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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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. 15-0024).

Background

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.

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 legalized under state law the cultivation and possession of marijuana in California for medical purposes. 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 those that have not. 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.

Legislative Analyst's Office
California Legislature
Mac Taylor • Legislative Analyst
925 L Street, Suite 1000 • Sacramento CA 95814
(916) 445-4656 • FAX 324-4281

Proposal

This measure changes state law to legalize the possession, cultivation, and sale of marijuana. Despite these changes to state law, activities related to the use of marijuana would continue to be prohibited under federal law.

State Legalization of Marijuana-Related Activities. Under the measure, individuals age 21 or over could legally possess, sell, transport, process, and cultivate marijuana under state law. The measure also states that state and local governments are prohibited from enforcing federal prohibitions on marijuana. Although the measure would generally legalize marijuana, certain marijuana-related activities would remain unlawful, including operating a motor vehicle while under the impairment of marijuana or providing marijuana to individuals under the age of 21.

Marijuana Possession and Cultivation for Personal Use. Under the measure, the cultivation and possession of marijuana for personal use generally would be exempt from regulation. The measure specifies limits on the amount of marijuana that could be cultivated or possessed for personal use. For example, individuals could not (1) cultivate a marijuana garden that exceeds 12 mature plants and 50 square feet in size or (2) possess more than 24 ounces of dried marijuana, unless the dried marijuana is a product of the individual's marijuana garden. However, local governments could authorize cultivation or possession for personal use of greater amounts. Conversely, local governments could place certain restrictions on the cultivation for personal use, such as by requiring that outdoor plants not be visible from a public place.

Regulation of Commercial Marijuana Activities. This measure establishes the Cannabis License Control Board within the Department of Consumer Affairs to regulate the commercial cultivation, processing, distribution, and sales of marijuana for recreational or medical use. The measure authorizes the board to monitor compliance with its regulations; investigate suspected violations; and restrict, suspend, or revoke business licenses of violators. Individuals or organizations engaging in commercial cultivation, processing, transportation, distribution, or sales of marijuana would be required to pay a fee and obtain a license from the board.

Taxation of Commercial Marijuana Sales. The measure establishes the following statewide excise taxes on marijuana products sold for recreational purposes: (1) $8 per ounce of dried marijuana, (2) $1 per gram of concentrated marijuana products (such as hash), and (3) 20 cents per gallon of liquid marijuana-infused products. The measure states that medical marijuana is exempt from sales taxes and, in some cases, excise taxes. Revenues collected from the excise taxes would be deposited in a new special fund—the Statewide Cannabis Tax Collection Account. The measure requires revenues deposited in the account to first be used to support the cost of regulating the commercial marijuana industry and other administrative activities. Any remaining funds would be allocated as follows: (1) one-half for school-based drug education and counseling services, (2) one-quarter for projects related to water quality and supply, and (3) one-quarter for research related to the medical use of marijuana. However, the measure states that the Legislature could allocate the remaining funds for other purposes with a two-thirds vote.

The measure authorizes local governments to impose various taxes on marijuana, subject to certain conditions. For example, local governments could impose up to a 2 percent tax on the retail sale of recreational marijuana products if authorized by a two-thirds vote of the governing body and a two-thirds vote of its electorate. Similarly, local governments could impose a business license tax on various types of medical and recreational marijuana-related business (such as manufacturers,

distributors, and retailers) of up to 1.5 percent of their gross receipts if authorized by a two-thirds vote of the governing body and a majority vote of its electorate.

Zoning Restrictions for Marijuana Businesses. The measure allows local governments to establish certain "reasonable" restrictions on the establishment of marijuana businesses. For example, local governments could prohibit the establishment of (1) retail stores selling marijuana for recreational use in areas not zoned for commercial use, (2) businesses cultivating marijuana in areas not zoned for commercial or industrial use, or (3) any marijuana businesses in areas zoned for residential use. In addition, a local government could establish further restrictions, such as completely banning marijuana businesses, if such restrictions are approved by a two-thirds vote of its governing body and a majority vote of the electorate.

Individuals Previously Convicted of Marijuana Crimes. The measure requires the immediate release of offenders serving prison, jail, parole, or probation terms for cultivating or possessing marijuana, including those convicted of possession with the intent to sell. In addition, offenders currently serving felony sentences for certain marijuana-related crimes that the measure reclassifies as misdemeanors or infractions would be eligible for resentencing. For example, an offender serving a sentence for transporting marijuana or providing marijuana to a minor would be eligible to be resentenced to either a misdemeanor or an infraction. However, a court would not be required to resentence offenders if it determined that doing so would pose an unreasonable risk to public safety. In addition, individuals who have already completed their felony sentences for such crimes can apply to the courts to have their convictions reclassified as misdemeanors or infractions. The measure also requires the destruction of arrest and conviction records for individuals previously arrested or convicted for marijuana-related offenses that would be either no longer unlawful or punishable by a reduced penalty under the measure.

Authorization of Criminal Penalties. The measure creates various new marijuana-related crimes. For example, under the measure it would be a misdemeanor crime punishable by a fine of up to $2,500 and/or up to a year in county jail to sell more than specified amounts of marijuana in a manner that is not authorized by the measure (such as without a proper license). It would also be a misdemeanor crime to make a false statement when applying for a marijuana business license. In addition, the measure states that possessing marijuana for personal use in an amount that exceeds the limits established by the measure or smoking marijuana in a public place in violation of a local ordinance are both crimes punishable as either an infraction or a misdemeanor.

Fiscal Effects

The provisions of this measure would affect both costs and revenues for state and local governments. The magnitude of the these effects would depend upon (1) the extent to which the U.S. DOJ exercises its discretion to enforce federal prohibitions on marijuana activities otherwise permitted by this measure and (2) how, and to what extent, state and local governments choose to regulate and tax the commercial production and sale of marijuana. 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 prisons and county jails, 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.

The above reductions would be offset somewhat in the short-term by a temporary increase in costs to state trial courts and state and local law enforcement agencies to (1) destroy records of arrest and conviction for certain marijuana-related crimes, (2) resentence individuals serving felony sentences for certain marijuana-related crimes, and (3) reclassify the felony convictions of individuals convicted of certain marijuana-related crimes.

In total, we estimate that the net reduction in state and local criminal justice costs from the above changes could eventually 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 abuse 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 could 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 fees authorized by the measure to be levied on marijuana-related businesses, as well as revenues from excise taxes imposed on marijuana sales.

Effects on State and Local Revenues. Assuming passage of the measure does not result in a significant change in the federal government's enforcement activities, the measure would result in increased governmental revenues. First, state and local governments would receive additional revenues, such as sales and business license taxes, from marijuana sales permitted 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 such taxes. In addition, the state would also receive revenue from excise taxes imposed on recreational marijuana by the measure. As noted earlier, the revenues derived from the excise taxes would be deposited in the Statewide Cannabis Tax Collection Account to support the costs of regulating the marijuana industry as well as various programs. Since the measure prohibits sales and use taxes and limits local taxes on medical marijuana, the above revenues would be partially offset by the loss of such taxes currently being collected.

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 illegally could begin doing so legally under state law and pay personal income and corporation taxes. Moreover, the measure would increase economic activity in the state to the extent that out-of-state consumers 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 up to several hundred million dollars annually.

Effect on 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 penalties created by the measure (such as for violating regulations established by the board).

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on (1) future actions by the federal government to enforce federal marijuana laws and (2) how, and to what extent, state and local governments choose to tax and regulate the commercial production and sale of marijuana.

- Net 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 state and local tax revenues of potentially up to several hundred million dollars annually related to the production and sale of marijuana, a portion of which is required to be spent on drug education and counseling services, water supply and quality projects, research related to the medical use of marijuana, and regulation of commercial marijuana activities.

Sincerely,

for Mac Taylor
Legislative Analyst

for Michael Cohen
Director of Finance