April 24, 2017

The Honorable Jim Cooper, Chair
Assembly Budget Subcommittee No. 4 on State Administration
State Capitol, Room 6026
Sacramento, CA 95814

RE: Proposed Trailer Bill Implementing Proposition 64, the Adult Use of Marijuana Act Notice of Opposition Unless Amended

Dear Assembly Member Cooper:

The League of California Cities and the California Police Chiefs Association respectfully submit notice of our position of Oppose unless Amended to the Proposed Trailer Bill Implementing Proposition 64, the Adult Use of Marijuana Act.

In a series of meetings with the Governor's office, our two organizations over a period of several months shared proposals for regulatory components we believe are necessary to protect public health and public safety, and harmonize Proposition 64 with the Medical Cannabis Regulation and Safety Act of 2015. Unfortunately, our recommendations are not reflected in the proposed Trailer Bill.

We must now therefore reluctantly oppose this measure based on our conviction that it will endanger both public health and public safety, and take a dangerous step toward de-regulation of an industry that until very recently in California history operated entirely outside the law. To adopt a laissez faire approach to regulation of an industry that deals in a psychotropic substance, on the eve of the roll-out of statewide regulations designed to protect the public, at best, sends a mixed message about the State of California's commitment to protecting the public health, and holding that industry accountable.

Specifically, our opposition to this measure is based on the following factors:

Proposed Repeal of the Medical Cannabis Regulation and Safety Act (MCRSA) – p. 8 of the Trailer Bill

In general, unless the MCRSA provisions are in direct conflict with Proposition 64, there is no compelling reason to repeal them. The MCRSA resulted from an intensive, painstaking 2-year stakeholder process balancing the interests of local government, industry, activists, medical

cannabis patients, labor, and law enforcement, and received bipartisan support in both houses. In fact:

- Prop. 64 passed in part because it explicitly built upon the MCRSA framework.
- Prop. 64 did not itself repeal MCRSA.
- To do so now is arguably a "bait-and-switch" tactic in regard to the protections California voters believed they were getting when they approved the initiative, and could be interpreted as thwarting the will of the voters, notwithstanding the Governor's directive to create a single regulatory system for both medical and recreational marijuana. The repeal itself may be a question that must be put the voters.

There are specific, critical protections from both a public safety and a regulatory standpoint that are included within the MCRSA, but that are absent from the Trailer Bill. Those protections are:

1) The Trailer Bill alters the definition of "delivery" by omitting from that definition the following language:
"Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products…"

   This omission will result in the proliferation of unregulated technology platforms used to link potential customers with cannabis retail outlets, i.e. cannabis-related activity that is entirely outside the scope of the state regulatory structure.

   We recommend restoring the full definition as originally laid out in the MCRSA and adding a new license category for technology platforms.

2) The Trailer Bill fails to specify who can transport cannabis. The MCRSA specifically stated in Section 19326 (a) that *"a person other than a licensed transporter shall not transport medical cannabis or medical cannabis products from one licensee to another licensee, unless otherwise specified in this chapter."*

3) The Trailer Bill language fails to address discrepancies in inventory, including theft, a breach of security, or other criminal activity. In contrast, Section 19334(d) of the MCRSA provided that:

   "d) A dispensary shall notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:
   (1) Significant discrepancies identified during inventory. The level of significance shall be determined by the bureau.
   (2) Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary.
   (3) The loss or unauthorized alteration of records related to cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents.
   (4) Any other breach of security."

This omission will hinder local law enforcement efforts to police illegal activity, and will increase opportunities for product diversion, thereby increasing the likelihood of federal intervention and enforcement based on the criteria laid out in the Cole Memo released by the U.S. Department of Justice in July 2013.

4) The Trailer Bill language fails to include important regulatory provisions governing the testing function, which is a critical component in enforcing state public health standards. Section 19345 of the MCRSA specifically:
    a. Regulates acquisition and receipt of cannabis by testing laboratories;
    b. Requires the keeping of testing records;
    c. Directs the State Department of Public Health to develop procedures to ensure that testing occurs prior to delivery of the product to retail outlets, specifies the frequency of testing and clarifies that the cost shall be borne by cultivators, and finally expressly requires destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the State Department of Public Health, unless remedial measures can bring the cannabis into compliance with quality assurance standards as promulgated by the Department.

5) The Trailer Bill fails to include critical protection for local governments' land use authority. It includes no provision in any way similar to Section 19320(b) of the MCRSA which provides:

    "Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license."

6) The Trailer Bill fails to include the transportation requirements for licensees, or any alternate, equivalent requirements, found in Section 19337 of the MCRSA:
    a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.
    b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:
    (1) Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.
    (2) Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.
    c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.
e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

These omissions hinder local enforcement and compliance checks and compromise the integrity of the regulatory structure's supply system.

