

September 2, 2009

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> 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. 09-0025).

## 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 states that it repeals existing prohibitions on marijuana use, cultivation, possession, transportation, and sale. The measure also requires that state and local

governments stop spending funds to enforce or prosecute any law that prohibits such marijuana-related activities. Under the measure, federal, state, and local governments would be authorized to tax the manufacture, sale, and use of marijuana. Specifically, the measure instructs the Legislature to establish laws for the regulation and taxation of marijuana. In addition, the measure instructs members of Congress from California to work to remove marijuana from the federal schedule of controlled substances and to vote against funding that would be used to enforce any laws prohibiting marijuana or hemp products.

### **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.

Moreover, some or all of the provisions of this measure could be subject to challenge in the courts and found unconstitutional under state law. For example, the way in which this measure proposes to change California's existing marijuana-related statutes could be challenged in the courts. That is because the measure does not directly amend or strike out the specific existing laws relating to marijuana. In addition, the provisions in the measure instructing members of the Legislature and Congress to perform certain actions may be found unenforceable.

Thus, the following fiscal effects of the measure would be subject to significant uncertainty, as discussed below.

***Reduction in State and Local Correctional Costs.*** The measure could result in significant savings to state and local governments, potentially in the 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 Increased 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.

***Potential 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 is because individuals would no longer require physician approval to legally possess marijuana under state law. The elimination of the program would reduce both the costs to run the program as well as the offsetting revenues that support the program.

***Potential New Revenues From the Legalization of Marijuana.*** As noted earlier, this measure authorizes state and local governments, as well as the federal government, to tax the manufacture, sale, and use of marijuana, such as through an excise tax. The amount of additional revenues generated from an excise tax would depend upon whether the Legislature and local governments choose to adopt an excise tax, the rate of such a tax, and how the measure changed the consumption and sales price of marijuana. State and local governments could realize additional revenues from sales taxes generated by the sale of marijuana. The state could also realize additional income tax revenues from the manufacture and sale of marijuana. The amount of the tax revenue 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.

***Reduction in 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.

### **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 resulting from this measure would be subject to significant uncertainty. In addition, it is uncertain if the measure would withstand state constitutional legal challenges as dis-

cussed above. If upheld in the courts, 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 on the costs of incarcerating and supervising certain marijuana offenders.
- Unknown but potentially major new excise, income, and sales tax revenues related to the manufacture and sale of marijuana products.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael C. Genest  
Director of Finance