

October 13, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the cultivation, use, possession, and sale of marijuana (A.G. File No. 15-0050).

Background

Federal Law. Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. While federal law allows the importation, distribution, and sale of certain products derived from marijuana plants (such as industrial hemp) if they are not intended for human consumption (such as for clothing and animal feed), the cultivation of marijuana for such products is generally illegal. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, cultivation, or distribution of marijuana generally is illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, possession of one ounce or less of marijuana is an infraction punishable by a fine, while selling marijuana is a felony and may result in a jail or prison sentence. The cultivation of industrial hemp is illegal in California except for certain research purposes.

In November 1996, voters approved Proposition 215, which made it legal under state law for individuals of any age to cultivate and possess marijuana in California for medical purposes only, specifically with a recommendation from a licensed physician. State law also authorizes cities and counties to regulate the establishment of medical marijuana dispensaries in their jurisdictions. The U.S. Supreme Court ruled in 2005, however, that federal authorities could continue under federal law to prosecute California patients and providers engaged in the cultivation and use of marijuana for medical purposes. Despite having this authority, the current policy of the U.S. Department of Justice (DOJ) is not to prosecute marijuana users and businesses that act in compliance with state and local marijuana laws so long as those laws are written and enforced in a manner that upholds federal priorities. These priorities include ensuring

that marijuana is not distributed to minors or diverted from states that have legalized marijuana to other states. State and local governments currently collect sales tax on medicinal marijuana sales.

Proposal

This measure changes state law to legalize the production, sale, and use of marijuana, as well as the cultivation of industrial hemp for any purpose. Despite these changes to state law, these activities would continue to be generally prohibited under federal law.

State Legalization of Marijuana-Related Activities. The measure provides that no person or corporate entity could be arrested or prosecuted for the possession, cultivation, transportation, distribution, or consumption of various products derived from cannabis plants, including marijuana and industrial hemp. The measure also provides that the manufacturing, marketing, distribution, or sale between adults of equipment or accessories associated with the above products 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 marijuana and provides that any person who “threatens the enjoyment” of the provisions of this measure is guilty of a misdemeanor.

While the measure generally permits the use of marijuana, it authorizes the Legislature to impose standards restricting the use of marijuana by persons operating a motor vehicle or heavy machinery, or engaging in conduct that could affect public safety. Personal use of marijuana products in enclosed or restricted public places could also be regulated.

Regulation of Commercial Marijuana Businesses. This measure requires that commercial production of marijuana products for recreational or religious use be regulated in a manner analogous to California’s beer and wine industries. Commercial production of marijuana is defined in this measure as the production of more than 99 flowering female marijuana plants and 12 pounds of dried, cured flowers of marijuana. The production of a lesser amount is deemed personal use and is exempt from permitting, licensing requirements, or taxation. The measure limits the commercial production of marijuana products to persons age 21 or older. The measure also requires that sufficient community outlets must be licensed in order to provide “reasonable access” to marijuana products consumed for recreational and religious purposes.

Imposition of Fees and Taxes. The initiative allows, but does not require, the Legislature to license and impose fees on vendors who distribute marijuana products to persons 21 or older for recreational or religious use. A license or permit fee could not exceed \$1,000. In addition, the Legislature could place an excise tax on the commercial sale of marijuana products of up to 10 percent of the retail price of the products. Such an excise tax would be in addition to any sales tax. Under the terms of the measure, half of any excise tax revenues collected from marijuana sales would support research, development, or promotion of the industrial hemp, “nutritional” marijuana (marijuana intended for consumption as food), and medicinal marijuana industries in California. For industrial hemp production, the measure prohibits any special zoning requirements, licensing fees, or taxes that are “excessive, discriminatory, or prohibitive.” This measure also prohibits the taxation of marijuana products that are used for medical purposes.

Release of Current Marijuana Offenders. The measure requires a case by case review for all persons in prison or jail, or on parole or probation, convicted under current criminal statutes for marijuana-related activities made legal under this measure. Such individuals would be eligible for resentencing, which could include immediate release from custody. In addition, the measure requires the deletion of marijuana-related criminal records for all persons who have been charged with or convicted of legal violations related to marijuana products. The measure also requires the California Attorney General to develop and distribute an application form for qualifying individuals to seek the destruction of such records upon the payment of a \$10 fee.

Drug Tests for Past Marijuana Use. Currently, some private businesses and agencies in California use drug tests to detect current intoxication or past marijuana usage for the purposes of making decisions about hiring or terminating employees. Under this measure, such tests could only be considered if they are limited to detecting current marijuana intoxication. Tests that are used for purposes of determining insurance eligibility would similarly be restricted to those that detect current intoxication.

Limits Zoning Restrictions on Medical Marijuana Dispensaries. Currently, many cities and counties restrict the locations where medical marijuana dispensaries can operate, and some local jurisdictions have prohibited the establishment of dispensaries altogether. This measure requires that sufficient community outlets be allowed in order to provide people with “reasonable and discreet” access to medical marijuana. This provision appears to limit the ability of cities and counties to place restrictions on the establishment of medical marijuana dispensaries.

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) how, and to what extent, the state chooses to regulate and tax the commercial production and sale of marijuana, (2) future consumption by marijuana users, and (3) the extent to which the U.S. DOJ exercises its discretion to enforce federal prohibitions on marijuana activities otherwise permitted by this measure. Thus, the potential revenue and expenditure impacts of this measure described below are subject to considerable uncertainty.

Reduction in Various Criminal Justice Costs. The measure would result in reduced costs to the state and local governments by reducing the number of marijuana offenders incarcerated in state prison and county jail, as well as the number placed under community supervision (such as county probation). In addition, the measure would result in a reduction in state and local costs for the enforcement of marijuana-related offenses and the handling of related criminal cases in the state court system. In total, we estimate that the net reduction in state and local criminal justice costs from the above changes could range from the tens of millions of dollars to potentially exceeding \$100 million annually. In many cases, however, these resources would likely be redirected to other law enforcement and court activities.

Other Fiscal Effects on State and Local Programs. The measure could also have fiscal effects on various other state and local programs. For example, 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 use treatment. This measure could also

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. This is because individuals could legally possess marijuana under the measure without participating in the Medical Marijuana Program. In addition, the measure would result in costs for the state to regulate the commercial production and sale of marijuana. These costs would vary depending on how, and to what extent, the state chooses to implement the above regulations but would be unlikely to exceed several tens of millions of dollars annually. Eventually these costs could be largely or entirely offset by license and permit fees levied on marijuana-related businesses if the Legislature exercises its authority to charge such fees authorized by the measure. Finally, the measure could result in state and local costs related to the destruction of criminal records and the resentencing of offenders convicted of marijuana-related crimes. Some of these costs might be offset by the \$10 court fee specified in the measure.

Effects on State and Local Revenues. State and local governments would receive additional revenues, such as sales taxes from marijuana-related activities allowed under this measure. This is because many individuals who are currently purchasing marijuana illegally could begin purchasing it legally under state law at businesses that collect sales taxes. In addition, the state could also receive revenue from any excise tax enacted by the Legislature. As noted earlier, half of any excise tax revenues collected would support research, development, or promotion of the medical marijuana, nutritional marijuana, and industrial hemp industries in California. However, since the measure prohibits taxation on medical marijuana products, these revenues would be partially offset by the loss of sales tax currently collected on medical marijuana sales.

In addition, the measure could result in an increase in taxable economic activity in the state, as businesses and individuals currently producing and selling marijuana and industrial hemp illegally could begin doing so legally under state law and pay personal income and corporation taxes. Moreover, the measure could increase economic activity in the state to the extent that out-of-state consumers (such as tourists) redirect spending into the state. The magnitude of the net increase in economic activity is unknown and would depend considerably on the extent to which the federal government enforces marijuana laws in California.

In total, our best estimate is that the state and local governments could eventually collect net additional revenues of potentially up to several hundred million dollars annually, which assumes the enactment of an excise tax. The potential revenues could be substantially less if a significant portion of consumers purchase marijuana for medical rather than recreational use since the measure exempts medical marijuana from excise and sales and use taxes.

Effects on Existing Fine and Asset Forfeiture Revenues. The measure could reduce state and local revenues from the collection of the fines established in current law for marijuana offenses and the assets that are forfeited in some criminal marijuana cases. We estimate that these revenues could amount to millions or low tens of millions of dollars annually. This could be somewhat offset, however, by additional fine revenue generated from the new misdemeanor penalty for persons who threaten the enjoyment of the provisions of this measure.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on (1) how, and to what extent, the state

chooses to regulate and tax the commercial production and sale of marijuana, (2) future consumption by marijuana users, and (3) the extent to which the U.S. DOJ exercises its discretion to enforce federal prohibitions on marijuana activities otherwise permitted by this measure.

- Reduced costs ranging from tens of millions of dollars to potentially exceeding \$100 million annually to 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.
- Net additional tax revenues of potentially up to several hundred million dollars annually related to the production and sale of marijuana and industrial hemp, a portion of which is required to be spent on marijuana-related research and other activities.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance