



Reform
California

BACKGROUND CONSIDERATIONS FOR 2016 INITIATIVE TO LEGALIZE AND REGULATE

The 2016 initiative should legalize and regulate marijuana for adult use in a manner similar to Colorado or Oregon, with modifications and adjustments for California. In particular, regulations need to be structured to be compatible with California's longstanding cultivation industry, including sun-grown. As in CO and OR, there should remain distinct distribution outlets for medical marijuana, with the existing rights of Prop 215 patients re-affirmed and if possible strengthened.

- I. **REGULATORY SYSTEM:** In order to meet federal demands for state regulation, a state agency, or agencies, should be designated to license and regulate cannabis. One system for medical/ adult use. Regulation/licensing should include all phases of the commercial industry: cultivation, processing, manufacturing (e.g. edibles and extracts manufacture, labeling), retail distribution, wholesale, transportation, research and testing. Flexible licensing categories, like alcohol, should be created in order to accommodate combined functions (e.g. cultivation and retail sales and on-site use).
 - A. **REGULATORY AGENCY:** This could be decided by legislature if a medical cannabis bill is approved this year. Options under consideration include:
 1. A multiple agency approach
 - i. ABC for distribution
 - ii. Dept of Agriculture for cultivation
 - iii. Public Health for processing, manufacturing, and lab testing
 2. Create a new lead agency, possibly under the Department of Consumer Affairs. This is likely to be more expensive and time-consuming.
 3. Public Health is generally considered a poor choice for lead agency, according to experienced sources from MA and CO.
 - B. **CULTIVATION REGULATIONS:** It is important that these regulations not be unduly burdensome. Elaborate "seed to sale" tracking software, security, cameras, and RFID systems in WA and CO have been a costly mistake that has eliminated mom and pop cultivation due to high expense and scales of economy. Options under consideration include:
 1. Require mandatory data base tracking of all product transfers instead of expanding the field of data collection to all farm activities.
 2. Follow Department of Food and Agriculture's tracking methods instead of methods similar to CO or WA.



3. Make allowance for small farmers, don't restrict to a handful of big licensees.
 4. Prohibit commercial cultivation in residential areas.
- C. **VERTICAL INTEGRATION:** CA should follow free market system. Allow applicants to have multiple licenses (vertical integration), but don't give them tax or licensing fee advantages over non-integrated facilities. Allow flexibility so cultivators, processors, and manufacturers don't need a separate license to transport, etc. Should licenses be transferrable by sale?
- D. **ON-SITE CONSUMPTION:** There is much desire to allow for on-site consumption. Probably subject to local option. Some concern has been expressed about how to message this as well as whether this should include allowing on-site consumption of edibles.
- E. **PERMIT CAPS:** A controversial and tricky topic. Some states do place caps on the number of available licenses and some concern has been expressed regarding possible federal pressure to mandate license caps. ABC caps alcohol outlets by population. Options under consideration include:
1. If caps are to be included, exempt the existing provisional applicants from caps.
 2. Allow the regulatory agency to determine a cap on dispensaries only but mandate that they use a formula to do so, e.g.- a minimum of 1 dispensary per 50,000 residents. In areas where there are less than 50,000 residents in a given locality then a minimum of 1 dispensary.
 3. Allow the regulatory agency to determine a cap based on estimated consumer needs
- F. **PRODUCT SAFETY:** Product safety guidelines should be the same for medical and adult use operations and products. There has been a great deal of conversation surrounding dosage, labeling, and testing requirements. Options under consideration include:
1. Dosage and packaging regulation are considered essential for edibles.
 2. Limit the amount of THC allowed per serving for edibles, however dosage limits should not be permanently set into the initiative language. It is possible to allow the regulatory agency to set these limits making them open to adjustment
 3. Require child-proof edibles packaging.
 4. Include Prop 65 warnings required for inhaled cannabis.
 5. Require GMO labeling
- G. **MANUFACTURE:** CA Sherman Pure Food and Drug Act must be changed to allow manufacture of edibles in licensed kitchens. BHO extraction by permitted facilities only.



- H. **RECIPROCITY:** There appears to be much support for including reciprocity for out-of-staters. Questions remain about what this might look like in CA. For example, CO restricts the amount of cannabis that can be purchased by out-of-state residents.
- H. **ADVERTISING:** Should CA try to limit advertising? (WA ad ban was just struck down by court). This might be best left up to polling.
- I. **EXPORTS:** Concern has been expressed that an initiative should not restrict CA businesses ability to export cannabis once Federal law changes.
- J. **HEMP:** Should hemp be included in a 2016 initiative? Concern has been expressed that regulations may need to be created to stop cross-pollination.

II. LOCAL CONTROL AND PROTECTIONS FOR EXISTING OPERATORS

- A. **LOCAL CONTROL:** How much authority should be retained by local governments? Pending legislation in Sacramento requires local governments to sign off on all state-licensed medical cannabis facilities. Overriding local control may not be politically viable option. Allowing localities to ban adult-use outlets would be consistent with other adult use cannabis laws. Localities should be expected to zone and regulate MJ like other industries. However, in some instances localities have used “exclusionary” zoning for cannabis facilities that amounts to a ban. Options under consideration include:
 1. Require municipalities to accommodate state-regulated medical dispensaries
 2. Require municipalities to allow delivery services where dispensaries are banned
 3. Ban “exclusionary” zoning for medical similarly to Arizona
 4. Tax revenues should go to local governments ONLY if they allow cannabis businesses.
- B. **PROVISIONAL LICENSES FOR EXISTING PLAYERS:** Regulation should be phased in so as to first afford “provisional licenses” to existing medical providers compliant with current laws, then extend to adult-use legalization when final regulations are ready (a year or so later). All existing cannabis businesses need a clear path to participate in “provisional licensing”. Cultivators, processors, and manufacturers aren’t currently recognized in existing local regulations and will require different provisional licensing procedures than dispensaries. Also, if the legislature passes a medical cannabis regulatory bill, this could be a different conversation as the application process could start before 2016 election. Options under consideration include:



