and destroying criminal records, a portion of which would be offset by the \$10 court fee specified in the measure. On net, we estimate that these costs could potentially reach the low- to mid-tens of millions of dollars on a one-time basis.

Reduction in Other State and Local Criminal Justice Costs. The measure would result in a reduction in state and local law enforcement workload and associated costs by reducing the number of cannabis-related crimes. These resources could potentially be redirected for other law enforcement purposes. Additionally, the measure would result in a reduction in state and local

costs by reducing the number of criminal cases handled by the courts, as well as the number of individuals in correctional facilities and under community supervision for cannabis-related offenses. In total, we estimate that reductions to these state and local criminal justice costs could possibly range from the millions to low tens of millions of dollars annually.

Summary of Major Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on future actions by the federal government to enforce federal cannabis laws and how the measure is interpreted and implemented:

- Reduced state and local tax revenues related to the production and sale of cannabis, likely in the mid-to-high hundreds of millions of dollars annually.
- Reduced state and local license fee revenue—likely in excess of \$100 million annually—which could result in some of the regulatory costs being supported from other fund sources (such as the state General Fund).

Sincerely,

Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance