

## **Legislative Analyst's Office Analysis**

September 9, 2009

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. 09-0024, Amdt. #1-S).

### **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 announced in March 2009 that it would no longer prosecute marijuana patients and providers whose actions are consistent with state medical marijuana laws.

### **Proposal**

This measure (1) legalizes various marijuana-related activities, (2) allows local governments to regulate these activities, (3) permits local governments to impose and collect marijuana-related fees and taxes, and (4) authorizes various criminal and civil penalties.

**Legalization of Marijuana-Related Activities.** Under the measure, persons age 21 or older could engage in "personal consumption" of marijuana. Specifically, personal consumption of marijuana would be permitted in a "non-public place," defined as including a residence or a public establishment licensed for on-site marijuana consumption. The measure states that persons generally may (1) possess, process, or transport up to one ounce of marijuana; (2) cultivate marijuana on private property in an area up to 25 square feet; (3) possess harvested and living marijuana plants cultivated in such an area; and (4) possess any items or equipment associated with the above activities. However, the measure permits local authorities to authorize the possession and cultivation, including commercial production, of larger amounts of marijuana. Under the terms of this measure, the state could also enact laws to allow larger amounts of marijuana, as well as to enact new laws to regulate the commercial production of marijuana. The measure prohibits state and local law enforcement agencies from seizing or destroying marijuana that was possessed, used, or sold in accordance with this measure.

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This measure sets forth some limits on marijuana-related activities. It states, for example, that possession of marijuana must be solely for an individual's personal consumption and not for sale, although sales are permitted to individuals in public establishments licensed for marijuana consumption. The measure specifies that smoking of marijuana in the presence of minors or the consumption of marijuana by the operator of a motor vehicle is prohibited. In addition, the measure states that it does not amend various existing statutes related to marijuana, including laws that prohibit driving under the influence of drugs or that prohibit possessing marijuana on the grounds of elementary, middle, and high schools.

**Local Government Regulation of Commercial Production and Sale.** The measure allows local governments to adopt ordinances and regulations regarding the cultivation, processing, distribution, transportation, sale, or possession for sale of marijuana. For example, local governments would be permitted to license establishments that could sell up to one ounce of marijuana per transaction to persons 21 and older. The measure also authorizes local governments to regulate the location, size, hours of operation, and signs and displays of such establishments.

Individuals could transport marijuana from a licensed marijuana establishment in one locality to a licensed establishment in another locality, regardless of whether any localities in between permitted the commercial production and sale of marijuana. However, the measure does not permit the interstate or international transportation of marijuana.

**Imposition and Collection of Taxes and Fees.** The measure permits local governments to impose general, excise, or transfer taxes, as well as benefit assessments and fees, on authorized marijuana-related activities. It specifies that the purpose of such taxes, assessments, and fees is to allow local governments to raise revenue or to offset any costs associated with marijuana regulation. The measure requires that licensed marijuana establishments pay all applicable federal, state, and local taxes and fees currently imposed on other similar businesses.