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# California Legislature

Senate Committee

on

Labor, Public Employment & Retirement

JERRY HILL  
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## Informational Hearing

“Cannabis and Employment: Balancing Safety and Equity in a Post-Proposition 64 (2016) Workplace”

November 8, 2019  
State Capitol, Room 2040

### Background Summary

On November 9<sup>th</sup>, 2016, Proposition 64 or the Control, Regulate and Tax Adult Use of Marijuana Act became law, having been approved by 57% of voters. This initiative followed a trend of states departing from the federal policy of prohibition concerning Marijuana. With that historic decision, California became the fifth state and the largest political entity in the world to allow the legal sale of cannabis within its borders.

The purpose of this hearing is to: (1) provide a platform to hear policy proposals pertaining to drug testing and Workers' Compensation; (2) hear feedback from stakeholders in the cannabis industry on their ongoing transition; and (3) hear from stakeholders in the employer community and from organized labor on how recreational cannabis has or may affect their workplaces.

### California State Cannabis Policy

Possession or sale of cannabis in the United States is still prohibited at the federal level, as it remains a Schedule I controlled substance under the Controlled Substances Act of 1970. That law, signed by President Richard Nixon, assigns Marijuana the strictest level of prohibition and asserts that it has a high potential for abuse and that it is unsafe to use, even under medical supervision. For context, schedule 1 classification puts cannabis into the same category as drugs such as methamphetamine and heroin.

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California has historically pushed the envelope on cannabis policy. In 1976, just six years after the passage of the Controlled Substances Act, Governor Jerry Brown signed the Moscone Act, which reduced the penalty for possession of marijuana from a felony to a misdemeanor. Two decades later, California made history when its voters passed California Proposition 215 (1996), which made California the first state to legalize medical cannabis in the United States.

Proposition 215 was the result of tireless advocacy and activism by San Francisco resident Dennis Peron. Peron was inspired to take on both the state and federal government by the death of his partner, Jonathan West, who had used marijuana to treat the symptoms of AIDS. In 1991, Peron organized the local San Francisco initiative Proposition P, which did not have the force of law but declared that the city supported medical marijuana. Prop P passed with 79% of the vote, sending a strong message that there was support for the new cannabis concept, at least in San Francisco. That momentum, combined with new research supporting cannabis's ability to provide relief to individuals living with HIV, AIDS and cancer, led to the statewide Proposition 215. The proposition eventually passed with 56% percent approval and allowed the use of cannabis by patients with a physician's recommendation. A later bill, SB 420 by Senator Vasconcellos (Chapter 875, Statutes of 2003), clarified some of the vague wording in the initiative and allowed for the formation of medical cannabis collectives, which could distribute cannabis to patients. Under these rules, a doctor was allowed to issue a recommendation for the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or "any other illness for which marijuana provides relief".

This new law created a domino effect across North America, with states and even countries like Canada embracing medicinal marijuana. Some states went even further; in 2012, voters passed Washington Initiative 502 and Colorado Amendment 64, which legalized recreational marijuana use in those states. Two other states followed quickly, when voters passed Oregon Ballot Measure 91 and Alaska Measure 2, both in 2014. In July 2015, then-Lieutenant Governor Gavin Newsom, the American Civil Liberties Union, and Stanford University faculty released the final report of the Blue Ribbon Commission on Marijuana Policy, which recommended regulations for recreational marijuana use in California

On May 4, 2016, sponsors of an initiative to allow recreational marijuana announced that it had collected over 600,000 signatures for the proposal, surpassing the threshold to get it on the 2016 ballot. On November 9<sup>th</sup> of that year, the Control, Regulate and Tax the Adult Use of Marijuana Act or AUMA, passed into law and went into effect.

### **Specific Provisions of the Adult Use of Marijuana Act (AUMA)**

The AUMA contained changes to California law to legalize the possession, cultivation, and sale of marijuana. Specifically, the AUMA:

- Allows individuals over age 21 to possess, cultivate and sell marijuana. Specifically allows adults to possess up to an ounce of marijuana and cultivate up to six marijuana plants inside their homes **for personal use**.
- Retains a ban on smoking marijuana in public and subjects violators to a \$100 fine. Driving under the influence of marijuana remains illegal.
- Creates a new State Regulatory Agency—the Bureau of Cannabis Control—formerly known as the Bureau of Medical Cannabis Regulation. The AUMA further empowers the California Departments of Food and Agriculture, Public Health, Pesticide Regulation, Fish and Wildlife the Water Resources Control Board to oversee the various facets of cannabis cultivation and proliferation.
- Requires that Businesses selling marijuana obtain a license from the state-level Bureau of Marijuana Control.
- Reduces the penalty for unlicensed sale of marijuana from four years in state prison to six months in county jail.
- Imposes a 15% excise tax and an additional \$9.25 per ounce of flower or \$2.75 per ounce of leaf on the sale of recreational cannabis.
- Establishes the new California Marijuana Tax Fund, which serves as a repository for tax revenue from the sale of cannabis. This fund allocates 60% of outflows to youth programs, 20% to environmental damage cleanup, and 20% to public safety.
- Permits local governments to completely ban marijuana-related businesses from their jurisdictions.
- Allows public and private employers to enact and enforce workplace policies pertaining to marijuana.
- Establishes new state regulation laws that require stringent product development systems to establish industry standards regarding testing, packaging and labeling. Marijuana packaging is now required to provide the net weight, origin, age, and type of the product, as well as the milligram amount per serving of tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoids, and if any pesticides were used during cultivation.
- Establishes a seed-to-sale tracking system through the newly created Bureau of Cannabis Control.
- Prohibits Marijuana shops from allowing the sale or consumption of alcohol or tobacco on the premises.

## **Federal Cannabis Policy**

Looming over the entire regulatory framework is the specter of federal intervention. Though the policies of administrations have varied, the federal government for decades remained largely antagonistic to California and other states that enacted marijuana policy differing from federal prohibition. Despite what seems to be an area of public policy that has undergone significant change since 1970, the legal policy of the federal government has remained largely unchanged.

On a fundamental level, the concept of medical marijuana is incongruous with federal law. As noted above, the Controlled Substances Act asserts that it has a high potential for abuse and that it is unsafe to use, even under medical supervision. Decades later, the results of this policy has shown itself in the form of the opioid crisis; opioids have ravaged broad swaths of the country with drug addiction stemming from the over-prescription of addictive painkillers. And yet, the main culprits of this crisis, Oxycontin, Vicodin, Xanax and other prescription opioids, remain either Schedule II or below. Perhaps emblematic of federal cannabis policy up to this date, synthetic narcotics such as fentanyl and prescription opioids were responsible for over 45,000 deaths in 2018; meanwhile, there has yet to be a recorded death due to overdose of marijuana and new research has been emerging that highlights the drug's potentially wide medical uses.

Even as early as 1996, nationwide views were changing on marijuana and its place in medicine, especially following California's medical marijuana initiative. Despite this, immediately following the passage of Proposition 215 in 1996, the Department of Justice under President Clinton began taking actions against California. These actions involved punishing those associated with medical cannabis, such as seeking to revoke the federal prescription licenses of doctors who recommended cannabis and filing for civil injunctions against the major medicinal cannabis providers.

Federal antipathy towards medical cannabis became much more aggressive under President George W. Bush. Dozens of raids carried out by federal authorities like the Drug Enforcement Agency (DEA) were ordered against California dispensaries and distributors that were operating in compliance with state law, including more than 50 raids in 2007 alone. The DEA began threatening property owners who leased to marijuana business with asset forfeiture, essentially ordering these landlords to cease dealing with cannabis businesses or risk having their properties seized by the federal government.

On top of active federal intervention to slow the growth of medical cannabis, the courts dealt several setbacks to the budding industry. In *United States v. Oakland Cannabis Buyers' Cooperative* (2001), the Supreme Court found that California's medical prescription providers were still subject to criminal prosecution even if they were in complete compliance with state law. In *Gonzales v. Raich* (2005), the Court ruled that Congress's interstate commerce clause power allowed it to prohibit an Oroville woman from growing and consuming a state-legal amount of marijuana inside her home.

While recent years have been kinder to cannabis as a whole, there is still no definite picture of how the future relationship between federal authorities and California's cannabis industry will look. President Obama's Attorney General, Eric Holder, announced "a shift in the enforcement of federal drug laws" saying the administration would effectively end the Bush administration's frequent raids on distributors of medical marijuana. However, despite statements that he supported marijuana decriminalization, President Obama presided over the arrest of over 1.7 million non-violent drug offenders nationwide. Furthermore, the most recent administration has issued only vague policy stances on cannabis. In fact, one of their only definitive policy decisions on cannabis was to rescind a justice department policy, the Cole Memo, which stated that the federal government would not interfere with states who have legalized marijuana.

### **The Future of Cannabis in California**

This informational hearing will provide a forum to discuss areas of interest in the near future concerning cannabis. Just a few of these areas include:

- **Workers' Compensation:** Preliminary research into cannabis has found a potential for helping with chronic pain and inflammation. With the dangers of opioids readily apparent, there is a space for medicinal cannabis to play a role in alleviating the discomfort of injured workers.
- **Drug Testing:** Many jobs in California still require employees to be drug tested as a condition of hiring and continued employment. This can cost law-abiding employees their jobs and, due to federal requirements, employers may have little to no control over the decision. Workplace safety is always a priority for the state, but mandatory and widespread drug testing policies are costly to employees, regulators and employers.
- **Labor Relations:** The Cannabis industry has historically been forced to operate out of compliance with provisions of the California labor code. There is a great opportunity for a mutually beneficial labor partnership, where labor representatives can provide assistance with regulatory compliance and the cannabis industry can provide high-wage jobs and a worker-friendly atmosphere.

Overall popularity for cannabis is on the rise, with polls showing support for nationwide legalization routinely topping 60 percent. In the meantime, questions surrounding integration of the cannabis industry into California's economic and regulatory framework remain. This informational hearing will provide a forum to begin to answer these lingering challenges and fully capitalize on the opportunity that this emerging legal industry presents.