

November 2, 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. 09-0044).

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 issued a memorandum on October 19, 2009 to its attorneys instructing them not to focus federal resources on prosecuting actions that are in “clear and unambiguous” compliance with state medical marijuana laws. Nevertheless, the memorandum stated that unlawful sales of marijuana for profit would continue to be an enforcement priority of the department.

Proposal

Legalization of Marijuana-Related Activities. The measure provides that no person, individual, 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 hemp. The 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 measure contains language stating that the use of marijuana for medicinal purposes in California is legal and provides that licensed physicians cannot be penalized for prescribing marijuana for medicinal purposes. In addition, the measure prohibits the taxation of marijuana products that are prescribed for medical purposes.

Regulation of Commercial Production. This measure requires that commercial production of marijuana products for recreational or religious use be regulated in a manner analogous to California's wine industry. 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 or licensing requirements or taxation. The measure also limits the commercial production of marijuana products to persons age 21 or older.

Imposition of Fees and Taxes. The initiative allows, but does not require, the Legislature to license and impose fees on concessionaires who 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 such marijuana products up to \$10 per ounce. For commercial hemp production, the measure also prohibits any special zoning requirements, licensing fees, or taxes that are "excessive, discriminatory, or prohibitive."

Regulation of Marijuana Use. This measure generally permits the legal use of marijuana and states that use of marijuana for religious or spiritual purposes is an "inalienable right." However, the measure authorizes the Legislature to 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 also be regulated.

Marijuana Offenders. The measure states that existing statutes relating to marijuana products that conflict with the measure 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. In addition, the measure 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 measure 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 measure 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 measure 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

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 nonmedical 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 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.

Increased Costs and Revenues From Destruction of Records. The measure could result in potentially minor state costs and potentially significant local costs related to the destruction of criminal records. Some or all of these costs might be offset by the \$10 fee specified by the measure.

Effect on State and Local 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 criminal offenders and the assets that are forfeited in some criminal marijuana cases. However, there could be additional fine revenue generated from the new misdemeanor penalty for persons who threaten the enjoyment of the measure. The net fiscal effect of these changes in fine revenues is unknown.

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 in the low hundreds of millions of dollars annually from sales taxes generated by commercial producers of marijuana. However, since the measure prohibits taxation on prescribed medical marijuana products, these sales tax revenues would be partially offset by the loss of the approximately \$10 million currently collected on medical marijuana sales. The state could also receive additional income tax revenues from the production and sale of marijuana. Moreover, the state could realize additional revenue if the Legislature exercised its option under the measure to collect an excise tax of up to \$10 per ounce on commercial production of marijuana products for personal recreational or religious use. Based on limited data, it appears that an excise tax of this level could potentially generate additional revenues in the high tens of millions of dollars annually. The actual amount of revenues generated, however, would depend upon whether the Legislature chooses to adopt an excise tax, the rate of such a tax, and how the measure changed the consumption and sales price of

marijuana. In addition, the state could also collect unspecified licensing fees from licensed concessionaires of marijuana products that could offset the cost of regulating such establishments, if the Legislature chose to enact such fees.

Potential Minor Reduction in Drug Testing Costs. 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 that would remain illegal.

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. 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 tax and fee revenues to state and local government related to the production and sale of marijuana products.

Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
Director of Finance