1. Set a window of 3-4 months for existing operators to declare themselves part of the industry and allow an indefinite time for them to work with local governments to get approval.
 2. Set low initial application fee ~ \$1,000 so small operators can enter market, with scaled fees for larger facilities.
 3. Grant provisional licenses to all locally regulated facilities.
 4. Grant provisional licenses to cultivators who can show they have been operating in conformance with AG guidelines for the past year
- C. **RESIDENCY REQUIREMENTS:** This has been a controversial topic and it is important to note that residency requirements might not be legal. The purpose for including a residency requirement would be to give California's already existing cannabis providers a head start in the application and licensing process. Some concern has been expressed that such residency requirements could limit support for a 2016 effort from out of state. Options under consideration include:
1. No residency requirement with the understanding that provisional licensing would give existing California providers a head start while letting other, out-of-state interests can enter the market when final regulations are done.
 2. Include a residency requirement and allow it to sunset in after a specified amount of time has passed, giving California's existing market a chance to solidify.

III. **TAXATION:** It is likely that a legalization initiative will include some form of a sin tax. WA model has been highly criticized as being overly costly, so much so as to encourage illicit market activities. Tax attorney Henry Wykowski believes that taxes at the pre-retail level could reduce the IRS tax costs under 280E.

Options under consideration include:

- A. Weight based tax, similar to Oregon. This would place a tax on the first sale of cannabis with various rates depending on whether the cannabis in the form of a whole plant, dried flower, dried trim, etc. Consideration must be given to the development of juice products, which could be challenged under this type of taxation scheme.
- B. Percentage based taxation similar to CO and other states. This could be assessed at the retail end only or at multiple places along the chain of custody. Revenues from such a tax could dry up if prices collapse.
- C. Regardless of the model, should a cap or override language be included in reference to a localities' ability to levy taxes?
- D. How and where should tax moneys be spent?



1. ENVIRONMENTAL COSTS: Allocate tax money to environmental restoration and reclamation projects
2. PESTICIDE PROTOCOL DEVELOPMENT: Federal FIFRA pesticide regulations don't cover cannabis, so agricultural officials don't know what to allow. Possibly remedy this by directing tax money to the California Department of Pesticide Regulation to develop tolerance threshold standards specific to cannabis
3. RESEARCH on cannabis health issues by the Center for Medicinal Cannabis Research. Also, research on driving and accident safety.
4. DRUG TREATMENT AND EDUCATION
5. GRANTS TO LOCAL GOVERNMENTS for enforcement costs related to cannabis regulation (only to governments that allow cannabis businesses).
6. PUBLIC EDUCATION, HEALTH CARE AND/OR GENERAL FUND

IV. MEDICAL v. ADULT USE. How and, at what point in the cannabis plant's life, do we determine medical or adult use value? Experience in CO, where both medical and adult use regulations exist and are different shows that cultivators, processors, and manufacturers have a very hard time operating both medical and adult use licenses under one roof. The commercial regulations for these types of activities should operationally be the same.

- A. **TAXATION:** Can a sin tax exemption be afforded to medical patients? This could pose a challenge in CA due to the very wide availability of medical recommendations. Options under consideration include:
1. Allow the regulatory agency to establish specific tax-exempt "medical" varieties?
 2. Allow patients to apply for tax rebate given SSI, Medi-Cal, or end-stage diagnosis from MD?
 3. Require all patients to have state ID cards for tax rebate?
- B. **PROTECTING MEDICAL:** There are several considerations to protecting medical protections in CA. Whether or not these are part of a 2016 initiative remains unclear, largely due to the unknown actions of CA legislators this session. Also, polling will likely play a large roll in determining what options may or may not be included in a 2016 effort. Options under consideration include:
1. The creation of a distinct license category for genuine non-profit collectives.
 2. Inclusion of language that protects patient rights regarding employment, parenting, housing, etc. Must be done discreetly so as not to attract big opposition money from business interests.



- C. **PERSONAL USE CULTIVATION GUIDELINES** (medical and adult use):
Limits based on canopy size or grow area are preferable to plant counts. 100 sq feet for personal use cultivation has been suggested.
- V. **CRIMINAL JUSTICE, PUBLIC SAFETY, and RANDOM ISSUES:** It is likely that many of the following topics will be determined by polling results.
- A. **DESCHEDELING:** Should cannabis be deleted from the CA controlled substances list? This would be consistent with alcohol and protect against charges for other criminal prosecutions.
- B. **CRIMINAL SANCTIONS:** Do we repeal existing marijuana laws and write new cannabis laws similar to those for alcohol? Or do we just modify existing laws to create personal-use exemptions? Agreed that we should explicitly outlaw growing on public lands, trespass grows, etc.
- C. **POW AMNESTY:** While many would like to see an initiative release prisoners from jail this option is likely politically unviable (polls very poorly). Does an initiative need to or should it allow offenders to apply for reduced charges (felony to misdemeanor or infraction) via the courts, a la Prop 47? Commute these sentences to community service?
- D. **FELONY RECORDS:** Criminal background for marijuana crimes should not be permanent disqualification for licensing.
- E. **INTELLECTUAL PROPERTY:** Federal law doesn't allow patents or trademarks of schedule 1 substances. May be able to instruct CA Secretary of State regarding some trademarks in-state.
- F. **DUI:** No change in current laws needed. Allocate money to research on impairment and accident safety.