

November 7, 2007

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as the "California Cannabis Hemp & Health Initiative 2008" (A.G. File No. 07-0064). The initiative adds a new section to the Health and Safety Code which, in effect, repeals current state criminal prohibitions against the use, possession, and sale of marijuana.

Background

Proposition 215. The cultivation and possession of marijuana for medicinal purposes was legalized in California in 1996 through the passage of Proposition 215 by the voters. However, the U.S. Supreme Court ruled in 2005 that federal authorities could continue to prosecute California patients engaged in the medicinal use of marijuana for violations of federal law, which prohibits marijuana use. The Federal Controlled Substances Abuse Act (Title 21, United States Code, commencing with Section 801), provides criminal sanctions for various activities relating to marijuana.

Proposal

Legalization of Marijuana-Related Activities. The initiative provides that no person, individual, or corporate entity could be prosecuted for the possession, cultivation, transportation, distribution, or consumption of cannabis hemp, including hemp industrial products, hemp medicinal preparations, hemp nutritional products, and hemp religious or recreational products. All of these products use as an ingredient the hemp plant commonly referred to as cannabis or marijuana. This measure also provides that the manufacture, marketing, distribution, or sale between adults of equipment or accessories associated with the above products shall not be prohibited.

Medicines. As noted earlier, Proposition 215 legalized the cultivation and possession of marijuana for medicinal purposes. Similar to Proposition 215, this initiative legalizes

the use of marijuana for medicinal purposes in California, regardless of the age of the patient, and provides that licensed physicians cannot be penalized for prescribing marijuana for medicinal purposes.

Regulation of Commercial Production. This initiative allows, but does not require, the Legislature to regulate the commercial production of marijuana products for recreational or religious use in a manner analogous to California's wine industry model. Commercial production is defined as the production of more than 99 flowering female plants and 12 pounds of dried, cured cannabis hemp flowers. The production of a lesser amount is deemed personal use exempt from permitting or licensing requirements or taxation.

Distribution of Marijuana Products. The initiative allows, but does not require, the Legislature to license and impose fees on concessionaires who could distribute marijuana products to persons 21 or older for personal recreational or religious use. Any such license or permit fee could not exceed \$1,000. In addition, the Legislature could place excise taxes on the commercial sale of marijuana products up to \$10 per ounce.

Regulation of Marijuana Use. This measure generally permits the legal use of marijuana for personal recreational or religious purposes by persons age 21 or older. However, under the measure, the Legislature could impose standards restricting the use of marijuana products for personal recreational or religious use by persons operating a motor vehicle or heavy machinery, or engaging in conduct that could affect public safety. Personal use of such marijuana products in enclosed or restricted public places could be regulated.

Release of Marijuana Offenders. The initiative states that existing statutes which relate to marijuana products would be repealed and that persons in prison or jail, or on parole or probation, convicted under such statutes for nonviolent offenses would be released from custody.

Records of Marijuana Offenders. The initiative requires the deletion of all criminal records for all persons currently charged with or convicted of legal violations related to marijuana products. The Attorney General would develop and distribute an application form individuals could file to compel the destruction of such records upon the payment of a \$10 fee.

Law Enforcement Activity. This initiative bars the use of California law enforcement personnel or funds to assist in the enforcement of federal laws relating to marijuana. The measure also provides that any person who "threatens the enjoyment" of the provisions of this measure is guilty of a misdemeanor.

Drug Tests for Past Marijuana Use. The initiative states that testing for past use of marijuana shall not be required for employment or insurance, nor considered in determining employment or intoxication.

Challenge to Federal Prohibitions. This initiative provides that the state would repudiate and challenge federal marijuana prohibitions that conflict with the act. Adoption of this measure in itself, however, would not alter federal law, which provides criminal sanctions for the same activities. Persons who violated federal laws relating to marijuana would still be subject to federal prosecution.

