



## CANNABIS – THE IMPACT ON CITIES AND COUNTIES

This report provides a review of cannabis-related legislation that the Governor acted on prior to the September 30, 2016 statutory deadline to decide on the fate of bills reaching his desk. Proposition 64, the Medical Marijuana and Adult Use Marijuana Initiative, has triggered client inquiry on a spectrum of issues ranging from whether jurisdictions should develop a local tax on medical cannabis to how it should be structured, to the issues surrounding dangerous chemicals.

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### SECTION 1: Legislation

#### Medical Marijuana, Regulation and Research - AB 2679 (Cooley) | **Chaptered**

- **Provisions:** Exempts “collectives” and “cooperatives” that manufacture medical cannabis products from criminal sanctions when certain conditions are met. This includes a requirement to have a valid BOE-issued seller’s permit, a valid local license or permit; and is in compliance with local licensing conditions by the issuing local agency. Refer to [http://ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuanaguidelines.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf) for broader detail on guidelines regarding collectives and cooperatives.
- **Why Locals Support AB 2679:** AB 2679 sets new standards for medical cannabis manufactures to follow and provides new clarity for local governments when issuing local licenses. The standards are related to solvents used in the manufacturing process, receiving certain approval from local fire officials, and others. This bill is intended to provide a criminal defense within the collective model for cannabis manufacturers if a variety of manufacturing standards are met and help prevent incidents such as explosions due to illegal production and operations.
- **Reporting Requirements Including Local Requirements:** Beginning in 2023 each licensing authority will report to the Legislature various information including, but not limited to:
  - The amount of funds allocated and spent by the licensing authority for medical cannabis licensing, enforcement, and administration.
  - The number of state licenses issued, renewed, denied, suspended, and revoked, by state license category.
  - The average time for processing state license applications, by state license category.
  - The number of complaints submitted by citizens or representatives of cities or counties regarding licensees, provided as both a comprehensive statewide number and by geographical region.
  - The number and type of enforcement activities conducted by the licensing authorities and by local law enforcement agencies in conjunction with the licensing authorities or the bureau.
- **Study:** Includes a provision for the University of California study the efficacy and safety of administering medical marijuana, to include studies to ascertain the effect of marijuana on motor skills.



**Medical Marijuana, Regulation and Sales and Use Tax Amnesty - AB 567 (Gipson) | Vetoed**

- **Provisions:** Between July 1, 2017 and December 31, 2017 requires the BOE to administer a tax penalty amnesty program for qualified medical cannabis-related businesses. Dispensaries may sell more than medical marijuana products. For example, dispensaries may sell t-shirts, stickers, pipes, and other TPP subject to the SUT. The amnesty program provided by this bill applies to the seller, not to the products sold. This bill would waive a dispensary's penalties on taxable sales for TPP other than medical marijuana products. A non-dispensary retailer with a tax liability for sales of similar products would not benefit from amnesty.
- AB 566 provisions include imposed penalties at double the rate for non-reporting or underreporting an amnesty tax liability. The BOE as reported in a Committee analysis maintains discretion to decide whether double penalties are justified and imposed in specific cases. Other provisions would require the Department of Consumer Affairs to suspend a state license; and would authorize the BOE to refuse or revoke a seller's permit.
- **Why a Penalty Amnesty:** The bill declares the intent of the Legislature to further the public purposes of preventing undue hardship on medical cannabis-related businesses and provide a strong incentive, the relief of penalties, for businesses to come forward and pay the owed taxes and interest. The BOE estimates that there are about 1,623 dispensaries selling medical marijuana in California, but that 66% of dispensaries are noncompliant with sales tax law.

Proposition 215, Compassionate Use Tax Act of 1996, became effective November 6, 1996 and exempts patients and their primary caregivers who possess and cultivate cannabis for medical use or approval by a physician from certain laws. The Legislature in 2004 refined Proposition 215 (SB 420/ Vasconcellos) by allowing the formation of medical cultivation collectives or cooperatives, and provides for a voluntary state identification card system for medical cannabis patients. SB 420 also limits the amount of medical cannabis cardholders are allowed to possess and cultivate. Federal law prohibits the sale of any cannabis.

A federal spending bill passed in late 2014 prohibits the use of United States Department of Justice funds to prevent states, including California, that authorize the use, distribution, possession, or cultivation of cannabis for medical use from implementing laws related to these activities. Various other federal legislative proposals to loosen federal restrictions on the cultivation, possession, and sale of cannabis in states where it is legal are also pending. Despite this identified federal guidance, the uncertainty created by state and federal differences has left medical cannabis-related businesses with the fear that compliance with state tax laws could lead to federal prosecution. Thus, many of these businesses have been noncompliant since their inception, and would owe massive penalties and interest if they were to come into compliance.

