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10-23-2019

**EXPANDS LEGALIZATION OF CANNABIS AND HEMP. INITIATIVE
STATUTE.**

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The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

EXPANDS LEGALIZATION OF CANNABIS AND HEMP. INITIATIVE STATUTE.

Repeals existing conflicting laws regulating cultivation, sale, and use of cannabis and hemp.

Legalizes cannabis and hemp, as defined. Expands judicial relief, including release from custody, for existing cannabis/hemp convictions. Prohibits permit, license, and tax requirements for personal uses; increases amount allowed for personal use. Prohibits commercial regulation beyond manner applicable to beer/wine; limits retail tax to 10%. Allows doctors to recommend cannabis without prescription; prohibits taxation of medicinal cannabis. Limits cannabis testing for employment or insurance purposes. Bars state or local aid to enforce federal cannabis/hemp laws. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **Reduced state and local tax revenues related to the production and sale of cannabis, likely in the mid-to-high hundreds of millions of dollars annually. Reduced state and local license fee revenue – likely in excess of \$100 million annually – which could result in some of the regulatory costs being supported from other fund sources (such as the state General Fund).** (19-0011.)

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AUG 19 2019

To the Honorable Attorney General of California:

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

We, the undersigned, registered, qualified voters of California, residents of the County of (City and County) referenced on the signature page of this petition, hereby propose amendments of the Health and Safety Code, relating to cannabis, hemp, marijuana, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law.

The proposed statutory amendments read as follows:

Cannabis Hemp Heritage Act of 2020

AN ACT TO AMEND THE HEALTH AND SAFETY CODE OF CALIFORNIA:

I. Add Section 11362.4 to the Health and Safety Code of California, such laws and policies shall control any contrary laws and policies:

(a) No person, business, or corporate entity shall be arrested or prosecuted, be denied any right or privilege, nor be subject to any criminal or civil penalties for the possession, cultivation, transportation, distribution, use, or consumption of cannabis hemp marijuana, as provided in this Act, including:

- (1) Cannabis hemp industrial products.
- (2) Cannabis hemp medicinal preparations.
- (3) Cannabis hemp nutritional products.
- (4) Cannabis hemp euphoric use and products.

(b) Definition of terms:

(1) (A) The terms "cannabis hemp" and "cannabis hemp marijuana" mean the natural, non-genetically modified plant cannabis hemp, hemp, cannabis, marihuana, marijuana, cannabis sativa L, cannabis Americana, cannabis chinensis, cannabis indica, cannabis ruderalis, cannabis sativa, or any variety of cannabis, including any derivative, concentrate, extract, flower, leaf, particle, preparation, resin, root, salt, seed, stalk, stem, or any product thereof.

(B) The term "non-genetically modified plant" means a plant in which the genetic material has not been altered in a way that does not occur naturally by mating and/or natural recombination.

(2) The term "cannabis hemp industrial products" means natural cannabis hemp, and all products made from cannabis hemp that are not designed or intended for human consumption, including, but not limited to: clothing, building materials, paper, fiber, fuel, lubricants, plastics, paint, seed for cultivation, animal feeds, veterinary medicine, oil, or any other product that is not designed for internal human consumption; as well as cannabis hemp plants used for crop rotation, erosion control, pest control, weed control, or any other horticultural or environmental purposes, for example, the extraction of atmospheric carbon dioxide and toxic soil reclamation.

(3) The term "cannabis hemp medicinal preparations" means natural cannabis hemp, and all products made from cannabis hemp that are designed, intended, or used for human consumption for the treatment of any human disease or medical condition, for pain relief, or for any healing purpose, including but not limited to the treatment prevention, or relief of: Alzheimer's and pre-Alzheimer's disease, stroke, arthritis, asthma, cancer, cramps, epilepsy, glaucoma, lupus, migraine, multiple sclerosis, nausea, premenstrual syndrome, side effects of cancer chemotherapy, fibromyalgia, sickle cell anemia, spasticity, spinal injury, stress, easement of post-traumatic stress disorder, Tourette syndrome, immunodeficiency, wasting syndrome from AIDs or anorexia; use as an antibiotic, antibacterial, anti-viral, or anti-emetic; as a healing agent, or as an adjunct to any medical or herbal treatment. Mental

conditions including, but not limited to bipolar, depression, attention deficit disorder, or attention deficit hyperactivity disorder are also conditions considered for medical use.

(4) The term “cannabis hemp nutritional products” means natural cannabis hemp grown for consumption by humans and animals as food, including but not limited to: leaf, root, seed, seed protein, seed oil, essential fatty acids, seed cake, dietary fiber, or any preparation or extract thereof.

(5) The term “cannabis hemp euphoric products” means natural cannabis hemp intended for consumption by people for personal, recreational, meditative, spiritual, religious, or other purposes, other than cannabis hemp industrial products, cannabis hemp medicinal preparations, or cannabis hemp nutritional products.

(6) The term “personal use” means the consumption of cannabis hemp by people 21 years of age or older for any relaxant, meditative, religious, spiritual, recreational, or other purposes other than sale.

(7) The term “commercial production” means the production of cannabis hemp products for sale or profit under the conditions of these provisions.

(c) Industrial cannabis hemp farmers, manufacturers, processors, distributors, medicinal collectives, and retailers shall not be subject to any special zoning requirements, licensing fee, or tax that is excessive, discriminatory, or prohibitive.

(d) Cannabis hemp and cannabis hemp medicinal preparations are hereby reclassified and de-scheduled from California Uniform Controlled Substances Act. Licensed physicians shall not be penalized for, nor restricted from approving or recommending cannabis hemp for medical purposes to any patient, regardless of age. No tax shall be applied to cannabis hemp medicinal preparations. Sufficient community outlets shall be allowed to provide reasonable and discreet access for patients. No recommending physician shall be subject to any professional licensing review or hearing as a result of recommending or approving the medical use of cannabis hemp

(e) Personal use of cannabis hemp euphoric products.

(1) No permit, license, or tax shall be required for the non-commercial cultivation, transportation, distribution, or consumption of cannabis hemp.

(2) No person shall be required to submit to testing for inactive and/or inert residual cannabis metabolites as a condition of any right or privilege including, employment or insurance, nor may the presence of such metabolites be considered in determining employment, other impairment, or intoxication. Testing for active (not metabolized) cannabis may be used and considered in determining employment, impairment, or intoxication. Cannabis users’ right to bear arms shall not be restricted.

(3) When a person falls within the conditions of these exceptions, the offense laws do not apply and only the exception laws apply.

(f) Commerce in cannabis hemp euphoric products shall be limited to adults, 21 years of age and older, and shall be regulated in a manner analogous, and no more onerous than California’s beer and wine model. For the purpose of distinguishing personal from commercial production, 99 flowering female plants and 12 pounds of dried, cured cannabis hemp flowers, but not leaf, produced per adult, 21 years of age and older, per year shall be presumed as being for personal use.

(g) The manufacture, marketing, distribution, or sales, between adults, of equipment or accessories designed to assist in the planting, cultivation, harvesting, curing, processing, packaging, storage, analysis, consumption, or transportation of cannabis hemp plants, industrial cannabis hemp products, cannabis hemp medicinal preparations, cannabis hemp nutritional products, cannabis hemp euphoric products, or any cannabis hemp product shall not be prohibited, except as provided in this Act.

(h) No California law enforcement personnel, State or local employees of any kind, or funds shall be used to assist or aid and abet in the enforcement of Federal cannabis hemp marijuana laws involving acts that are hereby no longer illegal in the State of California.

(i) Any person who threatens the enjoyment of these provisions is guilty of a misdemeanor. The maximum penalties and fines of a misdemeanor may be imposed.

II. Repeal, delete, and expunge any and all existing statutory laws that conflict with the provisions of this initiative.

I. Enactment of this initiative shall include: the case by case review for the purpose of sentence modifications, amnesty, immediate release from prison, jail, parole, and probation, and/or clearing, expunging, and deletion of all cannabis hemp marijuana criminal records for all persons currently charged with, or convicted of any non-violence cannabis hemp marijuana offenses included in, or modified by, this initiative, which are hereby no longer illegal and/or applicable in the State of California. People who fall within this category that triggered an original sentence are included within this provision.

2(a) Within 60 days of the passage of this Act, the Attorney General shall develop and distribute a one-page application, providing for the destruction of all cannabis hemp marijuana criminal records in California for any such offense invalidated by this Act. Such forms shall be distributed to district and city attorneys, made available at all police departments in the State, and made available electronically at <https://www.courts.gov/forms.html> to persons hereby affected. Upon filing such form with any Superior Court and a payment of a fee of \$10.00, the Court shall liberally construe these provisions to benefit the defendant in furtherance of the amnesty and the dismissal provision of this section. Upon the Court's ruling under this provision the arrest record shall be set aside and be destroyed. Such persons may then truthfully state that they have never been arrested or convicted of any cannabis hemp marijuana related offense which is hereby no longer illegal in the State of California. This shall be deemed to be a finding of factual innocence under California Penal Code Section 851.8 et seq.

III. Within 6 months of the passage of this Act, the legislature is required upon thorough investigation, to enact legislation using reasonable standards, which are compatible with the provisions of this Act to:

1. License concessionary establishments to distribute cannabis hemp euphoric products in a manner analogous to California's beer and wine industry mode. Sufficient community outlets shall be licensed to provide reasonable commercial access to persons of legal age, so as to discourage and prevent the misuse of, and illicit traffic in, such products. Any license or permit fee required by the State for commercial production, distribution, or use shall not exceed \$1,000.00. Regulation, penalties, and enforcement shall be in a manner analogous to, and no more onerous than, California's beer and wine model.

2. Place an excise tax on commercial sale of cannabis hemp euphoric products, analogous to California's beer and wine model, so long as no excise tax or combination of excise taxes shall exceed 10% of the retail price of the products. Fifty percent of the excise tax revenues collected shall be made available for the research, development and promotion of industrial, nutritional, and medicinal hemp industries in California.

3. Determine an acceptable and uniform standard of impairment based on scientifically acceptable performance testing, to restrict persons impaired by cannabis hemp euphoric products from operating a motor vehicle or heavy machinery, or otherwise engaging in conduct that may affect public safety.

4. Regulate the personal use of cannabis hemp euphoric products in enclosed and/or restricted public places.

IV. Pursuant to the Ninth and Tenth Amendments to the Constitution of the United States, the people of California hereby repudiate and challenge Federal cannabis hemp marijuana prohibitions that conflict with this Act.

V. Severability: If any provisions of this Act, or the application of any such provision to any person or circumstance, shall be held invalid by any court, the remainder of this Act, to the extent it can be given effect, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Act are severable.

VI. Construction: If any rival or conflicting initiative regulating any matter addressed by this Act receives the higher affirmative vote, then all non-conflicting parts shall become operative.

VII. Purpose of Act: This Act is an exercise of the police powers of the State for the protection of the safety, welfare, health, and peace of the people and the environment of the State, to protect the industrial and medicinal uses of cannabis hemp, to eliminate the unlicensed and unlawful cultivation, selling, and dispensing of cannabis hemp; and to encourage temperance in the consumption of cannabis hemp euphoric products. It is hereby declared that the subject matter of this Act involves, in the highest degree, the ecological, economic, social, and moral well-being and safety of the State and all of its people. All provisions of this Act shall be liberally construed for the accomplishment of these purposes: To respect human rights, to promote tolerance, and to end cannabis hemp prohibition.

Proponents:

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October 8, 2019

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

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OCT 08 2019

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the cultivation, sale, and use of cannabis (A.G. File No. 19-0011).

Background

Cannabis. Cannabis refers to a variety of species and subspecies of flowering plants that produce chemical compounds known as cannabinoids. While there are over 100 known cannabinoids, the most well-known are tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is considered to be the main psychotropic component of cannabis that is responsible for the intoxicating “high” reported by cannabis users. In contrast, CBD is generally not believed to be intoxicating. Cannabis plants vary in their levels of THC and CBD. Hemp typically refers to a strain of cannabis that has very low levels of THC.

State Cannabis Law and Regulation. In November 1996, California became the first state to legalize medical cannabis when voters approved Proposition 215. In November 2016, voters approved Proposition 64, which legalized nonmedical use of cannabis (often referred to as “adult” use). Proposition 64 and subsequent regulations made various changes related to cannabis in California, including the following:

- **Legalized Possession, Cultivation, and Use of Cannabis for Adult Use.** Proposition 64 authorized individuals 21 or older to possess, process, transport, purchase, obtain, or give away 28.5 grams of non-concentrated nonmedical cannabis, or 8 grams of concentrated cannabis product. The proposition also allowed for the cultivation of up to six plants per residence for personal use, but allowed local governments to impose certain restrictions on this cultivation.
- **Created a System for Regulating Adult Use Cannabis Businesses.** Proposition 64 created a regulatory structure for nonmedical cannabis (similar to one previously created by the Legislature for medical cannabis). It also enabled state regulatory agencies to impose fees to cover their reasonable costs. Through regulations, these

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agencies have established fees for adult use and medical cannabis businesses varying from under \$1,000 to as much as \$300,000 per license depending on the license type and amount of revenue generated by the business.

- ***Imposed State Taxes on Cannabis and Directed Revenues to Certain Purposes.*** Proposition 64 imposed two state excise taxes on medical and adult use cannabis: (1) an excise tax of 15 percent of retail sales and (2) a cultivation tax of \$9.25 per ounce of dried cannabis flowers and \$2.75 per ounce of dried cannabis leaves. The proposition directed that the revenues from these excise taxes be used for designated purposes (such as programs to discourage substance use by youth and address environmental damage from unlicensed cannabis cultivation). The proposition also excluded medical cannabis sales (with a valid state identification card) from state and local sales taxes.
- ***Authorized Local Governments to Regulate and Tax Cannabis Businesses.*** Proposition 64 provided cities and counties authority to restrict and regulate cannabis businesses located within their jurisdictions, including allowing them to limit the locations of these businesses or ban them altogether. Additionally, the proposition allowed local governments to impose additional taxes and fees on cannabis businesses.
- ***Reduced Various Penalties for Cannabis-Related Crimes.*** Proposition 64 reduced the criminal penalties for many cannabis-related offenses. For example, it made cultivating more than six cannabis plants without a license a misdemeanor generally punishable by up to six months in county jail and/or a fine of up to \$500. (Prior to the proposition, cultivating cannabis for nonmedical purposes was a felony punishable by up to three years in state prison or county jail.)
- ***Authorized Resentencing and Dismissal of Prior Convictions.*** Proposition 64 made individuals serving sentences for activities that were subject to harsher penalties prior to the proposition eligible for resentencing, and it allowed certain individuals to apply to the courts to have their criminal records changed. Subsequent legislation required the court to automatically reduce or dismiss cannabis convictions under certain circumstances.
- ***Legalized Hemp.*** The proposition legalized the cultivation of hemp and excluded it from the cannabis regulatory structure described above.

Federal Cannabis Law. Federal laws classify cannabis as an illegal substance and provide criminal penalties for various activities relating to its cultivation, sale, and use. These federal laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies. Currently, the United States Department of Justice (U.S. DOJ) chooses not to prosecute most cannabis users and businesses that follow state and local cannabis laws if those laws are consistent with federal priorities, such as preventing cannabis from being taken to other states. Federal law distinguishes hemp from cannabis. Under recent legislation, the federal government no longer considers hemp to be an illegal substance.

Proposal

This measure changes state law related to the cultivation, sale, and use of cannabis. We describe some key provisions of the measure below.

Increases the Amount of Cannabis That Can Be Grown for Personal Use. Under the measure, 99 flowering female plants and 12 pounds of dried flower produced per adult (21 or older) per year are assumed to be for personal rather than commercial use. The measure prohibits taxing, permitting, or licensing cannabis for personal use.

Changes Regulation of Adult Use Cannabis and Limits Its Taxation. The measure requires that the production of cannabis products for adult use be regulated and enforced in a manner analogous to, and not more onerous than, the regulation of California's beer and wine industries. Additionally, the measure limits the excise tax on the sale of adult use cannabis products to no more than 10 percent of the retail price of the products. Under the terms of the measure, half of the excise tax revenues collected would be provided for research, development, and promotion of cannabis industries in the state. The initiative also places a limit of no more than \$1,000 on licensing or permit fees the state can impose on adult use cannabis businesses.

Changes Regulation of Medical Use Cannabis and Prohibits Its Taxation. The measure prohibits taxation of medical cannabis, which is defined as any cannabis that is designed, intended, or used for treatment of any medical condition or healing purpose. It also states that licensed physicians shall not be penalized for or restricted from approving or recommending cannabis to any patient.

Limits Local Restrictions on Cannabis Businesses. Currently, many cities and counties restrict where cannabis businesses can operate or prohibit them altogether. This measure requires that sufficient adult-use and medical retailers be allowed to provide people with "reasonable" access to cannabis. Also, as discussed above, it requires that cannabis regulations be no more onerous than those in place for beer and wine. In so doing, the measure would limit the ability of cities and counties to ban or place restrictions on the establishment of cannabis businesses.

Limits Enforcement Actions Related to Cannabis. The measure limits the arrest and prosecution of individuals and businesses for activities related to cannabis. For example, it would no longer be a crime to cultivate more than six plants without a license. The measure also provides that the manufacturing, marketing, distribution, or sale between adults of equipment or accessories associated with cannabis shall not be prohibited. In addition, the measure bars the use of California law enforcement personnel or funds to assist in the enforcement of federal laws relating to cannabis. Finally, the measure provides that any person who "threatens the enjoyment" of the provisions of this measure is guilty of a misdemeanor.

Requires Release of Current Cannabis Offenders. The measure requires the release of people in prison or jail, or on state parole or county probation, convicted under current criminal statutes for cannabis-related activities that would be made legal under this measure. In addition, the measure requires the deletion of cannabis-related criminal records for all persons who have been charged with or convicted of crimes related to cannabis. The measure limits courts from charging an administrative fee of greater than \$10 for individuals to apply for these changes to their records.

Limits Drug Tests for Past Cannabis Use. Under the measure, private businesses and agencies in California would be limited in the types of tests they could use to detect cannabis usage for the purposes of making decisions about hiring or terminating employees and for determining insurance eligibility. Specifically, they could only test for current intoxication rather than past drug use.

Fiscal Effects

The provisions of this measure would affect both costs and revenues for state and local governments. The magnitude of these effects would depend upon (1) the extent to which the U.S. DOJ exercises its discretion to enforce federal prohibitions on cannabis activities otherwise permitted by this measure, (2) the specific regulatory structure that the state ultimately implements pursuant to the measure, and (3) how individuals and businesses respond to this regulatory structure. Thus, the potential revenue and expenditure impacts of this measure described below are subject to considerable uncertainty.

Reduction in State and Local Tax Revenues Due to Limits on Taxes. The measure would result in lower state and local tax revenues, likely in the mid-to-high hundreds of millions of dollars annually. This net reduction in tax revenue is driven primarily by two factors. First, the measure limits the excise tax rate on adult-use cannabis to no more than 10 percent of retail sales. Currently, the excise taxes on cannabis vary by jurisdiction. On average, we estimate that state and local excise taxes total about 30 percent of retail sales. Second, the measure prohibits any taxation of cannabis for medical or personal use, and defines medical and personal use more broadly than current law. Accordingly, it is likely that a greater share of consumption of legal cannabis would occur outside of the adult-use market, thus avoiding state and local sales and excise taxes. As previously indicated, under the measure half of the excise tax revenues collected would be provided for research, development, and promotion of cannabis industries in the state. This will leave less money available for the purposes identified under Proposition 64.

Reduction in State and Local Fee Revenues and Regulatory Costs. The measure would result in lower state and local license fee revenue—likely in excess of \$100 million annually—because it would limit state license fees for cannabis businesses to no more than \$1,000. At the same time, the measure’s changes to the regulation of cannabis would likely reduce licensing workload. To the extent that license fee revenues were not sufficient to fully support regulatory costs, it could result in some of these costs being supported from other fund sources (such as the state General Fund).

Increase in State and Local Costs for Resentencing and Criminal Record Destruction. The measure would result in one-time state and local court and law enforcement costs related to resentencing individuals and destroying criminal records, a portion of which would be offset by the \$10 court fee specified in the measure. On net, we estimate that these costs could potentially reach the low- to mid-tens of millions of dollars on a one-time basis.

Reduction in Other State and Local Criminal Justice Costs. The measure would result in a reduction in state and local law enforcement workload and associated costs by reducing the number of cannabis-related crimes. These resources could potentially be redirected for other law enforcement purposes. Additionally, the measure would result in a reduction in state and local

costs by reducing the number of criminal cases handled by the courts, as well as the number of individuals in correctional facilities and under community supervision for cannabis-related offenses. In total, we estimate that reductions to these state and local criminal justice costs could possibly range from the millions to low tens of millions of dollars annually.

Summary of Major Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on future actions by the federal government to enforce federal cannabis laws and how the measure is interpreted and implemented:

- Reduced state and local tax revenues related to the production and sale of cannabis, likely in the mid-to-high hundreds of millions of dollars annually.
- Reduced state and local license fee revenue—likely in excess of \$100 million annually—which could result in some of the regulatory costs being supported from other fund sources (such as the state General Fund).

Sincerely,

for 

Gabriel Petek
Legislative Analyst



for Keely Martin Bosler
Director of Finance