



1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500

Facsimile
916.441.5507

May 19, 2010

To: CSAC Board of Directors
From: Karen Keene, CSAC Senior Legislative Representative
Cara Martinson, CSAC Legislative Analyst

Re: The Regulate, Control and Tax Cannabis Act of 2010

The Regulate, Control and Tax Cannabis Act of 2010, which would amend the California Constitution and state statute to legalize marijuana, will go before the voters on the November 2010 ballot. At the request of the CSAC Medical Marijuana Working Group, CSAC staff prepared the following analysis. The purpose of this memo is to provide a detailed description of the initiative, existing law, and possible effects on counties to facilitate discussion about the measure at the June 3, 2010, CSAC Board of Directors meeting. The Officers will then determine if CSAC will take a position on the measure and which policy committees will review it.

I. THE REGULATE, CONTROL AND TAX CANNABIS ACT OF 2010

The Regulate, Control and Tax Cannabis Act of 2010 (Act) would legalize the personal consumption, cultivation, and sale of cannabis (marijuana) in California, and allow adults 21 and older to possess up to one ounce. The Act would authorize local governments to adopt ordinances to regulate the possession, transportation, cultivation, processing, and sale of marijuana, and to impose fees and taxes on it.

Specifically, the Regulate, Control and Tax Cannabis Act of 2010 would do the following:

A. *Legalization of Marijuana Activities*

- The Act would allow persons 21 years of age and older to personally possess, process, share, and transport — but not sell — up to one ounce of marijuana, solely for personal consumption. It would permit personal consumption in “non-public” places, defined as including a residence or a public establishment licensed for on-site marijuana consumption.
- The Act would allow marijuana cultivation on up to 25 square feet of private property, and would permit the possession of harvested and living marijuana plants cultivated in such an area as well as equipment and other paraphernalia associated with cultivation and consumption.
- The Act specifies that smoking marijuana in the presence of minors or the consumption of marijuana by the operator of a motor vehicle would be prohibited. In addition, the Act states that it would not amend various existing statutes related to marijuana, such as laws that prohibit driving under the influence of drugs or that prohibit possessing marijuana on the grounds of elementary, middle, and high schools.

B. *Commercial Regulations and Controls*

- The Act would only authorize the sale of marijuana by a person who is licensed or permitted to do so.

- Under the Act, a local government could adopt ordinances or regulations regarding the cultivation, processing, distribution, transportation, sale, and possession of marijuana.
 - The Act would permit local authorities to authorize the possession and cultivation — including commercial production — of larger amounts of marijuana. However, retail sales would be limited to one ounce per transaction in licensed premises.
 - The Act would allow local governments to control the licensing of establishments for the sale of marijuana, including limits on zoning and land use, locations, size, hours of operation, occupancy, advertising, and signs and displays.
 - The Act would allow local governments to ban the sale of marijuana within their respective jurisdictions. However, the possession and consumption of up to one ounce would be permitted.
- The Act would authorize the Legislature to amend the Act's provisions as long as they further the purposes of the Act. The Act lists examples, including: creating a statewide system of regulation for the commercial cultivation of marijuana, authorizing the production of hemp, and increasing quantitative limits.

C. *Taxes and Fees*

- The Act would allow local governments to impose general, excise, and transfer taxes. It would also authorize benefit assessments and fees on marijuana-related activities to raise revenue or recoup direct or indirect costs associated with authorized activities, including permitting, licensing, and enforcement.
- The Act requires licensed marijuana establishments to pay all applicable federal, state, and local taxes, fees, fines, penalties, and other financial responsibilities imposed on similar businesses.

D. *Criminal and Civil Penalties*

- Under the Act, any licensed marijuana distributor that sells or gives marijuana to a person under the age of 21 could not own, operate, or be employed by a licensed marijuana establishment for one year.
- Under the measure, persons age 21 or older who knowingly give marijuana to a person age 18-20 could be sent to county jail for up to six months and fined up to \$1000.
- The Act does not change existing criminal statute related to penalties for furnishing marijuana to persons under the age of 18.
- The Act authorizes local governments to impose additional penalties or civil fines on marijuana activities not in conflict with the goals of the Act.
- The Act states that no individual could be punished, fined, or discriminated against for engaging in any conduct permitted by the measure. The Act does specify that employers retain their existing rights to address consumption of marijuana by employees.
- The Act states that no state or local law enforcement agency or official shall attempt to, or threaten to seize or destroy any marijuana that is lawfully cultivated, processed or sold.

II. EXISTING STATE LAW

Existing law decriminalizes the use of marijuana for certain medical purposes. The following is a description of existing statute relating to the use of medical marijuana.

A. *Proposition 215 - The Compassionate Use Act of 1996*

Proposition 215, the Compassionate Use Act of 1996, amended state law to allow persons to grow or possess marijuana for medical use when recommended by a physician. Proposition 215 also allows caregivers to grow and possess marijuana for a person for whom the marijuana is recommended. It states that no physician shall be punished for having recommended marijuana for medical purposes. Additionally, Proposition 215 specifies that it is not intended to overrule any law that prohibits marijuana use for nonmedical purposes.

B. *Senate Bill 420 - The Medical Marijuana Program Act*

Senate Bill 420 (Chapter 875 of 2003), established the Medical Marijuana Program Act (MMPA). The MMPA, among other things, requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

According to the Office of the Attorney General, medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. SB 420 requires that all counties participate in the identification card program by:

- Providing applications upon request to individuals seeking to join the identification card program;
- Processing completed applications;
- Maintaining certain records;
- Following state implementation protocols; and
- Issuing DPH identification cards to approved applicants and designated primary caregivers.

Participation by patients and primary caregivers in the identification card program is voluntary. In addition to establishing the identification card program, the MMPA also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana.

Specifically, SB 420 states that qualified patients and primary caregivers who possess a state issued identification card may possess 8 ounces of dried marijuana and may maintain no more than 6 mature or 12 immature plants per qualified patient. In addition, the law allows counties and cities to adopt regulations that allow qualified patients or primary caregivers to possess medical marijuana in amounts that exceed the MMPA's possession guidelines.

III. EXISTING FEDERAL LAW

Federal law continues to treat marijuana as an illegal substance and considers the manufacture, distribution, and possession of marijuana as federal criminal offenses. The Controlled Substances Act of 1970 (CSA) established a federal regulatory system designed to combat drug abuse by making it unlawful to manufacture, distribute, dispense, and possess any controlled substance. The CSA reflects the federal government's view that marijuana is a controlled substance with no medical use.

In March 2009, the federal government announced that it would no longer prosecute medical marijuana patients and providers whose actions were consistent with state law, but would continue to enforce its prohibition on non-medical activities. It is unclear how the federal government will react if this Act is approved by the voters.

IV. EFFECTS

The Regulate, Control and Tax Cannabis Act is loosely drafted, leaving a great deal open for interpretation and legal review. The language is not specific in many instances and appears to be internally inconsistent in certain areas. The main questions surrounding the Act's implementation include:

- Would the Act be in direct violation of federal law? To what extent would the federal government impede the Act's implementation?
- Would local governments be able to impose adequate fees and taxes to cover all the costs associated with the Act's implementation?
- Would local governments be able to control personal marijuana cultivation with land use and zoning authority?
- How would the creation of a statewide regulatory framework for a commercial marijuana industry affect local regulation?
- How would the legalization of marijuana impact public safety?

A. Regulation

The Act does not include a specific framework for implementation and regulation; rather, it would place the regulatory burden of legalizing marijuana on local governments. The Act authorizes the Legislature to amend the Act to further its purposes, including creating a statewide regulatory system for a commercial marijuana industry. However, the Act specifically delegates this regulatory authority to local governments along with the ability to impose fees and taxes. It is unclear whether the state would assume the burden of regulation, or how their authority would interact with a local government's ability to regulate local commercial activity. This specific clause appears to be inconsistent with the purpose of the Act, which appears to focus on local regulation.

The Act authorizes cities and counties to adopt ordinances to control, license, and permit the sale of marijuana within their respective boundaries. The initiative also allows a local government to prohibit the sale of marijuana within its jurisdiction. However, personal consumption and cultivation would still be permissible by law.

This could create a patchwork-like system of local regulation. For example, local governments could authorize an increase in the possession limit to an amount greater than one ounce, or choose to not permit the sale of marijuana at all. Possession, sales, and distribution limits would almost certainly differ throughout the state, as would the fees and taxes on marijuana and its related activities. This has the potential to create an uneven system of regulation, but it does allow for local control and flexibility and would allow local governments to have greater control over the sale and distribution of marijuana within their respective jurisdictions.

B. Taxation

The preamble of the Act states that taxing marijuana will generate billions of dollars for the state and local governments. However, the amount of revenue that the Act would generate is difficult to predict. Most notably, it is unclear how the federal government would react if this initiative passes. For instance, would they challenge the ability of local agencies to collect taxes on activities that remain illegal under federal law? Due to these questions, any revenue directly associated with the legalization of marijuana would be subject to great uncertainty.

The initiative would authorize local governments to impose a wide variety of fees and taxes on marijuana-related activities. The Act specifies that the purpose of these fees and taxes would be to allow local governments to raise revenue or to offset any costs associated with its regulation. This could create a new source of revenue for local governments who might realize additional revenues from both sales and property taxes generated by the commercial cultivation and sale of marijuana. However, the loss in revenues from the collection of fines established in current law for criminal offenders could marginally reduce the amount of revenue the taxes and fees generate.

The Act does not expressly authorize the State to impose taxes or fees on marijuana. However, longstanding case law indicates that the Legislature's authority to impose taxes and regulate the collection thereof exists unless it has been expressly eliminated by the Constitution.

C. Public Safety

The Act specifies that no state or local law enforcement agency would be able to seize marijuana that is legally cultivated or sold in California. This presents several questions with regard to public safety. Would taxes and fees on marijuana create a greater incentive for a black market? Would increased protection from seizure by law enforcement allow drug cartels to operate more freely? Would the legalization of marijuana detract from illegal activity, or increase the prevalence of a cheaper, black market product?

With respect to costs, the Act presents potential cost increases associated with an increase in participation in publicly funded substance abuse treatment services. Alternatively, the Act has the potential to decrease costs associated with marijuana offenders incarcerated in state prisons and local jails as well as a potential reduction in court costs.

D. Medical Marijuana and Cultivation

With respect to medical marijuana, the Act would not change current law. Legalization of marijuana has the potential to reduce the number patients participating in the MMPA

program and its associated costs. The Act would clarify some issues facing local governments related to regulating medical marijuana, and would also resolve the legal ambiguity surrounding Proposition 215.

If legalized, the state and local governments would also have the ability to regulate the quality of marijuana consumed. Currently, authorities are not able to regulate the quality of medical marijuana in the state because the law only decriminalized its use for certain medical purposes. Current statute does not treat marijuana as a legal substance and therefore the state and local governments do not have the ability to regulate the pesticides used in its cultivation or any additives used in its production.

The Act would also create a personal right to cultivate marijuana on private property in an area up to 25 square feet. It is unclear if local governments would be able to regulate this activity under its existing zoning and land use authority. This could result in marijuana cultivation next to sensitive use areas, such as schools and playgrounds.

E. Proponents and Opponents

The Act's main proponent is Richard Lee, an Oakland-based medical marijuana dispensary owner. Other known proponents include the Drug Policy Alliance and the Marijuana Policy Project. The proponents' arguments focus on the Act's ability to regulate and control marijuana cultivation and use similar to alcohol. They also state that taxes and fees imposed on marijuana have the potential to generate billions in revenue for the state and local governments.

The Act's known opponents include the California Police Chiefs Association, California Narcotics Officers Association, and Mothers Against Drunk Driving. The arguments on the opponents' side focus on the potential for increased crime and substance abuse and the difficulty of enforcing "regulated" use and cultivation.

V. CONCLUSION

It is clear that the development of a regulatory framework to control the legal use and production of marijuana would consume a tremendous amount of time and resources. Given the uncertainty of federal involvement, it is unclear whether the potential benefits of new tax revenues would compensate for resources expended by the state and local governments. The Act also presents several questions with respect to actual implementation. Many provisions in the Act would likely be challenged in court, adding to the costs of implementing it.

Needless to say, there would also be social impacts associated with the legalization of marijuana, though what they would be can and will be the subject of considerable debate. The social costs and benefits of legalizing a controlled substance go beyond the scope of this analysis, but would undoubtedly affect the state and local governments.