Inclusion of 90-Business-Day Deadline for Locals to Response to State Notification of a Pending Application – Section 26055, p. 36 of Trailer Bill

The Trailer Bill's local control sections, 26055(g) and 26200, are helpful but are in themselves insufficient to preserve local control. We recommend the following language be amended into Section 26055(e):

(1) Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200. The determination of the licensing authority that an applicant for a state license is not in compliance with any local ordinance or regulation adopted in accordance with Section 26200 shall be based on a written or electronic notification provided to the licensing authority by the local jurisdiction in response to an inquiry from the licensing authority.

(2) If the local jurisdiction does not provide a written or electronic notification of compliance or noncompliance with applicable local ordinances and regulations, and does not provide notification indicating that the completion of the local permitting process is still pending, within 90 business days of receiving an inquiry from a licensing authority, the licensing authority shall deem the applicant to be in compliance with all local ordinances and regulations adopted in accordance with Section 26200. This paragraph does not preclude a local jurisdiction from enforcing applicable local ordinances and regulations with respect to the applicant.

Proposed Repeal of the State Medical Marijuana ID Card Program - Section 11362.712 and 11362.713, pp. 11-12 of the Trailer Bill

The Trailer Bill proposes to expand the universe of individuals eligible for the sales tax exemption provided to medical cannabis users under Prop. 64 by eliminating the requirement that a medical cannabis user have a medical marijuana ID cared to qualify. Current participation rates in the ID card program, which have been fairly low and cited as a justification for eliminating the program, are a flawed indicator of the program's usefulness, for the following reasons:

1. From inception, the program has been purely voluntary. There was never a requirement in law that anyone have a card.

2. Prop. 64 changed that, and required for the first time that consumers have an ID card – if they wanted to take advantage of the sales tax exemption for medical.
3. Another factor in low participation has been the public's fear of having their name and address on a database, that could potentially be used for enforcement purposes.
4. Since Prop. 64 legalized recreational use, we can anticipate that that fear will diminish.

Current law (Prop. 64) imposes as of last November, a hard requirement to have a card in order to qualify for the sales tax exemption, combined with sufficient legal protection in the form of marijuana legalization. It is too early to know the impact of this change on participation rates or consumer behavior.

The League has confirmed that in 2016, cities took in **at least $23.7 million** in sales tax revenue from medical marijuana transactions, and we expect the figure to go higher once the results of our member survey on this issue are in. Cities stand to lose a good portion of that revenue if the ID card program is eliminated, as there is reason to believe that a substantial amount of those sales were recreational in nature, based on the sole criteria in force at the time, a doctor's recommendation.

Statewide, municipal revenue sums from local sales tax <u>on recreational marijuana</u> will be significant in 2017, based on the number of local cannabis-related tax measures that passed in the November 2016 election. This figure, whatever it turns out to be, ought to be considered in any decision to eliminate the medical ID card program, since sales tax revenues from recreational marijuana can be expected to diminish significantly, based on how the program's elimination will encourage consumers to migrate to medical marijuana in order to save money.

Based on these factors, there is today no sound policy reason to abolish the ID card. Counties have signaled they will not take it over, therefore based on the harm to cities and the fact that the rules for the card changed less than 6 months ago, talk of eliminating the card is premature.

Vertical Integration and its Implementation

Perhaps the most hotly debated issue regarding the implementation of the Adult Use of Marijuana Act (AUMA) has been what form the system of product distribution would take. The MCRSA required mandatory third-party distribution, but the cannabis industry has made clear that it prefers an open system, allowing vertically integrated businesses which own and control their own means of distribution, distribution and sale.

As of February 24 of this year, the Police Chiefs and the League crafted and jointly approved a proposal under which the industry would be free to vertically integrate within a system which included an independent auditor-inspector to perform compliance and quality control checks, on both a random and a scheduled basis (see Attachment A).

We believe the independent auditor-inspector to be a reasonable compromise allowing the industry to attain maximum efficiency on the supply side, while providing an effective mechanism for a measure of government oversight to ensure compliance with public health and

non-diversion standards. This was among the ideas we shared with industry and other stakeholders prior to the release of the Trailer Bill, yet it is not included in the Trailer Bill. Instead, the Trailer Bill represents unfettered vertical integration with no independent oversight of the distribution component whatsoever, and no mechanism ensuring compliance with packaging, product labelling, track-and-trace, and other health and safety standards.

