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November 10, 2015

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

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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 medical marijuana (A.G. File No. 15-0069).

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. For example, possession of less than one ounce of marijuana is an infraction punishable by a fine, while selling marijuana is a felony and may result in a jail or prison sentence.

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 only for medical purposes (specifically, with a recommendation from a licensed physician). In 2003, the Legislature authorized the formation of medical marijuana cooperatives, which are nonprofit organizations of medical marijuana users that cultivate and distribute marijuana to their members through outlets known as dispensaries. State law also gives cities and counties the discretion to regulate the location and operation of such facilities. Currently, local medical marijuana laws vary widely across the state, ranging from complete bans of such facilities in some cities and counties to no restrictions at all in other places. State and local governments currently collect sales tax on medical marijuana. A small number of cities also impose a supplemental tax on medical marijuana sales. We estimate that the total amount of state and local revenue collected statewide from the above taxes likely is in the high tens of millions of dollars annually.

In 2015, the Legislature passed and the Governor signed into law legislation to regulate the commercial medical marijuana industry, creating the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs as the lead enforcement agency. Under the legislation (effective January 2016), medical marijuana cooperatives will be phased out within a few years and replaced by state-licensed businesses that cultivate and distribute medical marijuana. Local governments will continue to have the authority to regulate the location and

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operation of such businesses. The legislation also requires the state to set standards for labelling, testing, and packaging medical marijuana products and to develop a system to track such products throughout the supply chain.

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. Despite having this authority, the current policy of the U.S. Department of Justice 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.

Proposal

State Controlled Cultivation and Distribution of Medical Marijuana. Under the measure, the state would be required to own and operate a single site that is responsible for cultivating, processing, and testing all medical marijuana that is distributed in the state. The state would also have the exclusive right to own and operate medical marijuana retail stores. The measure states that cultivation or distribution of medical marijuana outside these state-run facilities would be unlawful and that all existing medical marijuana cooperatives must close by July 1, 2017. In addition, the measure allows cities and counties to restrict or prohibit the establishment of state-run medical marijuana retail stores in their jurisdictions. The measure requires the state to adhere to certain labelling, dosage, and packaging standards for medical marijuana. For example, the measure requires the state to sell medical marijuana in opaque, child-resistant packaging. The measure creates the Office of Medical Marijuana Program (OMMP) within the Department of Public Health to carry out the above provisions.

Standards for Physicians Recommending Medical Marijuana. The measure also establishes standards for physicians recommending medical marijuana to patients. For example, under the measure, physicians would be required to have an ongoing relationship with a patient before recommending that they use medical marijuana. In addition, physicians could not recommend the use of medical marijuana—other than certain pharmaceutical grade marijuana extracts—to patients under the age of 21. The measure also requires the OMMP to set additional “strict” standards for physicians recommending medical marijuana.

Other Provisions. The measure requires the California Department of Education to implement a drug-free schools program to educate all K-12 students in public and private schools, as well as their teachers and parents, regarding marijuana use. In addition, the measure requires the state Department of Justice to incorporate medical marijuana sales into an electronic database it currently maintains to track the prescription of certain drugs in the state. The measure also makes it illegal for individuals to drive if their blood exceeds specified levels of the psychoactive ingredient contained within marijuana.

Fiscal Effects

Despite the measure's requirements that the state operate facilities that cultivate and distribute medical marijuana, activities related to the use of marijuana would continue to be prohibited under federal law. Thus, the implementation of this measure and the resulting fiscal effects would depend on how it is interpreted by the courts. In particular, it is unclear whether the state could cultivate and distribute medical marijuana without violating federal law. If the state were allowed to do so the measure would have the fiscal effects described below.


Effects on State and Local Revenues. The effect of the measure on state and local revenues would depend on several factors, such as (1) the price and quantity of medical marijuana sold by the state and (2) how the state chose to operate medical marijuana cultivation and distribution facilities. As such, it is unclear how the sale of medical marijuana under this measure—and its effects on state economic activity and revenues—would differ from the existing system. Thus, the potential impacts of the measure on state and local revenues are unknown.

Other Fiscal Effects. The measure would result in increased state costs to implement a program to educate K-12 students and their teachers and parents regarding marijuana use. Depending on how the program were coordinated with existing drug education programs, costs could range from millions to tens of millions of dollars annually.

Summary of Fiscal Effects. If the federal government allowed the state to implement this measure, it would have the following fiscal effects:

- Unknown change in state and local revenues related to sales of medical marijuana depending on how the measure is implemented by the state.
- Increased state costs of millions to tens of millions of dollars annually to implement a program to educate K-12 students and their teachers and parents regarding marijuana use.

Sincerely,

for 
Mac Taylor
Legislative Analyst

for 
Michael Cohen
Director of Finance