- **Revenue Impact:** Depending on participation estimated one-time revenue increase of \$27.365 million (50% compliance); \$41.048 million (75% compliance); or \$54.730 million (100% compliance)

**Sales and Use Taxes: Administration: Payments: Dispensaries - AB 821 (Gipson) | Chaptered**

- **Provisions:** Allows the BOE to accept tax payments from dispensaries by means other than electronic fund transfers.
- **Why AB 821:** Seeks to increase voluntary payments of sales and use taxes by providing businesses that are "unbankable" with an exemption to current requirements that sales and use taxes over \$10,000 be paid through an electronic funds transfer." This bill will provide the BOE with the ability to establish an ongoing electronic funds transfer exemption for medicinal marijuana dispensaries in order to collect tax revenues due.
- **Background:** Existing law requires that a person remit tax liability due by an EFT if the estimated tax liability averages \$10,000 or more per month. A 10% penalty of the tax amount due is added if other means are utilized. Because many banks and credit unions refuse to accept medical dispensaries as customers for fear of federal sanctions, dispensaries that are remitting their tax liability have to pay a 10% penalty in order to comply with the law. Existing law also allows the BOE to waive the 10% penalty for medical marijuana dispensaries if it can be shown that the failure to utilize an EFT is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise.



- **Additional AB 821 Considerations:** The BOE under AB 821 may eliminate the 10% penalty provision for any reason that the BOE deems to be necessary to facilitate the collection of amounts due, which may include businesses beyond medical marijuana dispensaries. The broad language may also make it difficult for taxpayers to challenge an unfavorable ruling by the BOE since this bill provides no clear standard by which to judge a decision. It is unclear how AB 821 would impact any federal government changes in the future that would allow medical marijuana dispensaries to utilize the banking system.

### Medical Cannabis: State Cultivator License Types: Specialty Cottage Type – AB 2516 (Wood) | **Chaptered**

**Provisions:** Creates a “specialty cottage” (Type 1C) medical cannabis cultivator sub-license license for small growers that grown less than 5,000 square feet; current law lumps all cannabis cultivation sites that are 5,000 square feet or less into one license.

**Background:** The bill does not increase the number of eligible cultivators who may participate in the regulatory structure established by the MCRSA. Because the bill creates a license commensurate with the size of cottage farmers, it would likely increase the number of small cultivators into the regulatory framework established by the MCRSA. Type 1 licenses encompass the smallest group, or “specialty” operations. However, according to the author, there are some growers who represent a smaller subsection that grow very few plants on relatively small parcels of land in order to provide supplementary income or are part of a larger diversified farm. These operations fit into the category of “cottage,” which is already currently used for other commodities and products in state law. For example, “cottage food operations” are businesses located within private homes that do not gross more than \$35,000 annually and do not have more than one full-time employee, among other specifications. These entities are afforded regulations that better match their “cottage” operations. This bill seeks to provide similar accommodations for the unique needs of small “specialty cottage” medical marijuana growers.

### **SECTION 2: Medical Marijuana and Adult Use Marijuana Initiative (Proposition 64)**

Proposition 64 would affect sales tax revenue to the state and local governments in two ways. First, legalizing the sale of recreational marijuana will result in new sales tax revenue stream. This would happen automatically under the current tax law. Second, the sale of medical cannabis, which is currently subject to sales tax, would be exempt from sales tax. The excise tax under Proposition 64 is in addition the sales and use tax imposed by state and local governments.

#### **State Excise Tax on the Proposed Recreational Use**

- 15% on retail sales of marijuana
- \$9.25 per dry-weight on the commercial cultivation of marijuana flowers
- \$2.75 per dry-weight on the commercial cultivation of marijuana leaves

#### **How Will Proposition 64 Change Current Law**

- Medical marijuana and marijuana products are exempt from the State Sales and Use Taxes
  - 0.50% Local Revenue Fund that supports local health and social services would be exempt
  - 1.0625% Local Revenue Fund 2011 that supports local public safety programs would be exempt
- Bradley Burns and District Taxes would not be exempt on medical marijuana sales
- Will not impact locally adopted taxes on Medical Marijuana
- The proposed excise tax under Proposition 64 is in addition the sales and use tax imposed by state and local governments

#### **Local Authority Under Proposition 64**

- Bradley Burns and District Taxes would not be exempt on medical marijuana sales
- Will not impact locally adopted taxes on Medical Marijuana
- Medical marijuana and marijuana products are exempt from the State Sales and Use Taxes
  - 0.50% Local Revenue Fund that supports local health and social services would be exempt
  - 1.0625% Local Revenue Fund 2011 that supports local public safety programs would be exempt



**Personal Cultivation**

- Personal cultivation of cannabis would be done in accordance with local ordinances
- Living plants and any cannabis products must be kept within the person’s private residence or in a locked space not normally visible to the public
- Not more than 6 living plants

**Local Government Options**

- Enact and enforce reasonable regulations to personal cultivation
- Not completely prohibit indoor personal cultivation at a private residence
- Prohibit personal outdoor cultivation
- Limit the number of licenses based on the concentration of operations in the jurisdiction
- Impose a tax on cannabis business activities

**Public Safety and Health**

- Schedule I (Federal) Controlled Substance: Conflicts with State Medical Marijuana Regulation and Recreational Use
- Consumption in Public and Intoxication: What enforcements and regulations are needed
- Driving and Traffic Enforcement: DUI and public intoxication standards
- Neighbors: Housing and cooperative enforcement and regulation
- What About our Youth: What prevention programs are needed that work
- Cash: Nature of the industry heightens risk of robberies and home crimes
- Enforcement: Increased demand or a reduction for illegal markets
- Cultivation and Manufacturing Means New Waste: Hazardous chemicals, pesticides, and other waste need a ‘resting place’ that protects the public
- Others TBD

**SECTION 3: State Regulations / Pre-Regulatory Meetings**

- **Bureau of Medical Cannabis Regulation:** Convening pre-regulatory meetings:  
<http://www.bmcr.ca.gov/meetings/index.shtml>
- **Department of Food and Agriculture:** Convening public scoping workshops and a comment period:  
<https://www.cdfa.ca.gov/is/mccp>
- **Department of Public Health:** Convening pre-regulatory meetings:  
<https://www.cdph.ca.gov/programs/Pages/OMCSStakeholderMeeting.aspx>
- **State Board of Equalization:** <http://www.boe.ca.gov/news/marijuana.htm>

**SECTION 4: Marijuana Legalization News - State's with Cannabis Ballot Initiatives in November****California's Legal Marijuana Market**

<http://www.businessinsider.com/california-weed-marijuana-legalization-2016-9> (September 21, 2016)

If California's Proposition 64 passes on November 8, and sales begin by January 1, 2018, California's looking at an additional \$1.5 billion flooding into the marijuana market. That number swells to just shy of \$3 billion in 2019, and nearly \$4 billion by 2020 (Source: New Frontier Data and ArcView Market Research). The *total* size of the cannabis market would reach \$4.27 billion in 2018, and would grow to \$6.45 billion by 2020.

**Marijuana Legalization 2016 Ballot – State's Voting on Laws**

<http://www.businessinsider.com/marijuana-states-legalize-recreational-weed-2016-9/#1-massachusetts-1> (September 20, 2016)

<http://www.ibtimes.com/marijuana-legalization-2016-ballot-which-states-are-voting-cannabis-laws-election-day-2421044> (September 24, 2016)

More than 82 million U.S. residents will have the chance to cast ballots on marijuana measures when they go to vote for president come Election Day in November. Marijuana laws – whether it be to legalize or decriminalize – have been added to the ballot in nine states (Arizona, Arkansas, California, Florida, Maine, Massachusetts, Montana, Nevada, and North Dakota).

**Proposition 64 Polling**

<http://calmarijuanapolicy.org/2016/09/new-poll-has-good-news-prop-64.html> (September 22, 2016)

<http://www.mercurynews.com/2016/09/21/polls-voters-favor-legalizing-pot-outlawing-capital-punishment/>

The Public Policy Institute of California shows Proposition 64 is comfortably supported by 60 percent of the state's adult residents. The poll was conducted in mid-September.

**SECTION 5: Strategic Partner: California Marijuana Policy**

<http://calmarijuanapolicy.org/section/news>

California Marijuana Policy was created to provide local and state policy makers with the latest reliable information from professionals who have worked and advocated for city and county governments. MuniServices Technical Advisor, Jeff Kolin is a regular contributor: <http://calmarijuanapolicy.org/jeff-kolin>

**SECTION 6: Contacts and Resources**

Please contact your MuniServices Client Manager or a member of our technical team for confidential and jurisdiction-specific impact analysis. This report is published by MuniServices' Government Relations team. Refer to the Government Relations section of MuniServices' website for contact information and to access previously published reports at: <http://www.muniservices.com/services/government-relations/>.

MuniServices webinar presentations and related policy reports can be accessed at <http://www.muniservices.com/services/cannabis-support-services/>.

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