

Summary and Analysis of the 2015 Medical Marijuana
Regulation and Safety Act of California with
Supplemental Insight on the 2016 Ballot Initiatives

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INTRO/ABSTRACT

The state of California is entering an unprecedented time of social and political change particularly in the realm of drug policy where the public and private consensus is clearly shifting towards substantial re-education and reform measures. This policy analysis paper aims to present, on a baseline level, both factual and interpretive information regarding the most recent and upcoming pieces of legislation with particular care for how these new laws will affect local communities and businesses as well as state-wide government agencies. Though the report is tailored to the specific nature and mission of the Cal Heritage public benefit corporation, the content provided in Sections I-V have been researched and prepared in a standardized APA style with attention to professionalism and accuracy. Additional information is provided in the Appendix Sections to maximize the quality of content in this report. And finally, for the sake of a cleaner presentation, each Section has been specially formatted with adjustable annotations while maintaining clarity and accessibility both via word processing and in print.

I. Legislative Overview

The collective framework known as the “Medical Marijuana Regulation and Safety Act” (hereafter referred to as the MMRSA) is comprised of three separate pieces of legislation, being that of Assembly Bill Number’s 243 and 266 with Senate Bill Number 643. As per the language of each bill, all three must be enacted and put into operation for all parts to take effect by the prescribed date of Friday, January 1, 2016. As the breakdown below will show, these new legislations made it to Governor Jerry Brown who signed them into law, thereby ensuring the biggest change in marijuana related policy within the state of California since Proposition 215 of 1996 – commonly known as the Compassionate Use Act. To truly understand the MMRSA, it is critical to break down and detail each of the three separate bills, in the chronological order of introduction to the California Legislature. Additionally, information on primary policy goals and the principal parties involved will also be included.

AB 243 comes first, having been introduced on February 5th by Assembly Member and Lead Author of the bill Jim Wood (Democrat, 2nd District), assisted by fellow Assembly Members Anthony Rendon (Democrat, 63rd District) as the Principal Co-Author and Das Williams (Democrat, 37th District) as the Co-Author, respectively. The official legislative status of the bill is “An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation

therefor.¹ Its primary goal is to establish a regulatory program for the cultivation of medical cannabis.²

AB 266 comes next, having been introduced on February 10th by Assembly Members and Lead Authors Rob Bonta (Democrat, 18th District), Ken Cooley (Democrat, 8th District), Reginald B. Jones-Sawyer, Sr. (Democrat, 59th District), Tom Lackey (Republican, 36th District), and Jim Wood. The official legislative status of the bill is “An act to amend Sections 27 and 101 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 11362.775 of the Health and Safety Code, to add Section 147.5 to the Labor Code, and to add Section 31020 to the Revenue and Taxation Code, relating to medical marijuana.³” Its primary goal is to establish a comprehensive licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana.⁴

SB 643 comes last, having been introduced on February 27th by Senator Mike McGuire (Democrat, 2nd District). The official legislative status of the bill is “An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.⁵” Just like its companion bills, SB

¹ (AB-243 Status, 2015)

² (AB-243 Concurrence in Senate Amendments, 2015)

³ (AB-266 Status, 2015)

⁴ (AB-266 Concurrence in Senate Amendments, 2015)

⁵ (SB-643 Status, 2015)

643 contributes to the regulatory and oversight structure of the MMRSA...specifically [setting] forth standards for licensed medical physicians and doctors of osteopathy (“physicians”) who recommend marijuana for medical use and...[delving] into the criminal background standards for applicants.⁶

Both Assembly Bills received their final amendments in the State Senate on September 11th, followed by enrollment and presentation to the Governor on September 23rd, who approved them on October 9th, ending with their Chaptering (688 and 689) by Secretary of State Alex Padilla on the same day. Similarly to the two Assembly Bills, this Senate Bill received its final set of amendments in the State Assembly on September 11th, followed by the engrossing and enrolling step before its presentation to Governor Brown on September 17th, approving it on October 9th. The bill was Chaptered (719) by the Secretary of State on the same day, allowing for the entirety of the MMRSA to go into effect at the start of 2016. A final point of information is that although all three bills received majority votes, went through fiscal committee hearings, and prescribe localized legal parameters, only AB-243 received immediate appropriations – authorized funding of up to \$10,000,000 from the General Fund to the MMRSA Fund and from there on to the Department of Consumer Affairs to begin its activities⁷.

While each bill of the MMRSA troika invoked the name and language of the “Compassionate Use Act” (as is appropriate when referencing and building upon previously established statutory laws), the result of the upcoming 2016 Ballot Initiative will most likely be made to supplement what the MMRSA sets out to do. This can already be gathered by the current leading initiative known as the Control, Regulate and Tax Adult Use of Marijuana Act or more commonly as the Adult Use of Marijuana Act (hereafter referred to as AUMA or 15-0103) which

⁶ (Bricken, 2015)

⁷ (AB-243 Text, 2015)

was recently (Monday, December 7) announced to have been amended, adding substantial safeguards for children, workers, local governments, and small businesses.⁸ A particularly striking similarity between the MMRSA and the AUMA is the types or tiers of licenses that are prescribed by both sets of laws with the exception of the new “large” designation included in the AUMA language. The AUMA as it now stands, “is a lengthy, 62-page initiative which elaborately writes hundreds of detailed restrictions and regulations into state law. Its basic thrust is to (1) allow adults 21 years and older to possess up to one ounce of marijuana and cultivate up to six plants for personal use; (2) regulate and tax the production, manufacture, and sale of marijuana for adult use; and (3) rewrite criminal penalties so as to reduce the most common marijuana felonies to misdemeanors and allow prior offenders to petition for reduced charges.”⁹

Other competing ballot initiatives offer a variety of different policy prescriptions affecting issues like consumption age, grow capacities, transportation restrictions, licensing standards, and even state Constitutional changes. The focus of this report is not to delve into each detail of every competing measure, but to give an overview of what’s at stake, what’s to come, and what to prepare for – a general policy breakdown is available in Section III.

II. Agency Information

During the legitimizing process of a new industry, the introduction of a robust regulated regime is a must – especially when billions of dollars are involved as is the case here. This does not mean the implementation of overly-expansive and burdensome assortments of codes or arbitrary orders or even worse, violations of U.S. Constitutionally guaranteed rights and privileges. A restrained and efficient approach can deliver lasting success, and that usually depends on how well government agencies operate amongst themselves and the public at large.

⁸ (Pascual, 2015)

⁹ (CANORML Administrator, 2015)

Collectively, the MMRSA makes changes to 13* state-level government agencies and their subsidiary organs with the appropriate corresponding additions and revisions to seven* of the 29 California Codes currently in effect. These developments, legally speaking, should allow Federal agencies like the Department of Justice to ease their rather heavy-handed and oftentimes confusing policies and practices seen throughout the last two decades when addressing the state's virtually unregulated marijuana gray-market. **

Regarding the AUMA, changes would affect or address some 37*** state-level government agencies, 15*** government codes (and at least nine specific acts, an additional ancillary law, and several California Constitution references). Another notable contender for legalizing cannabis consumption on California's November 2016 Ballot is Initiative 15-0075 known as ReformCA, sponsored by the Coalition for Cannabis Policy Reform (CCPR), a registered 501(c)(4) non-profit organization based in Oakland.¹⁰ ReformCA was penned by those activists and scholars who learned from their mistakes in 2010 with the failure of Proposition 19, focusing mainly on individual consumption this time around though still lacking the money to guarantee a victory.¹¹ It affects 23**** government entities and 14**** governmental codes.

On the radical and shorter end of the spectrum there's the California Cannabis Hemp Initiative, which enjoys the backing of the Libertarian Party of California. The CCHI (15-0050) is actually the brainchild of the late Jack Herer, having been originally drafted more than two decades ago but without the powerful endorsements and funding needed to run an effective and legitimate campaign.¹² It is actually structured without a reference to even one specific state government agency, department, division, board, office, or panel with the exception of the

¹⁰ (Coalition for Cannabis Policy Reform, 2015)

¹¹ (Hecht, 2015)

¹² (California Cannabis Hemp Initiative for 2016)

Attorney General and the California Superior Courts. The initiative's aim, then, is to "repudiate and challenge Federal cannabis hemp marijuana prohibitions" and "that the subject matter of this Act involves...the ecological, economic, social, and moral well-being and safety of the State and all of its people."¹³ Such is the vagueness of its language that without serious amending, the Private and Public Sectors would surely never approve of such a measure.

III. Implications and Issues

Using a lens focused on community development and local business strategies, a long list of items present themselves based around how the MMRSA and some of the ballot initiatives will impact local communities and new businesses wanting to get into the industry. In that vein, the most important provisions¹⁴¹⁵ of the MMRSA are:

- Clear protections for rule-abiding business owners, employees, landlords, and patients from both criminal law and civil asset forfeiture.
- Seventeen different annual license types made available for businesses in various industry categories.
- Gradual phasing out of collectives and cooperatives with operations permitted until at least January 1, 2018 if local rules are complied with.
- Patients allowed to continue growing their own personal supply within a 100 square feet cultivation limitation. Giving away, donating, or selling medical cannabis without a license would be prohibited.
- Caregivers allowed to grow for up to five patients within a 500 square feet cultivation limitation.
- Additional growing limitations include professional cultivators confined to one acre outdoors and one-half acre indoors.

¹³ (Proponents of Initiative 15-0050, 2015)

¹⁴ (Bradley N. , 2015)

¹⁵ (Marijuana Policy Project, 2015)

- Medical marijuana sold to patients would be subject to new testing requirements targeting aspects like potency, contamination, packaging and labeling. New standards will be issued for issue areas like pesticides.
- Licensed manufacturers and cultivators are not required to sell their product to their distributors as direct contracts with dispensaries and setting of their own prices are still allowed.
- Local government authority preserved in regards to issuing business permits and adopting localized standards and taxes.
- Vertical integration will be restricted to two license types with a few exceptions. Businesses allowed to operate in several different categories by July 1, 2015 could continue doing so until at least 2026.
- Business license applicants could be denied if they have felonies on record that include offenses considered to be in relation to the qualifications, functions, or duties of the business. These include convictions of the illegal possession for sale, the sale, manufacture, transportation, or cultivation of marijuana.
- Deliveries to patients are allowed from larger dispensary license holders except in areas banned by local government ordinances. Deliveries or shipments through areas that otherwise prohibit businesses are protected.
- New imposition of a track and trace system for all medical cannabis from seed to sale. Patient identification and medical conditions remain confidential.
- For-profit business models and non-residents of California as investors and owners are now allowed.
- Labor Peace Agreements will now be required of all license applicants with 20 employees or more, excluding supervisors and managers. Unions can't strike or use work stoppages while negotiating or organizing but must hold worker elections by secret ballot and not a card check in order to organize a licensee's workforce.