Deletion of the Definition of "Volatile Solvent" – Section 11362.3(d), p. 10

The Trailer Bill proposes to delete from statute altogether the definition of "volatile solvent." This seems unwise, given the number of incidents of butane explosions in residential areas from do-it-yourself chemists performing illicit extraction. The current definition in statute works and is the result of consultation with the CA Fire Chiefs Association and the CA Police Chiefs Association. Repealing it endangers public safety and undermines AB 2679 (Cooley, 2016) which codified a legal form of volatile solvent extraction for the first time, and expressly references solvents at least seven times.

The Repeal of Existing Fire Safety Requirements – Section 26064, p. 42

To excuse cannabis-related businesses from compliance with the Fire Code endangers public safety, particularly in light of the hazards of butane extraction operations which may or may not be compliant with state law. If the intent of this provision is that locals and not the state are to enforce the Fire Code, then this code section should be retained, and local governments must be expressly authorized to enforce the relevant chapters of law. Otherwise local governments will be subject to the avoidable expense of defending against frivolous litigation when they attempt to undertake such enforcement.

Deletion of Protections for Minors, Fragile Neighborhoods and the Environment – Section 26051, p. 33

The Trailer Bill proposes to delete in its entirety Section 26051 of the Business and Professions Code. This Code section lists a range of factors to be considered by a licensing entity in weighing whether to grant or deny a license, including but not limited to:

- perpetuating the presence of an illegal market for marijuana or marijuana products;
- encouraging underage use or adult abuse of marijuana or marijuana products;
- resulting in excessive concentration of licensees in a given city, county, or both;
- resulting in violations of any environmental protection laws

In striking this language from statute, the Trailer Bill instead proposes a "study" to determine whether any of the above factors are a problem. From the viewpoint of cities and law enforcement, the best protection is the statutory protections that the Trailer would delete, not the expense of precious public funds on a study that will itself yield no value to our communities. Again, we see no compelling public policy rationale for the repeal of this code section.

Failure to Define "Open Container" in the Context of Marijuana and Marijuana Products
The lack of such a statutory definition in the context of marijuana products will only serve to frustrate enforcement efforts in the area of impaired driving. This is turn will compromise law enforcement efforts to keep our streets and highways safe in a state that has legalized marijuana for recreational use, yet has no legal standard of impairment resulting from ingesting the product. This was an item that was requested in our meetings with the Administration but was not included in the Trailer Bill language.

Statute Governing State Inspections Completely Omits Authorization for Same Activity by Locals – Section 26160(c), p. 57
The statute governing state agency/licensing entity inspection must be amended to expressly add local agencies, which will be undertaking compliance checks and audits independent of the state. As this industry remains an all-cash industry, locals must conduct periodic audits to verify the volume of legal product sold in their community and to assess whether their related revenue streams are commensurate with that volume. Again, absent express statutory authorization for such local regulatory activity, it is reasonable to assume that some local governments will be subject to avoidable litigation on this point.

Distributor License Not Currently Bound by State Law Regulating Commercial Transport.
The Trailer Bill is silent on this point. Clarification must be made to specify that all state laws and regulations governing commercial transport apply to distributor licensees under the AUMA.

Repeal of 10-day Deadline for State Action in Response to Revocation of a Local Permit within Section 26200(c), p. 60
The Trailer Bill repeals the provision imposing a time limit of 10 days on state licensing entities to take action when notified by locals of a revocation of a local permit to operate. While 10 days may be too short a time frame, there should be a statutory deadline. This provision should be retained, the number "10" struck, and discussions should ensue regarding an alternate deadline.

No Constraint on Type 5 License Permitting Unlimited Cultivation
The silence of the Trailer Bill on this point is extremely troubling, since inaction in this area could trigger federal enforcement activity. The statute governing the Type 5 license should be amended to clarify that the Department of Food and Agriculture shall only issue a Type 5 license if it has determined that there is insufficient cultivation capacity in the State of California. This is based on testimony in Assembly and Senate informational hearings on Prop. 64 by the California Growers Association to the effect that California currently consumes only 30 percent of marijuana cultivated here while the remainder leaves the state.

Repeal of Requirement to Disclose Product Potency in Labelling – Section 26120, p.50
A repeal of such a provision endangers public health and poses a heightened danger to patients who use cannabis as a bona fide medicinal therapy. The core requirement to disclose potency or concentration can and should be enshrined in statute. The precise ***level*** of potency and other

details can be delegated to the regulatory process, as well as rules regarding solvents, pesticides and fertilizers.

No Express Requirement for Individual Plant Tagging

Current law is very clear that individual plant tagging is required. However, the Trailer Bill does not make this expressly clear. This is the standard in Colorado. While there are references to unique identifiers being required, the language does not make clear that those unique identifiers must be capable of identifying harvested cannabis down to the level of individual plants. Failing to clarify the law on this point will facilitate both product diversion, as well as inversion, i.e. the practice of mixing illegal, unregulated product in with legal, regulated product to maximize yield and profit. We do not have confidence that the establishment of a track-and-trace system will be sufficiently comprehensive and lacking in flaws to render individual plant tagging unnecessary.

