

ISSUE: Prop. 64. Marijuana Legalization. Initiative Statute.

Measure Summary

Legalizes marijuana and hemp under state law. Designates state agencies to license and regulate marijuana industry. Imposes state excise tax on retail sales of marijuana equal to 15% of sales price, and state cultivation taxes on marijuana of \$9.25 per ounce of flowers and \$2.75 per ounce of leaves. Exempts medical marijuana from some taxation. Establishes packaging, labeling, advertising, and marketing standards and restrictions for marijuana products. Allows local regulation and taxation of marijuana. Prohibits marketing and advertising marijuana to minors. Authorizes resentencing and destruction of records for prior marijuana convictions.

Current Law

The possession, cultivation, and distribution of marijuana is illegal in California, but penalties vary widely depending on the circumstances of the offense and prosecutorial discretion. Beginning in 2011, possession of less than an ounce is an infraction, punishable by a maximum of a \$100 fine (plus additional state and local fees that can bring the cost to \$485). Possession of larger amounts is a misdemeanor (\$500 fine and up to 6 months in jail). Under Prop. 47 (2014), possession of hashish or concentrated cannabis is a misdemeanor. Under Prop. 36 (2000), first and second offenders can demand a treatment program instead of jail.

Possession with intent to sell is a felony as is cultivation, sale or distribution to minors, and sale, transportation or distribution. However, persons growing for personal use can be eligible for diversion under Prop. 36. Transporting or giving away less than one ounce is a misdemeanor.

Marijuana paraphernalia are illegal to sell or manufacture, and are subject to seizure by police.

Prop. 215 (1996) legalized medical marijuana for persons with a recommendation from a licensed physician. Medical marijuana cooperatives were authorized in 2003. In addition, patients may have 6 mature or 12 immature plants, although local governments can pass higher allowances. Sales are subject to state and local sales tax, and some cities levy additional taxes.

The state Bureau of Medical Marijuana Regulation was created in 2015 to regulate the commercial medical marijuana industry. The medical cooperatives are to be phased out in 5 years and replaced by businesses licensed by the state: cultivators by Department of Food and Agriculture, testing and processing by Department of Public Health, and other activities by the Bureau.

In the latest data (December 2013), Department of Corrections reported a total of 441 state inmates (out of 134,339) serving time for marijuana and hashish offenses. A total of 281 (out of 47,462) were on state parole. In 2014, there were 20,399 (13,300 felony) arrests for marijuana violations, down from 24,295 (13,075 felony) in 2010 just prior to the partial decriminalization and 50,303 (14,449 felony) in 1995 just prior to Prop. 215.

Prior measures for full legalization/decriminalization in California have failed: Prop. 19, 1972 (33.5% - 66.5%); Prop. 5, 2008 (40.5% - 59.5%); Prop. 19, 2010 (46.5% - 53.5%). The margin, however, has been shrinking.

Marijuana is illegal under the Federal Controlled Substances Act, although charges are generally applied to larger instances involving commercial distribution. The Supreme Court ruled in 2005 that federal authorities can continue to prosecute violators even when they are complying with California's medical marijuana laws.

Analysis

California essentially has moved towards de facto legalization beginning with Prop. 215. The 2015 statutory changes dealt with one of the remaining barriers, and have set the stage for development of a full-blown cultivation and production component. Regardless of the outcome of this measure, California has set the stage for expansion of this industry within the state, with legal (at least for state purposes) access barred only to those who for some reason don't know the right physician.

California is not the only state considering this issue. In 2016, up to 19 other states (including another measure in Washington) may have ballot measures on this issue. Colorado, Washington, Oregon, Alaska, and DC have already legalized recreational marijuana. Another 19 states besides California had legalized medical marijuana.

The current California measure tracks closely with the recent recommendations of Gavin Newsom's [Blue Ribbon Commission on Marijuana Policy](#). According to discussions with the sponsors, a number of provisions have been added/changed to address the concerns/requests of various interest groups in order to head off potential opposition.

While these numbers are positive for the measure, it is likely that a funded opposition could still be successful, a factor the sponsors apparently recognize as they have attempted to satisfy various interests with multiple language changes.

Issues to consider prior to adopting a position include the following:

- Marijuana will remain illegal under federal law, and while current federal enforcement policy is to de-emphasize all but commercial quantities, this legal jeopardy will continue to exist both for individuals and for companies doing business with the newly-legalized operations. The fact that 48% of California remains owned by the federal government also makes it highly likely that many will be inadvertently breaking federal law as they travel around the state.
- Federal banking laws will limit access to the banking system. This is an issue that has yet to be resolved in states such as Colorado and Oregon that have already adopted legalization, and will continue to raise challenges to an expanded industry here that will be forced to continue operating on a cash basis including for payment of taxes to state and local governments.
- Are the employer provisions in the measure sufficient? The measure allows the Legislature to amend certain provisions by a majority vote and others by a 2/3 vote, as long as the amendments are in furtherance of the purposes stated in the measure. And if additional employer protections are needed, are they sufficient to justify opposition or are they the kinds of changes for which CBRT should first seek a commitment of support from the sponsors prior to

releasing a position, including a potential neutral position? The measure creates an advisory committee to develop future amendments for the Legislature to consider, and a strong business voice on this body may be another avenue to address any current and future concerns.

- The measure allows cities and counties to adopt additional regulations including local bans on marijuana-related businesses (but not deliveries to or through their jurisdictions). This model is used by several states for alcohol sales through “wet” and “dry” counties, but does it create any unique issues for businesses such as CBRT members who operate in locations throughout the state?
- While legalization has often been promoted by supporters as a government-funding solution, this measure devotes all revenues to a number of special funds, including administrative costs, environmental cleanup programs, marijuana related research, and various social issues expanded use is likely to worsen. This allocation is not necessarily inconsistent with revenue allocations from other “sin” taxes, but is the General Fund a more appropriate use for these funds, including advocating for appropriate changes through future Legislative amendment?
- Does the measure adequately address potential impacts on other states in which CBRT members operate through potential “weed tourism,” out of state buyers, and unintended consequences such as offsetting benefits to illegal drug operations that increasingly have already shifted cultivation closer to their markets due to the relatively lower value/higher bulk nature of this product in the illegal drug trade?

Fiscal Impact

From the [LAO/DOF fiscal analysis](#):

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 potentially ranging from the high hundreds of millions of dollars to over \$1 billion annually related to the production and sale of marijuana. Most of these funds would be required to be spent for specific purposes such as substance use disorder education, prevention, and treatment.

Consistency with CBRT Draft Strategic Policies

No applicable strategies.

Arguments Pro

Beginning with Prop. 215 in 1996, California has adopted a series of measures that have essentially legalized this product for anyone willing to go through the necessary steps to purchase it. At the same time, law enforcement discretion has in many jurisdictions reached the same point by shifting their focus from incidental personal use to commercial operations. This measure largely brings state law into conformance with prevailing practices and societal attitudes, but ensures revenue flows to deal with the societal consequences just as similar products such as alcohol, tobacco, and others are treated.

Arguments Con

The products will remain illegal under federal law and treaty obligations, creating a jeopardy situation both for individuals and potentially for businesses that intentionally or unintentionally provide services and products to the newly-legitimized operations.

The measure promotes a federal-state conflict towards the law. One of the more problematic outcomes will be driven by federal banking laws that will require most if not all of this potential multi-billion dollar industry to be conducted on a cash basis, including tax payments to state and local authorities. Moreover, accepting cash knowingly from these businesses may also create federal liabilities for the recipients, including potential seizure under the asset forfeiture laws. The states that have already legalized recreational use have not to date developed effective remedies for this conflict.

The measure acknowledges that increased access to these products is likely to also increase various social problems through the dedication of sizable amounts of its revenues to substance use programs, youth prevention programs, and DUI prevention.

