

May 24, 2016

L E G I S L A T I V E A N A L Y S T ' S O F F I C E

LAO
75
YEARS OF
SERVICE

Marijuana Legalization. Initiative Statute.

Presented to:
Assembly Committee on Business and Professions
Hon. Rudy Salas Jr., Chair

Assembly Committee on Health
Hon. Jim Wood, Chair

Assembly Committee on Revenue and Taxation
Hon. Sebastian Ridley-Thomas, Chair

Senate Committee on Business, Professions and
Economic Development
Hon. Jerry Hill, Chair





LAO Role in Initiative Process



Fiscal Analysis Prior to Signature Collection

- State law requires our office to work with the Department of Finance to prepare a joint impartial fiscal analysis of each initiative before it can be circulated for signatures. State law requires that this analysis provide an estimate of the measure's fiscal impact on the state and local governments.
- The fiscal analysis must be submitted to the Attorney General within 50 calendar days from the initiative's submission date. A summary of the estimated fiscal impact is included on petitions that are circulated for signatures.



Analyses After Measure Receives Sufficient Signatures to Qualify for the Ballot

- State law requires our office to provide impartial analyses of all statewide ballot propositions for the statewide voter information guide, including a description of the measure and its fiscal effects.
- We are currently in the process of preparing these materials.



Existing State and Federal Marijuana Laws

- Marijuana Generally Illegal Under State Law.*** Penalties for marijuana-related activities vary depending on the offense. For example, possession of less than one ounce of marijuana is punishable by a fine while selling or growing marijuana may result in a jail or prison sentence.
- Proposition 215 Legalized Medical Marijuana.*** In 1996, voters approved Proposition 215, which made it legal under state law for individuals of any age to use marijuana for medical purposes. In 2003, the Legislature legalized medical marijuana cooperatives, which are nonprofit organizations that grow and provide marijuana to their members. Cooperatives are not now licensed or regulated by the state but cities and counties can regulate where and how medical marijuana is grown and sold by individuals or cooperatives.
- Taxes on Medical Marijuana.*** State and local governments currently collect sales tax on medical marijuana, and a small number of cities impose additional taxes specifically on medical marijuana. The total amount of state and local taxes collected on medical marijuana likely is around several tens of millions of dollars annually.
- Marijuana Illegal Under Federal Law.*** Under federal law, it is illegal to possess or use marijuana, including for medical use. However, the U.S. Department of Justice (DOJ) currently chooses not to prosecute most marijuana users and businesses that follow state and local marijuana laws if those laws uphold federal priorities. These priorities include preventing minors from using the drug and preventing marijuana from being taken to other states.



State Currently Adopting New State Medical Marijuana Regulations

Medical Marijuana Industry to Be Regulated by Multiple State Agencies

Regulatory Agency	Primary Responsibilities
Bureau of Medical Marijuana Regulation	License medical marijuana distributors, transporters, and retailers.
Department of Food and Agriculture	License and regulate medical marijuana growers.
Department of Public Health	License and regulate producers of edible marijuana products and marijuana testing facilities.
State Water Resources Control Board	Regulate the environmental impacts of marijuana growing on water quality.
Department of Fish and Wildlife	Regulate environmental impacts of marijuana growing.
Department of Pesticide Regulation	Regulate pesticide use for growing marijuana.

- In 2015, the Legislature passed laws requiring state agencies to begin regulating medical marijuana. The new laws also require the state to develop a system to track medical marijuana products from production to sale. Under the new laws, medical marijuana cooperatives must be closed within a few years and replaced by state-licensed businesses.

- Local governments will continue to have the ability to regulate where and how medical marijuana businesses operate.



Major Provisions of Proposed Initiative



Legalization of Adult Nonmedical Use of Marijuana

- The measure changes state law to legalize the use of marijuana for nonmedical purposes by adults age 21 and over.
- The figure below summarizes the activities that would be allowed under the measure.

Measure Legalizes Nonmedical Marijuana Activities, With Restrictions		
Activity	Examples of What Would Be Allowed	Examples of What Would Not Be Allowed
Smoking marijuana	Smoking marijuana in a private home or at a business licensed for on-site marijuana consumption.	Smoking marijuana (1) while driving a car, (2) in any public place (other than at a business licensed for on-site consumption), or (3) anywhere that smoking tobacco is prohibited.
Possessing marijuana for personal use	Possession of up to 28.5 grams (about one ounce) of marijuana and up to 8 grams of concentrated marijuana (such as hash).	Possession of marijuana on the grounds of a school, day care center, or youth center while children are present.
Growing marijuana	Growing up to six living marijuana plants and keeping the marijuana produced by the plants within a private home.	Growing in an area that is unlocked or visible from a public place.
Giving away marijuana	Giving away to other adults up to 28.5 grams of marijuana and up to 8 grams of concentrated marijuana.	Providing marijuana to minors under the age of 21 for nonmedical use.



Regulation of Marijuana Businesses

- State agencies would have responsibilities similar to those under current law for medical marijuana. Under the measure, the system for tracking medical marijuana products would be expanded to include nonmedical marijuana products.
- Cities and counties could require nonmedical marijuana businesses to obtain a local license and set rules for such businesses (such as restricting where they could be located). Cities and counties could also completely ban marijuana-related businesses.

