

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: August 15, 2013

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee

FROM: Gerry F. Miller *Gerry F. Miller For*
Chief Legislative Analyst

Assignment No: 13-05-0462
Council File No. 13-0002-S86

SUBJECT: SB 439 (Steinberg) - Medical Marijuana.

CLA RECOMMENDATION: Adopt the attached revised Resolution to include in the City's 2013-14 State Legislative Program **OPPOSITION** to SB 439 (Steinberg).

SUMMARY

The Resolution (Parks-Englander) states that SB 439 (Steinberg) would exempt marijuana collectives, cooperatives, entities, and persons from criminal prosecution or punishment, inasmuch as it would permit collectives or cooperatives to be organized as any business entity, thereby allowing medical marijuana to be cultivated and distributed for profit which is inconsistent with Proposition 215, the Compassionate Use Act of 1996, and also in direct violation of federal law.

Subsequent to its introduction, SB 439 has been amended, with the most recent amendment being introduced on August 5, 2013. The bill currently states that nothing in Section 4 of the bill shall authorize any individual or group to cultivate or distribute marijuana for profit, but it does not reprint language from Health and Safety Code Section 11362.83, which if omitted may lead to future litigation regarding the civil and criminal enforcement of SB 439 by local government.

BACKGROUND

Existing Law

In 1996, California voters passed the Compassionate Use Act (CUA) to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes. The CUA ensures that patients and their primary caregivers are not subject to criminal prosecution or sanction, and protects physicians from punishment for recommending marijuana to a patient for medical purposes. Additionally, as directed by the CUA, the Attorney General developed guidelines for the legal operation of cooperatives and collectives in 2008.

The League of California Cities reported that some cities and counties have permanently banned dispensaries' operations in their communities, others have adopted temporary land use moratoria, and others, such as the City of Los Angeles, have adopted regulations permitting a limited number of dispensaries. Data from Americans for Safe Access indicate that a total of 193 cities and 20 counties in California have banned medical marijuana dispensaries. An additional 72 cities and nine counties have imposed moratoriums while another 44 cities and 10 counties have passed ordinances to regulate them.

In October 2009, the U.S. Department of Justice (DOJ) issued a memo announcing that it would no longer raid medical marijuana dispensaries that are established legally under state law.

The California Supreme Court recently held that the medical marijuana statutes (CUA and MMPA) do not preempt local bans on facilities that distribute medical marijuana, which upholds local authority to prohibit such conduct as a public nuisance.



Article 5.1 Medical Marijuana Collective, of the City of Los Angeles' Municipal Code (LAMC) outlines the regulations for medical marijuana collectives in the City but does not recognize them as a business entity. The regulations in the LAMC are in compliance with the CUA, the Medical Marijuana Program Act and the California Health and Safety Code. In addition, Section 21.50 of the LAMC details taxation of medical marijuana collectives.

California Health and Safety Code Section 11362.83 provides, as follows:

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:

- a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.
- b) The civil and criminal enforcement of local ordinances described in subdivision (a).
- c) Enacting other laws consistent with this article.

SB 439 does not reference section (b) listed above.

SB 439

This bill would exempt medical-marijuana collectives and cooperatives from criminal liability for possession, cultivation, possession for sale, sale, transport, importation, and furnishing marijuana, and, for maintaining a place, or knowingly providing a place for selling or furnishing marijuana. Specifically, this bill:

1. Exempts medical marijuana collectives and cooperatives from criminal liability for possession, cultivation, possession for sale, sale, transport, importation, and furnishing marijuana. Also exempts collectives and cooperatives from criminal liability for maintaining a place, or knowingly providing a place for selling or furnishing marijuana.
2. Defines "collectives and cooperatives" as entities that operate within the terms of the Compassionate Use Act of 1996 (Proposition 215) and organized in compliance with the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, issued by Attorney General (AG) Bill Lockyer in August 2008.
3. Authorizes a collective to be organized as any statutory business entity permitted by California law.
4. Specifies that collectives and cooperatives include their officers, members, and employees.
5. Clarifies that this bill does not prevent a local government from adopting or enforcing local ordinances that regulate the location, operation, or establishment of a medical-marijuana collective or cooperative.
6. Clarifies what constitutes professional misconduct on the part of a physician recommending marijuana to a patient for medical purposes.
7. Clarifies that being employed by a cannabis clinic or dispensary to provide recommendations for medical-marijuana would constitute corporate practice of medicine.

Regarding item 5 above, this bill does not fully cite language from Health and Safety Code Section 11362.83.