Next up are the key provisions from the three main ballot initiatives covered by this report, presented with the same context in mind as before:

- Initiative 15-0050¹⁶ (California Cannabis Hemp Initiative):
 - Robust protections from arrest, persecution, denial of rights or privileges, and criminal or civil penalties for individuals, businesses, and corporations in regards to possessing, cultivating, transporting, distributing, using or consuming of cannabis/hemp/marijuana in any of its forms.
 - Removes the possibility of professional licensing reviews or hearings as well as the application of penalties or restrictions for licensed physicians who approve or recommend cannabis for medical purposes to any patient, regardless of age.
 - Bans the use of mandatory permits, licenses, and taxes for the non-commercial cultivation, transportation, distribution, or consumption of cannabis.
 - Bans the use of testing for inactive and/or inert residual cannabis metabolites as a condition of any right or privilege including employment or insurance. Also bans the consideration of such metabolites in determining employment, other impairment, or intoxication. But allows for the testing of active cannabis for use and consideration in determining impairment or intoxication.
 - Limits euphoric cannabis products to adults of 21 years of age or older, allowing for the regulation of commerce in a manner analogous and no more onerous than the current state beer and wine model.
 - Personal cannabis production limited to 99 flowering female plants and 12 pounds of dried, cured cannabis flowers, but not leaf, produced per adult, 21 years of age or older, per year.
 - Bans the prohibition of 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 in any of its forms.
 - Repeals, deletes, and expunges any and all existing state and local statutory laws and regulations that conflict with the provisions of this Act.
 - Introduces a case by case review for the purpose of sentence modification, amnesty, immediate release from prison, jail, parole, and probation, and/or clearing, expunging, and deletion of all cannabis related criminal records for all

¹⁶ (Proponents of Initiative 15-0050, 2015)

persons currently charged with, or convicted of any non-violent cannabis related offenses.

- Requires the State Legislature upon thorough investigation, within six months of the passage of this Act, to enact legislation to address the granting of business licenses, adopting of health and product safety rules, introducing of excise taxes on commercial cannabis products, and determining new standards of impairment.
- Initiative 15-0075¹⁷ (Control, Regulate and Tax Cannabis Act of 2016):
 - Legalizes the possession of up to one ounce of cannabis and equivalent amounts of cannabis products for adults over 21 years of age while allowing for personal cultivation and possession of homegrown cannabis of up to 100 square feet as well as permitting collective personal use cultivation.
 - Repeals current laws criminalizing the use, possession, cultivation, and sale of cannabis and cannabis products, replacing those laws with new criminal justice and licensing regimes. Among the new criminal justice provisions, individuals attempting to sell, possess, or transport more than one ounce of cannabis without a license could be subject to an infraction punishable by a fine of not more than \$500, with escalating penalties for amounts over sixteen ounces. An expungement process for those previously convicted of cannabis-related offenses also begins.
 - Subjects individuals under the age of 21 who possess, share, or transport cannabis to an infraction of not more than \$100 while sales to minors under 18 years of age may be treated as felonies.
 - Imposes on individuals who consume cannabis in a public transit vehicle or who consume cannabis as passengers of a motor vehicle to an infraction penalty of a fine not more than \$100. Additionally, individuals under the influence of cannabis or who consume cannabis while operating a motor vehicle could be subject to a misdemeanor punishable by a fine or imprisonment.
 - Safeguards the rights of patients using medical cannabis and medical cannabis products in a manner reasonably equivalent to other legal medications.Accordingly, it proposes to overturn the adverse consequences of *Ross v.*

¹⁷ (Proponents for Initiative 15-0075, 2015)

RagingWire, while not forcing employers to accept cannabis use by their employees.

- Creates a California Cannabis Commission which will be comprised of government officials and experts in public health, medical cannabis, organized labor, local government, and law enforcement. Similarly to the Alcohol Control Board, this Commission will devise rules and help form the policies applying to the cultivation, sale, and consumption of medical and non-medical cannabis in California.
- Mandates that licenses be distributed through an Office of Cannabis Regulation, subject to the oversight of the Commission. The licensing of alcohol will be used as a model to provide for, at a minimum, cultivation, nursery, distribution, manufacturing, retail, transportation, testing, and research/education licenses. Additionally, the Office will make available and administer provisional licenses to allow preexisting medical cannabis dispensaries, collectives, operators, and other entities involved with medical cannabis to obtain provisional licenses by July 1, 2017 or earlier.
- Doesn't prohibit vertical integration so individuals and businesses will be permitted to hold more than one cannabis license with the exception of those holding testing licenses. Without introducing complicated rules, licenses will be made available to both for-profit and non-profit organizations. Furthermore provides that individuals and entities holding a license under existing medical cannabis laws may also hold a reasonably equivalent license under the laws governing non-medical cannabis, as instructed by the Commission and with priority given to current medical cannabis businesses.
- Doesn't infringe upon the protections granted under the Compassionate Use Act of 1996 and instead operates in parallel with the California Legislature's recent changes to the production, sale, and control of medical cannabis. The Commission will be responsible for establishing regulations so that cannabis and cannabis products from the legislatively approved medical cannabis regime can move seamlessly into the adult use system, including the recognition of medical licenses

for commercial purposes and maintaining the ability to track and trace commercial cannabis.

- Encourages the protection of small and medium size businesses by establishing licensing tiers and application fees based on the size of businesses, requiring disclosures be made by corporate interests, and placing obligations on “responsible” parties of record who will be accountable for the conduct of their companies.
- Allows for cities and counties to adopt reasonable regulations, restrictions, or prohibitions on the cultivation, manufacture, distribution, sale and use of cannabis in public areas, with related prohibitions on medical cannabis being subject to a majority vote. However, restrictions on the controlled transportation of cannabis are not allowed.
- Structures a simple and manageable taxing regime with a \$2 per square foot cultivation tax, a \$15 per ounce production tax paid, with a \$10 reduction for certain small businesses for their first 500 pounds produced annually, a 10% state sales tax on edibles and concentrated extracts, a 5% state sales tax on all other cannabis and cannabis products, and a 5% tax for local governments on all cannabis and cannabis extracts. Medical cannabis will be exempt from the 10% tax on edibles and concentrated extracts and the 5% tax on other cannabis and cannabis products. Also, medical cannabis purchased by those eligible for Medi-Cal is exempt from the 10% tax on edibles and concentrated extracts, the 5% tax on other cannabis and cannabis products, the 5% cannabis tax for local governments and the state sales tax.
- Collects funds to direct revenue to local governments with special allocations for environmental protection and restoration. Revenue will also fund grants prioritized towards disadvantaged communities for infant and toddler care, youth counseling, drug education and rehabilitation, and gang diversion, among other programs; fund research product safety, labeling, and testing; fund studies to reduce and prevent driving while under the influence of cannabis; and provide assistance for programs for the protection of seniors and to advance public health.

- Initiative 15-0103¹⁸ (Control, Regulate, and Tax Adult Use of Marijuana Act):
 - Legalizes under both state and local law for adults 21 years of age or older the ability to possess, process, transport, obtain, or give away to other adults no more than one ounce of marijuana. However, there are inconsistent limits for marijuana concentrates, allowing possession of up to 8 grams in Sec. 11362.1 (a)2 , but no more than 4 grams in Sec. 11357(a), (b) and (c) and 11360. Other provisions (VC 23222(b) and HSC 11360(b)) inconsistently prohibit driving while in possession of marijuana or giving away marijuana, in contradiction to 11362.1.
 - Allows adults to cultivate up to six plants and possess the marijuana from these plants at their residence for personal use with no more than six plants per residence. This differs from the new MMRSA limit of 100 square feet of growing space per patient. All plants and harvested marijuana in excess of one ounce must be kept with the person’s private residence or on its grounds, in a locked space, and not visible from a public place. Cities and counties may regulate and prohibit cultivation outdoors, but cannot completely prohibit cultivation inside a private residence or accessory structure that is “fully enclosed and secure.”
 - Allows the manufacture and adult use of marijuana-specific accessories.
 - Legalizes private smoking or ingesting of marijuana, but forbids consumption in any public place, that is, any business or property that is open to the public, except for licensed dispensaries when authorized by local governments, thus greatly reducing the amount and type of locations where medical patients can inhale their medicine, as they can presently consume legally in streets and public areas where smoking is allowed. Consumption (or possession at) or within 1,000 feet of a school or youth center while children are present, except on residential property or on licensed premises and provided the smoking is not detectable by the kids, is also forbidden.
 - Prohibits the use of smokeless electronic cannabis vaporizers except in tobacco smoking areas which effectively precludes medical vaporization in housing and health facilities catering to patients.

¹⁸ (CANORML Administrator, 2015)

- Prohibits the consumption of marijuana or marijuana products or possession of an open container of marijuana or marijuana products while driving or riding as a passenger in a motor vehicle, aircraft, vessel, or other transportation vehicle with the exception of passenger consumption in the case of licensed dealers given a local government permit.
- Authorizes adults to transport marijuana though contrary to an existing law (VC 23222(b)) that makes it illegal to drive in possession of marijuana, thus making drivers still liable for arrest.
- Prohibits the unlicensed manufacture of concentrates using volatile or poisonous solvents, not including CO2 or alcohol.
- Steers clear of interfering with the right of employers to discriminate against marijuana users, medical or otherwise, both on and off the job.
- Refrains from altering the protections provided by the Compassionate Use Act of 1996, although physician recommendations must now conform to minimal standards already established under the MMRSA and current medical marijuana legislation.
- Requires that qualified patients obtain a state ID card if they want to be exempted from a 15% retail tax to be imposed on marijuana sales, though no card is needed to enjoy the other legal protections of Prop. 215. The cost of the ID card is limited to \$100, \$50 for Medi-Cal patients, or is available free of charge for indigent patients. Identifying information in the ID card program must adhere to the Confidentiality of Medical Information Act.
- Protects the child custody rights of qualified patients.
- Renames the MMRSA's Bureau of Medical Marijuana Regulation in the Department of Consumer Affairs to the Bureau of Marijuana Control and gives them the chief authority to regulate the industry, charged with licensing transport, distribution and sale, while the Department of Food and Agriculture is charged with licensing cultivation, and the Department of Public Health is charged with licensing manufacturing and testing.

- Establishes 19 different license categories parallel to those in the MMRSA with licenses for adult use facilities being distinct from those for medical facilities issued under the MMRSA.
- Staggers the introduction of large-scale cultivation as a protection to small and medium sized businesses by introducing a new category of Type 5 cultivation licenses, created for farms over half an acre indoors or 1 acre outdoors, but restricting their issue until Jan 1, 2023.
- Introduces a new category of Type 12 microbusiness licenses created for small retailers with farms not exceeding 10,000 square feet.
- Directs license eligibility by various factors, including restraints on competition or monopoly power, perpetuation of the illegal market, encouraging abuse or diversion, posing a risk of exposure to minors, environmental violations, and excessive concentration in any city or county.
- This excessive concentration is defined broadly to include any concentration in a local census tract that is higher than elsewhere in the county, thus effectively including any new facility in a county that doesn't already have one with the exception of denying applications that would unduly limit the development of the legal market. This gives regulators on top of local governments a blank check to determine what constitutes excessive concentration.
- Bars licensees from price fixing, restraint of trade, price discrimination between different locations, and selling at less than cost to undercut competitors.
- Prohibits marijuana license holders from also holding alcohol or tobacco licenses. Additionally forbids each licensed location from being located within 600 ft. of a school or youth center, unless a state or local licensing authority allows otherwise.
- Requires that all licensees be continuous California residents as of Jan 1, 2015 with the restriction lifting on Dec 31, 2019 as part of a type of economic protectionism.
- Prioritizes the issuing of licenses to those applicants who can demonstrate that they have acted in compliance with the Compassionate Use Act since Sept 1, 2016.