No Clarification of Rules on Loss of Grant Funds as a Result of Local Bans: No Lowering of Barriers

The current language of Prop. 64 requires clarification on this point. It would be helpful to clarify whether local governments may retain eligibility for state grant funds if they allow cultivation but prohibit retail operations, or vice versa. Many cities are confused on this point and need to know if the eligibility criteria for grant funds amounts to a requirement that they allow BOTH forms of licensed activity. In addition, the League and the Police Chiefs have jointly requested a provision allowing jurisdictions with total prohibitions to apply for grant funds, based on public safety and enforcement impacts they have based on the fact that neighboring jurisdictions allow either medical or recreational cannabis.

Weakening of Existing Environmental Laws in re: Cultivation Licensees

1) <u>Substituting Specific Requirements for General Requirements</u>
   In the original Section 26060(b), which is being deleted, there was very specific language making it clear that cultivation standards developed by the Department of Pesticide Regulation (DPR) and the Department of Food and Agriculture (DFA) for *"pesticides… and maximum tolerances for pesticides and other foreign object residue in harvested cannabis shall apply to licensed cultivators…"*

   This is replaced with a more general statement, troubling because it is so much less specific, in the new Section 26060(b)(2), to the effect that the regulations shall *"Require that all cannabis cultivation by licensees is conducted in accordance with state and local laws."* We can identify no sound policy reason for this proposed change.

2) <u>Standards vs. Guidelines</u>
   The original Section 26060(b), again language that is being repealed, references "standards" developed by the Department of Pesticide Regulation. However, the new 26060(d) now references "guidelines" to be developed by DPR "for the use of pesticides in the cultivation of cannabis and residue in harvested cannabis."

The word "guidelines" invokes a less stringent benchmark for compliance, which is enough in the area of chemical substances used in cannabis cultivation, some of which are known to be harmful to human life in the case of illegal rodenticides, to cause great concern. It begs the question whether there will be any meaningful enforcement, especially in light of language in 26060(e)(2) making clear that upon being notified of a violation of the conditions of the license by either the State Water Resources Control Board or the Department of Fish and Wildlife, the decision about whether to take "appropriate action," a phrase which ideally would include the word "disciplinary" but does not, is left entirely to the discretion of DFA. We do not see a justification for this proposed change.

3) Weakening of Role of the State Water Resources Control Board and the Department of Fish and Wildlife

Section 26060(e)(2) in its original form mandated that DFA was to include the conditions requested by Department of Fish and Wildlife (DFW) and the State Water Resources Control Board (SWRCB) in each cultivation license issued, to ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability, and to otherwise protect fish, wildlife, fish and wildlife habitat, and water quality.

The new 26060(e)(2) appears to repeal the requirement that DFA include the conditions of its sister agencies in each state license, thereby weakening the protections against illegal water diversion and discharge, since the state cultivation license is no longer expressly conditioned on compliance with those conditions. At a minimum, the binding nature of the conditions upon the licensees is no longer clear, and given this subject matter, alterations in a trailer bill to painstakingly crafted language regulating cultivation activity that was spearheaded by Assembly Member Wood, but crafted without his input, gives us no comfort. In addition, the language goes on to expressly provide that DFA is not responsible for enforcing violations of the conditions imposed by DFW or SWRCB, despite the fact that it is DFA and DFA only that issues the cultivation license. This would appear to compromise the credibility and efficiency of the regulatory structure, as well as the goal of promoting compliance with conditions imposed by those state entities for the purpose of protecting the environment. Department of Fish and Wildlife and the State Water Resources Control Board, who have no power of licensure, are left to whatever enforcement devices they can muster. This does not appear to represent a robust regulatory and enforcement structure, but it does appear to run contra to the spirit and the letter of AB 243 (Wood), which is the seminal piece of legislation in re: marijuana cultivation.

While there is reference to similar language re: requirements pertaining to cultivation licenses at Section 26060.1, subdivision (d), (e) and (f), that language is not identical to the language that was struck from the original 26060(e)(2). Subdivision (d) is questionable in that it references "principles" and "guidelines" as compared to hard statutory prohibitions against environmental contamination. We remain very skeptical

about what appears to be a softening of the environmental requirements and regulations as originally crafted in the MMRSA and as expanded somewhat in SB 837 – in short, it is not clear why any of the proposed changes are necessary for Prop. 64 implementation.

For these reasons, we will respectfully oppose this measure until such time as it has been amended to address the host of concerns listed above.

Sincerely,

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