Support

The author states the bill was drafted because there is no statewide oversight of medical marijuana collectives and cooperatives which has caused issues with the federal government and difficulty for local governments who may or may not want medical marijuana dispensaries in their communities. Patients and caregivers who obtain a state medical marijuana identification card from their county health department are protected from state arrest and prosecution for possessing, transporting, delivering, or cultivating marijuana. But, patients and caregivers who engage in these activities remain liable for federal arrest and prosecution, and those who operate dispensaries face frequent federal enforcement actions.

The American Civil Liberties Union (ACLU) supports the bill. The ACLU states that under existing law qualified patients and caregivers are expressly exempt from criminal prosecution for possession or use of medical marijuana, however, collectives and cooperatives or other business entities operating in compliance with California law are not exempt, which exposes them to continued harassment by local officials. SB 439 would expressly state that collectives, cooperatives and other lawfully operating business entities and their employees will not be exposed to criminal penalties for the sale or distribution of medical marijuana.

The following entities also support the bill: Kevin Johnson, Mayor of Sacramento; California NORML; Crusaders for Patient's Rights; Greater Los Angeles Collective Alliance; Law Enforcement Against Prohibition; and the Marijuana Policy Project.

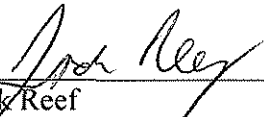
Opposition

The bill is opposed by various law enforcement organizations, numerous California cities, county organizations, and the Los Angeles Police Protective League. The California State Sheriff's Association opposes SB 439 because the bill may expand the distribution of marijuana without providing sufficient safeguards against abuse.

The League of California Cities (LCC) also opposes the bill, as follows: the legislation limits local governments from bringing nuisance abatement action to remove threats to public safety (which the LCC claims is an indispensable tool of local land use authority); the state has a responsibility to establish stricter and readily enforceable guidelines pertaining to medical marijuana; and the bill, by not specifically referencing Section 11362.83(b) of the Health and Safety Code which enables local governments to exercise enforcement powers against collectives and cooperatives, weakens existing law.

BILL STATUS

08/05/13	From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.
06/27/13	From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.
06/18/13	From committee: Do pass and re-refer to Com. on HEALTH
06/03/13	Referred to Coms. on PUB. S. And HEALTH.
05/20/13	In Assembly. Read first time. Held at Desk.
05/20/13	Read third time. Passed. Ordered to the Assembly
05/01/13	From committee: Do pass
04/03/13	Re-referred to Com. on PUB. S.
04/01/13	From committee with author's amendments. Re-referred to Com. on RLS.
03/11/13	Referred to Com. on RLS.
02/21/13	Introduced. To Com. on RLS. for assignment.



Jack Reef
Analyst

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state, or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor, and

WHEREAS, on May 6, 2013, the California Supreme Court ruled in the case entitled City of Riverside v. Inland Empire Patient Health and Wellness Center, Inc., et al., that cities may ban medical marijuana dispensaries through zoning; and

WHEREAS, SB 439 (Steinberg) would exempt marijuana collectives, cooperatives, entities, and persons from criminal prosecution or punishment, inasmuch as it would permit collectives or cooperatives to be organized as any business entity; and

WHEREAS, the Compassionate Use Act of 1996 sought to ensure that seriously ill Californians had the right to obtain and use marijuana for medical purposes which has been recommended by a physician for treatment of cancer, anorexia, Acquired Immunodeficiency Syndrome (AIDS), chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, the intent of the Compassionate Use Act of 1996 was to ensure that patients and primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution, and it was surely not to condone the diversion of marijuana for non-medical purposes; and

WHEREAS, the California Narcotics Association and California Police Chiefs Association indicate that SB 439 will expand the distribution of what is classified under Proposition 215 as medical marijuana in California because it will enable other entities that are not patients, or caregivers to cultivate or distribute marijuana; and

WHEREAS, California Health and Safety Code Section 11362.83 states that nothing...shall prevent a city or other local governing body from adopting and enforcing any of the following: a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective; b) The civil and criminal enforcement of local ordinances described in subdivision (a); and c) Enacting other laws consistent with this article; and

WHEREAS, the City should oppose SB 439 because it does not cite language from California Health and Safety Code Section 11362.83, which if omitted may lead to future litigation regarding the civil and criminal enforcement of local ordinances by local government in applying SB 439;

NOW THEREFORE BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-14 State Legislative Program OPPOSITION to SB 439 (Steinberg), which would exempt marijuana collectives, cooperatives, entities, and persons from criminal prosecution or punishment, inasmuch as it would permit collectives or cooperatives to be organized as any business, but does not include a reprinting of the entirety of Health and Safety Code Section 11362.83 language which may limit the civil and criminal enforcement of SB 439 by local government.