- Allows the possibility of denying licenses to those with convictions of offenses “substantially related” to the business, including serious and violent felonies, felonies involving fraud or deceit, and felonies for employment of a minor in controlled substance offenses. Prior conviction for a controlled substance offense may not in itself be the sole grounds for rejecting a license however.
- Establishes cultivation regulations similar to those of the MMRSA insofar as requiring compliance with conditions set by the Department of Fish and Wildlife and the State Water Resources Control Board plus all other state and local environmental laws. In addition, the Department of Pesticide Regulation is to issue standards for the use of pesticides, the state is to create an organic certification program and standards for recognizing regional appellations of origin, marijuana to be regulated as an agricultural product by the Department of Food and Agriculture which must also create an identification program with unique identifiers for every marijuana plant.
- Requires that the BMC establish standards for types of vehicles and qualifications for drivers eligible to transport commercial marijuana wherein local governments may not prevent delivery of marijuana on public roads by licensees in compliance with the initiative and local law. However, local governments still retain the right to bar deliveries to medical marijuana patients under the MMRSA.
- Requires that the BMC investigate the feasibility of creating nonprofit license categories with reduced fees or taxes by Jan 1, 2018, while in the meantime, local jurisdictions may issue temporary local licenses to nonprofits primarily providing marijuana to low income persons, provided they are registered with the California AG’s Registry of Charitable Trusts. However, marijuana non-profits are not allowed on the registry due to federal law restrictions unless they register as commercial entities.
- Requires that the Department of Public Health regulate the manufacturing and lab testing of marijuana along similar lines as the MMRSA.
- Doesn’t rule out the employment of minors as peace officers trying to entrap marijuana dealers into making illegal sales, as is the case in the alcohol industry.

- Bans the advertising and marketing of marijuana to minors such as the use of cartoon characters, language, or music known to appeal to kids.
- Clearly allows local governments to completely prohibit any type of business licensed under the act, as is the case with medical marijuana facilities under the MMRSA. Additionally allows for local governments to permit on-site consumption at licensed retailers and microbusinesses provided that access is prohibited to individuals under 21, that consumption is not visible from any public place or non-age-restricted area, and that sale or consumption of alcohol or tobacco is not allowed, effectively ending the current practice of allowing beer and wine at popular cannabis events.
- Empowers the Division of Labor Standards Enforcement and Occupational Safety and Health to apply the same labor standards as outlined in the MMRSA.
- Instates a 15% excise tax on all retail sales in addition to the regular state sales tax, effective Jan 1, 2018, though patients with state ID cards are exempt. Additionally, all marijuana is subject to a cultivation tax of \$9.25/ounce dry-weight for flowers or \$2.75 for leaves, also effective Jan 1, 2018. Other categories of harvested product are to be taxed at a similar rate based on their relative price to flowers.
- Allows cities and counties to impose any taxes they please on facilities cultivating, manufacturing, processing, selling, distributing, providing, storing, or donating marijuana.
- Authorizes the Board and other law enforcement officers to inspect any place where marijuana is sold, cultivated, or stored to assure that all taxes are being collected.
- Directs most tax revenue to the new California Marijuana Tax Fund with many specific provisions and allocations as found in (34018). Of the remaining revenues, 60% are allocated to a Youth Education, Prevention, Early Intervention and Treatment Account for youth programs to prevent drug abuse; 20% to an Environmental Restoration and Protection Account for environmental cleanup and restoration; an 20% to a State and Local Government Law Enforcement Account

for CHP DUI programs and grants to local governments relating to the enforcement of the AUMA.

- Rewrites current marijuana laws with a new penalty structure, where in all cases, offenders under the age of 18 are not liable to criminal punishment, but instead to drug education and community service.
- Maintains that the illegal possession of an ounce by individuals aged 18-21 continue to be a \$100 infraction, while illegal possession of more than an ounce by adults continue to be a misdemeanor, punishable by \$500 and/or six months in jail. Possession of less than an ounce upon a school ground during school hours by a person over 18 is a misdemeanor punishable by a fine of \$250, or \$500 plus 10 days in jail for repeat offenses.
- Lowers penalties from current mandatory felony levels to misdemeanors (\$500 and/or 6 months) while allowing felony enhancements for repeat offenders, serious or violent priors, and sale to minors under 18. Also lowers penalties from current mandatory felony levels to misdemeanors while allowing enhancements for crimes involving the commercial importation, exportation, or transportation of more than 1 ounce of marijuana or 4 grams of concentrate.
- Allows for individuals who were previously convicted of offenses that would not be a crime or would be a lesser offense under the AUMA the ability to apply to court for a recall or dismissal of their sentence.
- Enables the legal production of industrial hemp under California's existing hemp law, which has been in suspense pending approval by the state Attorney General.

The stated purpose of the AUMA in its current form “is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana.¹⁹” This description poorly reflects the intricate and convoluted nature of this landmark legal proposal. In

¹⁹ (Proponents of Initiative 15-0103, 2015)

fact, Cal NORML describes it as containing “a number of complications and restrictions that users accustomed to the looser framework of Prop 215 may find objectionable. [And that] AUMA fails to afford the same degree of protection to marijuana consumers as some other initiatives that have been filed with the state but are unlikely to qualify for the ballot.”²⁰

However, despite these issues, the initiative seems to be experiencing an expansion of its support base. Launched and led by the entrepreneur and multibillionaire Sean Parker, the AUMA enjoys the support of the influential Drug Policy Alliance (DPA), the Marijuana Policy Project (MPP), and the recent addition of six CCPR Board Members who all jumped ship from ReformCA.²¹ This marks an important shift in the movement as explained in Sections IV and V.

IV. Policy Alternatives

As of the completion date for this report, there are no less than 23 Active Measures (14 unique entries) on record with the State of California’s Department of Justice (under the issue of the Office of the Attorney General, Kamala D. Harris) though several are different versions of the same proposal. All but one of these stand for (15-0069 is clearly against) some kind of progressive drug policy reform as pertaining to marijuana. None of these, however, including the AUMA are listed as Qualified for Ballot due to how early it still is on the legal timeline. But with the AUMA enjoying the most industry support – though perhaps not the most outright public support – on top of being one of the best funded and most visible, a handful of possibilities present themselves, three of which are: that the playing field has already been significantly narrowed down with only a few serious contenders left; that another measure might take a sizable lead as the AUMA has just done from ReformCA; or, that the growing size of the AUMA’s proponents effectively absorb parts of other initiatives for better or worse.

²⁰ (CANORML Administrator, 2015)

²¹ (Marijuana Politics Staff, 2015)

Regarding what has the most political and financial capital behind it however, may not necessarily be in the best interests of CalHeritage, its associates, backers, or clients. An issue like that of decriminalization and legalization of casual cannabis consumption will naturally be influenced by different interest groups****, with one potentially bad outcome being something akin to the State of Washington’s current cannabis policies (enacted through Initiative 502) – based on high taxes, many restrictions like age and licensing, dual sovereignty of law and a re-emergence of the black market²². That is not to say that there haven’t been positive developments to report, but simply issuing glowing reviews of particular successes thus far – especially from reputable authorities on marijuana like that of the Drug Policy Alliance²³ – is missing the point of policy change in which all sides of the situation are evaluated both before and after the effective date. A brief listing of all the Active Measures can be found under Appendix B for the readers’ convenience.

V. Recommendations and Conclusions

The MMRSA is a definitively more mature legislative product than the older and more stand-alone***** styles of Prop 215 of 1996, SB 420 of 2003, and SB 1449 of 2010 while also having the luxury of being built upon some of the observed best practices experienced within the state thus far along with findings from the progressive marijuana policies of other states. Furthermore, the provisions of Prop 215 (and any voter-enacted law for that matter) cannot be overturned or amended by the CA legislature, including the new rules of the MMRSA.

Based on endorsements from cannabis industry mainstays like the California Cannabis Industry Association²⁴ along with additional guidance and support from other parties like

²² (Johnson, 2015)

²³ (Newman & Todd, 2015)

²⁴ (Bradley B. , 2015)

Greenbridge Corporate Counsel and even SFGate, the clear frontrunner is Initiative 15-0103 (AUMA). Keeping the initiative's shortcomings in mind, it still stands as the most comprehensive, innovative, and economically-sound in the crowded field of proposals. Perhaps one of the most helpful positive reviews outside of law and academia can be found at TheLeafOnline²⁵ though with so much time left before the voting begins, there will likely be a flood of additional helpful resources in the months to come. Regardless of this recommendation, it is important to note that the sheer size of the AUMA is staggering when considering the complicated future of cannabis in California against a backdrop of regular consumers, small business owners, farmers, and the like – most of whom don't have an expert's level of legal know-how. Some of the other measures like 15-0120 (Marijuana Control, Legalization and Revenue Act of 2016) are short and simple but don't have the capital to effectively compete.

The grassroots favorites, Initiatives 15-0050 (Jack Herer) and 15-0075 (ReformCA) will likely fail to raise the tens of millions of dollars – “\$2 million to \$3 million just to gather the signatures to put it on the ballot” – required to mount a successful campaign in the Golden State.²⁶ Die-hard supporters and activists are being edged out by the recent injection of big money so unless big changes take place like more wealthy backers joining those cash-strapped initiatives or the CA Legislature drafting their own bill, the future will likely be with Sean Parker's camp.²⁷ Thus, a plain pro-business approach would be to invest in talented lawyers and large agri-business development with a long-term plan built on the prospects of the AUMA – but CalHeritage would probably gain the most in line with its mission and image if focused more authentically, locally, and smaller scale regardless of the policy outcome in 2016. Despite the

²⁵ (Daw, 2015)

²⁶ (Lewis & Romero, 2014)

²⁷ (Belville, 2015)

report issued by Lieutenant Governor Gavin Newsom’s blue ribbon commission – which warned that marijuana policy reform shouldn’t become the state’s next Gold Rush²⁸ – most signs are pointing in that very same opportunistic direction.

[END]

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Appendix A

** Compiled from the chaptered legal language of AB 243²⁹, AB 266³⁰, and SB 643³¹ in the order of mention and by group association, excluding comments:*

Agencies - Department of Pesticide Regulation; Department of Fish and Wildlife; State Water Resources Control Board; Department of Food and Agriculture, Medical Cannabis Cultivation Program; Department of Consumer Affairs, Bureau of Medical Marijuana Regulation, Center for Medicinal Cannabis Research, Marijuana Research Program, Medical Board of California; Joint Sunset Review Committee; State Board of Equalization; Department of Public Health; Division of Occupational Safety and Health.

Codes - Business and Professions Code; Fish and Game Code; Health and Safety Code; Water Code; Government Code; Labor Code; Revenue and Taxation Code. Compassionate Use Act.

*** From page 6 of the chaptered AB 266 document³²:*

United States Department of Justice Guidance Regarding Marijuana Enforcement. On August 29, 2013, the USDOJ issued a memorandum that updated its guidance to all United States Attorneys in light of state ballot initiatives to legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. While the memorandum noted that illegal distribution and sale of marijuana is a serious

²⁹ (AB-243 Concurrence in Senate Amendments, 2015)

³⁰ (AB-266 Concurrence in Senate Amendments, 2015)

³¹ (SB-643 Senate Third Reading, 2015)

³² (AB-266 Concurrence in Senate Amendments, 2015)

crime, it also noted that USDOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats. According to the USDOJ, "In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above... In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."

**** Compiled from the pending legal language of Statewide Initiative Measure 15-0103³³ in the order of mention and by group association, excluding comments:*

Agencies - Department of Consumer Affairs, Bureau of Marijuana Control (Bureau of Medical Marijuana Regulation), Marijuana Control Appeals Panel; Governor, Office of Business and Economic Development; Department of Food and Agriculture, Industrial Hemp Advisory Board; Department of Public Health; Board of Equalization, Controller; Department of Justice, Attorney General; Department of Corrections and Rehabilitation, Division of Juvenile Justice; Department of Health Care Services, Medi-Cal; County Medical Services Program Governing Board, County Medical Services Program; Office of Administrative Law; Department of Alcoholic Beverage Control; Department of Pesticide Regulation; Water Resources Control Board; Department of Fish and Wildlife; Industrial Welfare Commission; Board of Forestry and Fire Protection; Bureau of State Audits; Division of Occupational Safety and Health; Legislative Analyst's Office; Department of Finance; Natural Resources Agency; Department of the California Highway

³³ (Proponents of Initiative 15-0103, 2015)

Patrol; Labor and Workforce Development Agency; Department of Social Services; Department of Education; Department of Parks and Recreation; Board of State and Community Corrections; Judicial Council.

Codes - Health and Safety Code; United States Code; Business and Professions Code; Vehicle Code; Penal Code; Civil Code, Confidentiality of Medical Information Act; Government Code, Administrative Procedure Act; Revenue and Taxation Code, Fee Collection Procedures Law; Fish and Game Code, California Endangered Species Act; Food and Agricultural Code; Public Resources Code, California Environmental Quality Act; Water Code; Code of Civil Procedure; Labor Code; Welfare and Institutions Code. Medical Marijuana Regulation and Safety Act. Compassionate Use Act. Clean Water Act. Porter-Cologne Water Quality Control Act. Migratory Bird Treaty Act. California Constitution.

***** Compiled from the pending legal language of Statewide Initiative Measure 15-0075³⁴ in the order of mention and by group association, excluding comments:*

Agencies - Department of Corrections and Rehabilitation; Department of Motor Vehicles; Department of Consumer Affairs, Office of Cannabis Regulation & Bureau of Medical Marijuana Regulation; Cannabis Commission; Governor; Senate Committee on Rules; Speaker of the Assembly; Lieutenant Governor; Attorney General; Board of Equalization, Controller; Department of Food and Agriculture; Environmental Protection Agency; Department of Finance; Water Resources Control Board; Department of Fish and Wildlife; Wildlife Conservation Board; Department of Parks and Recreation; Department of Justice; Secretary of State; Medi-Cal.

Codes - United States Code, Controlled Substances Act; Business and Professions Code; Health and Safety Code, Compassionate Use Act of 1996 & Medical Marijuana Program Act; Vehicle

³⁴ (Proponents of Initiative 15-0075, 2015)

Code; Civil Code; Penal Code; Government Code, Bagley-Keene Open Meeting Act & Administrative Procedure Act & California Public Records Act; Public Contract Code; Revenue and Tax Code, Cannabis and Cannabis Products Tax Law; Corporations Code; Public Resources Code, California Environmental Quality Act; Fish and Game Code, California Endangered Species Act; Code of Civil Procedure; Food and Agricultural Code. California Uniform Controlled Substances Act. Clean Water Act. Porter-Cologne Water Quality Control Act. California Constitution.

***** *From page 6 of the chaptered AB 266 document*³⁵:

Medical Cannabis Industry in California. According to the author's Sunrise Questionnaire, submitted to the Assembly Business and Professions Committee pursuant to Government Code Section 9148 *et seq.*, there are multiple occupational groups interested in state regulation, representing a growing marijuana industry.

***** *From page 4 of the chaptered SB 643 document*³⁶:

Purpose. This bill is author sponsored. According to the author, "SB 643 seeks to resolve many of the issues created by the enactment of the Compassionate Use Act and subsequent legislation....California voters made it clear that they wanted medical marijuana to be legalized, but issues and concerns for growers, doctors, dispensaries, law enforcement, district attorneys, cities, counties and others have only become more complicated...Since the voters of California passed Proposition 215 in 1996, it has become clear that there needs to be a comprehensive regulation bill from the Legislature that oversees the cultivating, processing, manufacturing, transportation, prescribing and sale of medical marijuana."

³⁵ (AB-266 Concurrence in Senate Amendments, 2015)

³⁶ (SB-643 Senate Third Reading, 2015)

Appendix B

15-0120 [Marijuana Control, Legalization and Revenue Act of 2016 – Version 7]

Submitted for Title and Summary on December 17, 2015

Proponent(s): Dave Hodges

15-0119 [Marijuana Control, Legalization and Revenue Act of 2016 – Version 6]

Submitted for Title and Summary on December 17, 2015

Proponent(s): Dave Hodges, John Lee, Michael Grafton

15-0104 [Cannabis Control and Taxation Act]

Submitted for Title and Summary on November 3, 2015

Proponent(s): George Mull

15-0103 [Control, Regulate, and Tax Adult Use of Marijuana Act] “AUMA”

Submitted for Title and Summary on November 2, 2015

Amended on December 7, 2015

Proponent(s): Michael Sutton, Donald Lyman, Larry Bedard

15-0087 [Marijuana Control, Legalization and Revenue Act of 2016 – Version 5]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on December 22, 2015

Proponent(s): Editte Dalya Lerman, Russell Goodrow, J. David Nick, Michael Grafton, Ron Mullins, Richard Miller, Dave Hodges, Steve Kubby

15-0086 [Marijuana Control, Legalization and Revenue Act of 2016 – Version 4]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on December 22, 2015

Proponent(s): Editte Dalya Lerman, J. David Nick, Dave Hodges, John Lee, Michael Grafton, Russell Goodrow, Ron Mullins, Richard Miller, Steve Kubby

15-0085 [Marijuana Control, Legalization and Revenue Act of 2016 – Version 3]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on December 22, 2015

Proponent(s): Editte Dalya Lerman, J. David Nick, Omar Figueroa, Dave Hodges, John Lee, Michael Grafton, Russell Goodrow, Dege Coutee, Shona Gochenaur, Gregory Fuentes, Steve Kubby, Richard Miller, Jason Browne, Deborah Tharpe, Dona Frank, Jason Bennett, Gilbert Canedo, Denise Dorey, Steve Crane, Archie Hinkle, Gregory Ledbetter, Sandra Bacon Tercero, Elihu Hernandez, Jon Martinelli, Lanette Davies, Craig Beresh, Ron Mullins

15-0075 [Control, Regulate and Tax Cannabis Act of 2016] “ReformCA”

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on December 9, 2015

Proponent(s): Dale Sky Jones, Alice Huffman, ~~Larry Bedard~~

15-0069 [**California Safe and Drug-Free Community Act**] *Against Reform*

MEDICAL MARIJUANA. INITIATIVE STATUTE.

Title and Summary Issued on November 25, 2015

Proponent(s): Roger Morgan

15-0060 [**Cannabis Legalization Act of 2016**] *Replaces 0058*

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on November 10, 2015

Proponent(s): Sam Clauder

15-0058 [**California Cannabis Legalization Act of 2016**] *Replaced by 0060*

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on November 9, 2015

Proponent(s): Sam Clauder

15-0052 [**Safe Communities, Parks, and Schools Act of 2016**] *Replaces 0036*

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on October 29, 2015

Proponent(s): Chad Hanes, Marinda Hanes

15-0050 [**California Cannabis Hemp Initiative**] *Jack Herer*

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on October 28, 2015

Proponent(s): Berton Duzy, Michael Jolson

15-0049 [**Community Act to Regulate, Control and Tax Cannabis of 2016**]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on October 26, 2015

Proponent(s): Alice Huffman

15-0044 [**Compassionate and Sensible Access Act – Version 2**]

MEDICAL MARIJUANA. INITIATIVE CONSTITUTIONAL AMENDMENT.

Title and Summary Issued on September 23, 2015

Proponent(s): Craig Beresh, Marcia Blount, Jeffrey Byrne, Kimberly Cargile, Dege Coutee, Lanette Davies, Richard Fenton, Shona Gochenaur, Kandice Hawes, Brook Hilton, Donna Lambert, Rowola Maharaj, Andrew Merkel, Richard Miller, Eric Salerno, Deborah Tharp, Van Ton, Randall Welty

15-0041 [Right to Medical Marijuana]

MEDICAL MARIJUANA. INITIATIVE CONSTITUTIONAL AMENDMENT.

Title and Summary Issued on September 17, 2015

Proponent(s): Clarence Phillip Snider

15-0039 [Marijuana Control, Legalization and Revenue Act of 2016 – Version 2]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on September 16, 2015

Proponent(s): Marc Baylen, Jason Bennett, Jason Browne, Heather Burke, Gilbert Canedo, Dege Coutee, Lanette Davies, Denise Dorey, Omar Figueroa, Gregory Fuentes, Shona Levana Gochenaur, Russell Goodrow, Michael Grafton, Elihu Hernandez, Dave Hodges, Gregory Charles Ledbetter, John Lee, Edie Lerman, Jon Martinelli, Richard Miller, Ron Mullins, J David Nick, Teresa Randolph, Patricia Smith, Sandra Bacon Tercero

15-0036 [Safe Communities and Parks Act of 2016] *Replaced by 0052*

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on September 8, 2015

Proponent(s): Chad Hanes, Marinda Hanes

15-0027 [2016 California Bipartisan Decriminalization of Cannabis Act]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on July 7, 2015

Proponent(s): Jason Collinsworth; Lara Collinsworth

15-0024 [Responsible Use Act of 2016]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on June 26, 2015

Proponent(s): Chad Hanes; Marinda Hanes

15-0020 [Marijuana Control, Legalization and Revenue Act of 2016 – Version 1]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on June 24, 2015

Proponent(s): Jason Bennett; Gilbert Canedo; Dege Coutee; Denise Dorey; Omar Figueroa; Shona Gochenaur; Michael Goldman; Michael Grafton; Archie Hinkle; Elihu Hernandez; Dave

Hodges; Gregory Ledbetter; John Lee; Jon Martinelli; Jennifer Nicoletto; Teresa Randolph; Sandra Tercero

15-0018 [Compassionate and Sensible Access Act – Version 1]

MEDICAL MARIJUANA. INITIATIVE CONSTITUTIONAL AMENDMENT.

Title and Summary Issued on June 19, 2015

Proponent(s): Craig Beresh; Jeffrey Byrne; Lanette Davies; Richard Fenton; Kandice Hawes; Donna Lambert; Ronald Mullins; Eric Salerno; Deborah Tharp; Kathie Thelen; Randall Welty

15-0017 [California Craft Cannabis Initiative]

MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

Title and Summary Issued on June 24, 2015

Proponent(s): Heather Burke; Omar Figueroa