Taxation of Marijuana

Measure Allows for Certain Marijuana Taxes

Type of Tax	Type of Marijuana Taxed	Rate
Existing state and local sales tax	Nonmedical only.	Rates vary across the state but average around 8 percent.
New state retail excise tax	Both medical and nonmedical.	15 percent of retail price.
New state tax on growing	Both medical and nonmedical.	\$9.25 per ounce of dried marijuana flowers and \$2.75 per ounce of dried marijuana leaves. ^a
Existing and future local taxes	Subject to local government decisions.	Subject to local government decisions.

^a Marijuana flowers contain relatively more of the psychoactive ingredient in marijuana than leaves.

- As shown in the above figure, marijuana would be subject to various taxes under the measure. However, the measure would eliminate the sales tax on medical marijuana. The measure does not change local governments' ability to place other taxes on medical or nonmedical marijuana.

Allocation of Certain State Revenues

- The state excise tax on retail sales and the state tax on growing, as well as certain fines, would be deposited in a new special fund—the California Marijuana Tax Fund.
- Monies deposited in the fund would first be used to pay back certain state agencies for any marijuana regulatory costs not covered by license fees. The measure would allocate a portion of the remaining revenues in the following order:
 - \$10 million annually from 2018-19 through 2028-29 to evaluate the effects of the measure.
 - \$3 million annually from 2018-19 through 2022-23 to create and adopt methods to determine whether someone is driving while impaired, including by marijuana.



Major Provisions of Proposed Initiative

(Continued)

- \$10 million in 2018-19, increasing by \$10 million annually until 2022-23, and \$50 million each year thereafter, for a grant program to provide services (such as job placement assistance and mental health and substance use treatment) in communities most affected by past federal and state drug policies.
- \$2 million annually beginning in 2017-18 to study the risks and benefits of using marijuana for medicinal purposes.
- Any funds remaining after the above allocations would be annually allocated as follows:
 - 60 percent for youth programs including substance use disorder education, prevention, and treatment.
 - 20 percent to clean up and prevent environmental damage resulting from the illegal growing of marijuana.
 - 20 percent for (1) programs designed to reduce driving under the influence of alcohol, marijuana, and other drugs and (2) for a grant program designed to reduce any potential negative impacts on public health or safety resulting from the measure.
- Beginning July 2028, the Legislature could change the above allocations subject to certain limitations.



Major Provisions of Proposed Initiative

(Continued)



Penalties for Marijuana-Related Crimes

- The measure changes various state penalties related to marijuana. For example, currently, possession of one ounce or less of marijuana by someone under the age of 18 is punishable by a \$100 fine. Under the measure, such a crime would instead be punishable by a requirement to attend a drug education or counseling program and complete community service.
- In addition, selling marijuana for nonmedical purposes is currently punishable by up to four years in prison or jail. Under the measure, selling marijuana without a license would be a crime generally punishable by up to six months in jail and/or a fine of up to \$500.



Individuals Previously Convicted of Marijuana Crimes

- Under the measure, individuals serving sentences for activities that are subject to lesser penalties under the measure would be eligible for resentencing. Qualifying persons would be resentenced by the courts to whatever punishment they would have received under the measure.
- Individuals who have completed sentences for crimes that are reduced by the measure could apply to the courts to have their criminal records changed.



Major Fiscal Effects of Proposed Initiative

The size of the measure's fiscal effects on state and local governments could vary significantly depending on (1) how state and local governments choose to regulate and tax marijuana, (2) whether the U.S. DOJ enforces federal laws prohibiting marijuana, and (3) how marijuana prices and consumption change under the measure.



Reduction in Various Criminal Justice Costs

- The measure would result in reduced criminal justice costs for the 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. These savings could be partially offset in the first couple of years by costs, such as for the courts to resentencing individuals.
- In total, these reduced costs could range from the tens of millions of dollars to potentially exceeding \$100 million annually.



Other Fiscal Effects on State and Local Programs

- The measure could result in increased marijuana use, potentially resulting in an increase in the number of individuals seeking publicly funded substance use treatment. However, such costs could be partially or entirely offset by additional funding that would be available for substance use treatment under the measure. The measure would also result in costs for the state to regulate the commercial production and sale of nonmedical marijuana. However, these costs would likely be entirely offset by license fees and tax revenues.



Major Fiscal Effects of Proposed Initiative

(Continued)



Effects on State and Local Revenues

- The state would receive additional revenue, such as from new excise taxes on marijuana under this measure. In addition, the state and local governments would receive revenue from existing sales taxes applied to marijuana sales. This is largely because many individuals who are currently purchasing marijuana illegally could begin purchasing it legally under state law at businesses that collect such taxes.
- However, since the measure prohibits sales and use taxes on medical marijuana, these revenue increases would be partially offset by the loss of sales taxes currently collected on medical marijuana sales.
- 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. However, the revenues are likely to be significantly lower in the first several years following the passage of the measure. This is because it will take time for the state to issue licenses to marijuana businesses and for consumers to switch from the illegal market to the legal market.
- Most of these funds would be required to be spent for specific purposes, specified in the measure.