Fiscal Effects

Effect Under Enforcement of Current Federal Law. So long as the federal government chooses to maintain and enforce its own laws prohibiting marijuana, this measure would have the following state and local fiscal effects:

- ***Shift of Felons From Local and State Incarceration to Federal Facilities.*** The measure would result in significant savings to state and local governments, probably in the several tens of millions of dollars annually, by lowering the number of marijuana offenders incarcerated in state prisons and county jails. It would also reduce the number of persons placed on state probation or parole. The county jail savings would decline to the extent that jail beds no longer needed for marijuana offenders were used for other criminals who are now being released early because of a lack of jail space. To the extent that additional violators of marijuana laws might be prosecuted by federal authorities, federal prison costs might increase.
- ***Redirection of Law Enforcement Resources.*** The measure would potentially result in a major reduction in state and local costs for enforcement of marijuana-related offenses. However, it is likely that state and local governments would redirect some or all of their resources to other law enforcement activities, reducing or perhaps eliminating the savings that could otherwise be realized. In addition, if the Legislature chose to regulate the use of marijuana products by motorists and other parties, as the initiative authorizes, some law enforcement resources would likely be devoted to this effort.
- ***Redirection of Court Resources.*** The measure would likely reduce the number of criminal cases in the state court system. However, trial court costs may not decrease substantially since very few marijuana cases result in a criminal trial. The decrease in caseload is likely to free up resources for prosecutors and public defense attorneys to pursue other types of criminal cases.
- ***Effect on Substance Abuse Programs.*** The measure would likely result in an increase in the consumption of marijuana, resulting in a potentially signifi-

cant increase in the number of individuals seeking publicly funded substance abuse treatment services. For example, such an increase in marijuana consumption could result in an increase in the costs of a few million dollars annually in the state Drug Medi-Cal program, which provides substance abuse treatment services for eligible low-income persons. This measure could also have fiscal effects on state-funded drug treatment programs for criminal offenders, such as drug courts, which could shift resources for involuntary treatment of marijuana offenders to treatment of offenders for other types of drugs.

- ***Elimination of Medical Marijuana Program.*** The measure could potentially result in the elimination 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 program costs almost \$1 million annually in special funds derived entirely from patient application fees. The initiative would likely reduce both the cost of this program and the offsetting amount of revenues derived from its fees.
- ***Prohibition Against Testing for Past Use of Marijuana by Employers.*** The measure might result in slightly lower costs for state and local agencies that perform drug testing, since these agencies would no longer be allowed to test for past use of marijuana. These cost savings are likely to be minimal, however, since such agencies would most likely maintain their programs to test for other substances.
- ***Elimination of Federally Funded Marijuana Suppression Programs.*** This initiative would prohibit the state from accepting federal funds for anti-marijuana programs, such as the Marijuana Suppression Program and the Campaign Against Marijuana Planting program. The state would not realize any savings, however, since these programs are supported entirely by federal funds.
- ***Loss of Fines.*** The measure would result in an unknown reduction in state and local revenues due to the elimination of fines for marijuana offenders.
- ***Destruction of Records.*** The measure would result in potentially minor state costs and potentially significant local costs related to the destruction of criminal records. Some of these costs might be offset by the \$10 fee specified by the measure.

Effect if Federal Law Were Changed or Current Law Not Enforced. Given the federal government's response to Proposition 215, it appears likely that enforcement of marijuana laws at the federal level will continue regardless of whether this new initiative was enacted. In the unlikely event that these federal laws were not enforced or were

changed, there could be additional fiscal impacts beyond those listed above if a commercial industry in marijuana-related products was allowed to develop.

For example, the state could derive significant additional revenue if the Legislature exercised its option under the initiative to collect an excise tax of up to \$10 per ounce on commercial production of marijuana products for personal recreational or religious use. If the Legislature acted accordingly, the state could also collect unspecified licensing fees from licensed concessionaires of such marijuana products to offset the cost of regulating such establishments, and might also realize additional revenues from income and sales taxes generated by commercial producers.

Summary of Fiscal Effects

We estimate that this measure would have the following major fiscal effects:

- Savings in the several tens of millions of dollars annually to state and local governments, which would no longer incur the costs of incarcerating and supervising certain marijuana offenders.
- A potential increase of a few million dollars annually in the cost of the state's Drug Medi-Cal substance abuse treatment program.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance