

January 30, 2012

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 regulation and taxation of medical marijuana (A.G. File No. 11-0098, Amdt. #1S).

Background

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. While some marijuana crimes are defined in state law as infractions, punishable by a fine, other marijuana crimes are defined as misdemeanors, punishable by fines, incarceration in jail for less than a year, probation, or some combination of these. In addition, certain marijuana crimes are considered felonies and may result in incarceration in jail or prison, community supervision, or a combination of both. Some marijuana crimes are referred to as “wobblers” and can be prosecuted as misdemeanors or felonies.

In November 1996, voters approved Proposition 215, which made it legal under state law to cultivate and possess marijuana in California for medical purposes only. In 2003, the Legislature authorized the formation of medical marijuana cooperatives, which are non-profit organizations of medical marijuana users that cultivate and distribute marijuana to their members through outlets known as dispensaries. State law generally gives local cities and counties the discretion to regulate the location and operations of facilities that distribute, sell, or cultivate medical marijuana. Currently, local medical marijuana laws vary widely across the state, with some jurisdictions choosing to completely ban such facilities and others choosing to enact no restrictions at all. State and local governments currently collect sales tax on medicinal marijuana sales. A small number of cities also impose a supplemental tax on medical marijuana sales.

Federal Law. Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies. The U.S. Supreme Court ruled in 2005 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 regardless of state law. Despite having this authority, the U.S. Department of Justice's (DOJ's) current policy is not to prosecute individual marijuana patients and caregivers who act in compliance with state medical marijuana laws.

Proposal

State Regulation of Medical Marijuana. This measure establishes the Bureau of Medical Marijuana Enforcement (BMME) within the state's Department of Consumer Affairs to regulate the cultivation, distribution, and sales of medical marijuana. For example, the BMME would have the authority to regulate how medical marijuana dispensaries advertise, store, and transport medical marijuana. While regulations established by the bureau would generally preempt local medical marijuana laws, the measure permits cities and counties to continue to regulate the location, size, and number of facilities distributing, selling, or cultivating medical marijuana as long as the regulations allow for the establishment of at least one medical marijuana dispensary for every 50,000 residents. Under the measure, individuals or organizations cultivating, selling, or distributing medical marijuana would be required to register with BMME and pay a fee, as discussed below. Individual medical marijuana users and their caregivers who cultivate marijuana at their primary residences for personal use would be exempt from the registration requirement.

The measure allows BMME to establish fees for processing the above applications. The BMME would be required to adjust these fees on a sliding scale based on the projected revenue of each registrant. Revenues collected from the fees would be deposited in a new special fund, the Medical Marijuana Fund, to pay for the administrative and regulatory costs of the BMME. Monies in this fund would be continuously appropriated (and, thus, not subject to the annual state budget appropriation process). The measure also creates a fine of up to \$25,000 for individuals or organizations that cultivate or distribute medical marijuana without registering with BMME. Monies collected from this fine would also be deposited in the Medical Marijuana Fund.

Medical Marijuana Taxes. The measure imposes a new supplemental tax of 2.5 percent on medical marijuana sales. The revenue from this new tax would be deposited in the Marijuana Medical Fund to help support the administrative costs of the BMME. Under the terms of the measure, any remaining tax revenue would be transferred into a new special fund, the Medical Marijuana Trust Fund, and allocated on a formula basis to fund (1) research on medical uses of marijuana; (2) the reimbursement of health care providers who provide emergency medical services to individuals who are unable to pay; (3) programs that offer medical marijuana education, low-income assistance, and health services; and (4) research on best environmental protection practices in marijuana cultivation. In addition, the measure places a limit on any additional city and county supplemental taxes imposed specifically on the sale of medical marijuana at 2.5 percent.

Penalties for Marijuana-Related Crimes. The measure changes the criminal penalties for certain crimes related to the possession and distribution of marijuana for non-medicinal purposes. For example, the measure changes the punishment for possession of concentrated marijuana, or hash, from a wobbler to a misdemeanor. In addition, this measure would change

the punishment for cultivating, selling, or possessing for sale, any amount of marijuana from a felony to a wobbler.

Fiscal Effects

Implementation of some of the provisions of this proposed California measure could be limited by future legal challenges and federal government actions. For example, requiring the establishment of a registration system for medical marijuana dispensaries and imposition of a registration fee may conflict with federal laws prohibiting the sale of marijuana. If the federal courts prevent these provisions from being fully implemented, that could impede the development of the medical marijuana industry and, thus, reduce the amount of tax revenues from medical marijuana sales. In addition, if federal policy changes and the U.S. DOJ begins enforcing federal marijuana laws on medical marijuana users and caregivers in California, that too would further reduce tax revenues. Thus, the potential revenue impacts of this measure described below are subject to considerable uncertainty.

Reduction in Various Criminal Justice Costs. This measure could result in savings to the state and local governments by reducing the number of marijuana offenders incarcerated in state prisons and county jails, as well as the number of offenders placed under community supervision. In addition, the measure could 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. This is because processing and prosecuting arrests for misdemeanor crimes is generally less expensive than for felony crimes. In total, the measure could result in savings to the state and local governments on various criminal justice costs of up to several tens of millions of dollars annually.

Increase in State Regulatory Costs. This measure would result in additional state costs for BMME to regulate the cultivation, distribution, and sales of medical marijuana. Depending on how, and to what extent, the bureau chooses to implement such regulations, these costs could be in the tens of millions of dollars annually. However, these additional costs would be entirely funded by the fees and taxes authorized in the measure.

Increase in State Revenues From Supplemental Tax on Medical Marijuana Sales. Under this measure, the state would receive additional revenues in the low tens of millions of dollars annually from the 2.5 percent supplemental tax on medical marijuana sales authorized in the measure. These revenues would support the regulation of medical marijuana and various research and programs generally related to medical marijuana.

Potential Increase in State and Local Sales Tax Revenues. This measure could result in an increase in sales tax compliance. This is because state tax agencies would have access to the list of medical marijuana dispensaries registered with the BMME, which they could use to more effectively identify and monitor taxable sales of medical marijuana. To the extent this results in greater sales tax compliance, the amount of sales tax revenue collected would increase. The magnitude of the potential revenue increase would depend on such factors as how dispensary operators respond to this new regulatory structure and future tax enforcement actions.

Reduction on Existing Local Medical Marijuana Taxes. Cities that currently impose a supplemental tax on the sale of medical marijuana of greater than 2.5 percent would see a reduction in tax revenues because of this measure's cap on such taxes. We estimate that there are currently less than ten cities and counties with such taxes. The impact on local revenue is unknown and would depend on the number of local taxes exceeding the cap and the level of medical marijuana sales in those communities.

Increase in Fine Revenue. The measure could result in an increase in revenues from the collection of the \$25,000 fine levied on individuals and organizations engaging in commercial medical marijuana activities without a valid registration with the BMME. Under the terms of this measure, these revenues would support the regulation of medical marijuana and various research and programs generally related to medical marijuana.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects:

- Savings potentially up to several tens of millions of dollars annually to state and local governments from reductions in various criminal justice costs related to enforcing marijuana crimes.
- Additional state tax revenues in the low tens of millions of dollars annually from a new supplemental tax on medical marijuana sales, used for various regulatory, research, education, and health care purposes generally related to medical marijuana.
- Increased costs to regulate medical marijuana potentially in the tens of millions of dollars annually, offset by fees and/or taxes authorized by the measure.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance