



Key Facts On Prop 64

Overview

Differences between Prop 64 and Recent Legislation covering Medical Marijuana

Medical Marijuana Regulation and Safety Act (MMRSA) – AB 243, AB 266, and SB 643 would have prohibited vertical integration of licenses. Prop 64 does not prohibit vertical integration of licenses. A licensee may hold any combination of licenses: cultivator, manufacturer, retailer, and distributor. MMRSA would only allow applicants to have at most two different license types, effectively prohibiting direct farm-to-consumer sales (AB 266, B&P Code 19328).

Less testing and inspection under Prop 64

Unlike MMRSA, Prop 64 does not require that cultivators send their product to independent “distributors” (Type 11 licensees). MMRSA would have required that the distribution system put in place would have added testing requirements and increased inspection. This means that Prop 64 does not require a third party to ensure testing compliance and destruction of unhealthy, contaminated product.

Permits marijuana advertising on television

The measure rolls back the prohibition of smoking advertisements on television and allows for marijuana advertisement on tv, radio, digital and print where “at least 71.6% of the audience is expected to be 21 years of age or older.” This so-called restriction will allow for advertising on most prime-time and family viewing television shows, radio programs and digital platforms

Prior Convictions for Controlled Substances

Licenses may be denied for convictions of offenses “substantially related” to the business, including serious and violent felonies, felonies involving fraud or deceit, felonies for employment of a minor in controlled substance offenses. Except in rare cases, a prior conviction for a controlled substance offense may not in itself be the sole grounds for

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rejecting a license (26057(b)5). This is a departure from MMRSA, which makes past controlled substance offenses valid grounds for license denial.

Driving under the influence of marijuana

The initiative does not include any DUI standard for marijuana. In both Washington and Colorado incidence of driving under influence of marijuana have increased. The AAA Foundation for Traffic Safety reporting that DUI fatalities involving those under the influence of marijuana have doubled since recreational legalization.

Unlimited Marijuana Grows would be allowed in CA

Five years after Prop 64 takes effect it would create a new category of Type 5 “Large” cultivation license. This creates farms over the MMRSA limit of ½ acre indoors or 1 acre outdoors. No limit is set on the size of these grows.

Local Control

Prop 64 prohibits local governments from banning indoor cultivation intended for personal use. It allows for six plants, but it is not practical to assume that law enforcement will come to count your plants. Nearly every city and county has experienced problems with growers buying homes, gutting them, and turning them into grow houses. Many cities and counties in California have already put bans in place. Taking away the right of local government to ban this activity sets up a loophole by which bad actors can continue to exploit the system.

MMRSA also requires a system of dual-licensing, meaning an applicant needs a local license or permit before applying for a state license. Prop 64 does not require local licenses and permits, and authorizes the state to be the sole licensing entity for jurisdictions without an ordinance regulating recreational marijuana.

Uber for Pot?

Prop 64 calls for the establishment of standards for types of vehicles and qualifications for drivers eligible to transport commercial marijuana (26070(b)), but does not allow local government to stop delivery of marijuana on public roads by licensees in compliance with the initiative and local law (27080(b)).

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Impact on Neighborhoods

We have seen the impacts of marijuana dispensaries clustered in poor communities. (See article on Denver - <http://www.politico.com/magazine/story/2016/05/what-works-colorado-denver-marijuana-pot-industry-legalization-neighborhoods-dispensaries-negative-213906>)

Prop 64 does not set up any regulation to stop the concentration in one area. The language in the initiative is vague and allows for an exception made for denying applications would “unduly limit the development of the legal market.” The burden will be on each local government to try to deal with this and will create another patchwork of confusing regulations.

Does not mandate money for environmental clean up and DUI programs

After requiring that the initiative reimburse the various agencies for cost to administer, implementing and enforcing Prop 64 that act calls for money to spent on the following:

- \$10 million per year from 2018 thru 2028 for California public universities to study and evaluate the implementation of the act
- \$3 million per year from 2018 thru 2022 to the California Highway Patrol to establish protocols to determine whether drivers are impaired.
- \$10 million per year beginning in 2018, increasing by \$10 million per year to \$50 million in 2022-23 to the Governor's Office of Business and Economic Development for a community reinvestment program, at least 50% of which in grants to community nonprofits, for job placement, mental health and substance abuse treatment.
- \$2 million per year to the California Center for Medicinal Cannabis Research for research on efficacy and safety of medical marijuana.

Of the remaining revenues – unclear what that amount might be...

- 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.
- 20% to a State and Local Government Law Enforcement Account for CHP DUI programs and grants to local governments relating to

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enforcement of the Act (although no money is available for any local government that has a ban on cultivation).

Appeals Board for Losers

Prop 64 allows the Governor to appoint an independent, three-member Appeals Board to adjudicate appeals subject to standard procedures (26040).

Unreasonably Impracticable?

Prop 64 defines that there will be regulations covering the legalization of marijuana in California, but it leaves an out for those investing in the business by defining “unreasonably impracticable” (Chapter 1. General Provisions and Definitions 26001.)

“Unreasonably impracticable” means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset, that the operation of a marijuana establishment is not worthy of being carried out in practice by a **reasonably prudent business person**.

(c) Regulations issued under this division shall be necessary to achieve the purposes of this division, based on best available evidence, and shall mandate only commercially feasible procedures, technology, or other requirements, and shall not unreasonably restrain or inhibit the development of alternative procedures or technology to achieve the same substantive requirements, nor shall such regulations make compliance **unreasonably impracticable**.

26014.

(a) The bureau shall convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this division, including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial marijuana activity that does not impose such **unreasonably impracticable** barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for marijuana.

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