The measure continues the trend of imposing new revenue instruments and then dedicating the resources to special interest programs rather than making them available to the general fund. State costs and base spending are thereby continuously expanded, while furthering the conditions that eventually lead to pressure to raise general taxes, often on business and higher income individuals.

Support

The recent IGS poll shows strong support for legalizing marijuana for recreational use and regulating it similar to alcohol: 63.8% support – 36.2% oppose. The poll did not ask specifically about Prop. 64. Recent polling (March 2016) from PPIC showed a majority of Californians supporting legalization. Support among likely voters, however, was a majority at only 55%, and support varied widely by region and demographic, with a more typical supporter being a younger white male from the Bay Area:

Secretary of State shows the support committees have raised \$7.8 million, with major support from: Sean Parker and his New Approach PAC, Nicholas Pritzker, Henry van Ameringen, Daniel Lewis, Weedmaps (handy app showing closest dispensaries and prescribing physicians), Drug Policy Network, Fund for Policy Reform. California Democratic Party also donated \$1,500 in February. Other supporters listed on the campaign [website](#) include (among many others):

- Gavin Newsom
- Congressmen Jared Huffman, Ted Lieu, Dana Rohrbacher, Eric Swalwell; Former Congressmen Tom Campbell, George Miller
- Senator Mark Leno
- Assemblymembers Rob Bonta, David Chiu, Susan Eggman, Cristina Garcia, Reggie Jones-Sawyer, Kevin McCarty, Bill Quirk; Former Speaker Toni Atkins
- ACLU of California
- California Democratic Party
- California Academy of Preventative Medicine
- California Medical Association
- California State NAACP
- California Young Democrats
- United Food and Commercial Workers Western States Council

- Marijuana Policy Project of California, California Cannabis Industry Association, NORML
- Blacks in Law Enforcement of America, Law Enforcement Against Prohibition (LEAP), National Latino Officers Association, and individual officers and judges (retired or out-of-state)

Opposition

Coalition for Responsible Drug Policies (California Public Safety Institute) has raised \$172,000 from the following: California Police Chiefs, California State Sheriffs, California Police Officers, California Narcotic Officers, Association for Los Angeles Deputy Sheriffs, California Correctional Supervisors, California Hospitals Committee on Issues, California Teamsters, Los Angeles Police Protective League, Riverside Sheriffs Association, Sam Action, Inc. Other opposition has come from marijuana activists such as ReformCA.org who maintain the measure will result in big business taking over marijuana in the state, and destroy the current medical marijuana program by edging out smaller growers. No major fundraising against the measure is expected at this point.

The Governor has no official position at this time, although he opposed the earlier legalization effort, Proposition 19 in 2010.

Kamala Harris was one of the ballot argument signers (rebuttal against the In Favor statement) against Prop. 19, stating in part “. . . *the statewide organizations representing police, sheriffs and drug court judges are all urging you to vote “No” on Proposition 19. Passage of Proposition 19 seriously compromises the safety of our communities, roadways, and workplaces.*” As reported by the Sacramento Bee (4/21/16), her current position is: “*As a U.S. senator, an area of focus for me would be to remove marijuana from Schedule I and put it in Schedule II . . .*”

Executive Committee Recommended Position

Position: Neutral

Statement: “The California Business Roundtable is remaining neutral on Prop. 64. Since the implementation of California’s current medical marijuana laws, we understand societal attitudes toward recreational marijuana use have continued to evolve. While this initiative worked to address many issues important to employers, there are still too many significant unanswered questions about conformity with federal regulations and public safety laws, including conformance with federal banking laws, and identification, deterrence and punishment of those who drive while under the influence. Other states that have legalized recreational marijuana have yet to come up with effective solutions to many of these problems. The potential of a multi-billion dollar all-cash industry—including tax payments to state and local authorities—is not only concerning from a practical standpoint, but from a public safety one as well.”