

September 9, 2009

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 statutory initiative related to the use, possession, and sale of marijuana (A.G. File No. 09-0024, Amdt. #1-S).

Background

Federal Law. Federal law classifies marijuana as an illegal substance. The Federal Controlled Substances Abuse Act provides criminal sanctions for various activities relating to marijuana. Federal laws are enforced by federal law enforcement agencies that may act independently or in conjunction with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, use, transportation, or cultivation of marijuana is generally illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, under the state Penal Code, possession of less than one ounce of marijuana is a misdemeanor punishable by a fine, while selling marijuana is a felony and may result in a prison sanction.

In November 1996, voters approved Proposition 215, which legalized the cultivation and possession of marijuana in California for medicinal purposes. Notwithstanding this initiative, the U.S. Supreme Court ruled in 2005 that federal authorities could continue to prosecute California patients and providers engaged in the medicinal cultivation and use of marijuana for violations of federal law. However, the U.S. Department of Justice announced in March 2009 that it would no longer prosecute marijuana patients and providers whose actions are consistent with state medical marijuana laws.

Proposal

This measure (1) legalizes various marijuana-related activities, (2) allows local governments to regulate these activities, (3) permits local governments to impose and col-

lect marijuana-related fees and taxes, and (4) authorizes various criminal and civil penalties.

Legalization of Marijuana-Related Activities. Under the measure, persons age 21 or older could engage in “personal consumption” of marijuana. Specifically, personal consumption of marijuana would be permitted in a “non-public place,” defined as including a residence or a public establishment licensed for on-site marijuana consumption. The measure states that persons generally may (1) possess, process, or transport up to one ounce of marijuana; (2) cultivate marijuana on private property in an area up to 25 square feet; (3) possess harvested and living marijuana plants cultivated in such an area; and (4) possess any items or equipment associated with the above activities. However, the measure permits local authorities to authorize the possession and cultivation, including commercial production, of larger amounts of marijuana. Under the terms of this measure, the state could also enact laws to allow larger amounts of marijuana, as well as to enact new laws to regulate the commercial production of marijuana. The measure prohibits state and local law enforcement agencies from seizing or destroying marijuana that was possessed, used, or sold in accordance with this measure.

This measure sets forth some limits on marijuana-related activities. It states, for example, that possession of marijuana must be solely for an individual’s personal consumption and not for sale, although sales are permitted to individuals in public establishments licensed for marijuana consumption. The measure specifies that smoking of marijuana in the presence of minors or the consumption of marijuana by the operator of a motor vehicle is prohibited. In addition, the measure states that it does not amend various existing statutes related to marijuana, including laws that prohibit driving under the influence of drugs or that prohibit possessing marijuana on the grounds of elementary, middle, and high schools.

Local Government Regulation of Commercial Production and Sale. The measure allows local governments to adopt ordinances and regulations regarding the cultivation, processing, distribution, transportation, sale, or possession for sale of marijuana. For example, local governments would be permitted to license establishments that could sell up to one ounce of marijuana per transaction to persons 21 and older. The measure also authorizes local governments to regulate the location, size, hours of operation, and signs and displays of such establishments.

Individuals could transport marijuana from a licensed marijuana establishment in one locality to a licensed establishment in another locality, regardless of whether any localities in between permitted the commercial production and sale of marijuana. However, the measure does not permit the interstate or international transportation of marijuana.

Imposition and Collection of Taxes and Fees. The measure permits local governments to impose general, excise, or transfer taxes, as well as benefit assessments and

fees, on authorized marijuana-related activities. It specifies that the purpose of such taxes, assessments, and fees is to allow local governments to raise revenue or to offset any costs associated with marijuana regulation. The measure requires that licensed marijuana establishments pay all applicable federal, state, and local taxes and fees currently imposed on other similar businesses.

Authorization of Criminal and Civil Penalties. Under the measure, any individual licensed to engage in an authorized marijuana activity who negligently gives or sells (or offers to give or sell) marijuana to a person under 21 would be banned from owning, operating, or being employed by a licensed marijuana establishment for one year. In addition, the measure specifies that persons age 21 or older who knowingly give (or offer to give) marijuana to persons age 18 through 20 could be sent to county jail for up to six months and fined up to \$1,000 per offense. The measure does not change existing criminal statutes involving penalties for furnishing marijuana to minors under the age of 18. Local governments could impose additional penalties or civil fines on certain marijuana activities that were inconsistent with the terms of this measure.

The measure states that no individual could be punished, fined, or discriminated against for engaging in any conduct permitted by the measure. However, it does specify that employers would retain existing rights to address on-the-job consumption of marijuana that affects an employee's job performance.

Fiscal Effects

Although the federal government recently announced that it would no longer prosecute medical marijuana patients and providers whose actions are consistent with Proposition 215, it has continued to enforce its prohibitions on non-medical marijuana activities. To the extent that the federal government continued to enforce existing federal marijuana laws, it would generally have the effect of impeding or eliminating the cultivation, possession, transportation, sale, or use of marijuana permitted by this measure under state law.

Thus, the revenues or expenditures resulting from this measure would be subject to significant uncertainty. The measure could have the following fiscal effects discussed below.

Reduction in State and Local Correctional Costs. The measure could result in significant savings to state and local governments, potentially up to several tens of millions of dollars annually, by reducing the number of marijuana offenders incarcerated in state prisons and county jails. It could also reduce the number of persons placed on county probation or state parole. The county jail savings would be offset 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.

Redirection of Court and Law Enforcement Resources. The measure could result in a major reduction in state and local costs for enforcement of marijuana-related offenses and the handling of related criminal cases in the court system. However, it is likely that state and local governments would redirect some or all of their resources to other law enforcement and court activities, reducing or perhaps eliminating the savings that could otherwise be realized.

Potential Effects on Substance Abuse Program Costs. 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 abuse treatment services. For example, the state Drug Medi-Cal Program could incur increased costs of a few million dollars annually. This measure could also have fiscal effects on state- and locally funded drug treatment programs for criminal offenders, such as drug courts. For example, the measure might reduce spending on mandatory treatment for some criminal offenders, or result in the redirection of these funds for other offenders.

Potential Reduction in Medical Marijuana Program. The measure could 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. That is because some adults 21 and over would likely no longer participate in the program to obtain marijuana.

Potential New Revenues From the Legalization of Marijuana. State and local governments could realize additional revenues from sales taxes generated by commercial producers of marijuana. The state could also realize additional income tax revenues from the production and sale of marijuana. In addition, local governments could realize additional revenue from various types of taxes, benefit assessments, and fees on marijuana. The actual level of revenues generated would depend upon the rate of such levies and how the measure changed the consumption and sales price of marijuana. Moreover, the amount of all of the various revenues that could be generated under this measure would depend considerably on the extent to which the federal government enforces its laws against marijuana in California.

Effects on State and Local Fine Revenues. The measure could reduce state and local revenues from the collection of the fines established in current law for marijuana criminal offenders. However, there could be additional fine revenue generated from the new civil and criminal penalties for violators of the measure, such as for selling marijuana commercially without authorization. The net fiscal effect of these changes in fine revenues is unknown.

Summary of Fiscal Effects

Given that the federal government continues to enforce federal marijuana laws that do not conflict with state medical marijuana laws, the revenues and expenditures result-

ing from this measure would be subject to significant uncertainty. We estimate that this measure would have the following major fiscal effects:

- Savings of up to several tens of millions of dollars annually to state and local governments on the costs of incarcerating and supervising certain marijuana offenders.
- Unknown but potentially major tax, fee, and benefit assessment revenues to state and local government related to the production and sale of marijuana products.

Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
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