

Designing State-Level Cannabis Legalization

Design objectives:

- Cannabis available without legal penalty to adults
- Minimum law enforcement activity and incarceration
- No large increase in problem use
- No massive export across state lines
- Revenue

Feasibility constraints:

- Administratively workable in the face of Federal prohibition
- Acceptable to the voters

Prop. 19 failed in part because its backers made promises that couldn't have been kept. In particular, they promised large amounts of revenue, without being able to explain how it would be possible to collect taxes on a set of activities that would remain a felony under federal laws. What is to prevent the federal government from obtaining the list of licensed facilities and getting an injunction to forbid each one of them from selling cannabis? Without such a list, how is it possible to tax and regulate cannabis commerce?

A simple repeal of all the cannabis laws, leaving behind only bans on sales to minors and driving under the influence, would be far less subject to criticism than Prop. 19 was. (Such a proposal could include authority for the legislature to tax and regulate cannabis after the repeal of the Federal law.) With an adequately-funded campaign, that proposition might even pass. But it would be purely negative, with no promise either of regulation or of revenue. And the resulting free-for-all market – with California (or Colorado) potentially the cannabis supplier for all of North America - might well draw in massive federal enforcement.

An alternative that could actually deliver both regulation and revenue would start from the existence of licensed sellers of intoxicants: bars, restaurants, package stores, and, in some states including California, grocery stores, convenience stores, and drugstores. With the appropriate license, all are permitted to sell alcoholic beverages, and there is an existing administrative mechanism to enforce some basic rules such as “no sales to minors.” That enforcement activity is simplified because the licenses themselves are valuable, and can be suspended or revoked for license violations. No one would hold out alcohol regulation as anything like ideal, but it's basically workable and familiar.

If the law were changed to allow sales of cannabis by any holder of an alcoholic-beverage license, that would create a large but finite number of sales venues. The current set of state and local licensing authorities could be delegated the power to regulate

cannabis sales by any alcohol seller who wanted to make use of its new permission. (Some convenience stores might change ownership as a result.) The sellers would still be at risk of federal enforcement. But no one would have applied for or received a license to sell cannabis, and there would therefore be no list of applicants for the Justice Department to enjoin.

Tax collection could be managed through physical tax stamps, each authorizing the sale of a fixed dollar amount of cannabis. Assume for illustration that the state decided to set the tax on each sale equal to the pre-tax price: thus a vendor selling cannabis for a total retail price of \$100 would have to pay \$50 in tax. The vendor would purchase tax stamps from other businesses licensed to sell them, as bait shops now sell fishing licenses (for a 5% commission). That transaction could be open, as selling a state-issued stamp is not a crime and no cannabis would be present. Each stamp would be numbered and counterfeit-proofed.

When a retail customer comes to buy \$100 worth of cannabis, the vendor would physically cancel a \$100 tax stamp (which, in the illustration, would cost \$50) and give the cancelled stamp, along with the cannabis, to the buyer. To enforce tax collection, the state could send “mystery shoppers” to make purchases; any transaction not involving a valid cancelled tax stamp would lead to a citation for tax evasion and either a hefty fine or the revocation of the seller’s valuable alcoholic-beverage (and implicitly cannabis) license. This would not eliminate evasion, but it could reasonably be expected to generate a reasonable level of compliance. The resulting revenue to California might in fact be several hundred million dollars per year.

A substantial tax would also prevent the sort of drastic reduction in retail prices that might otherwise lead to a large increase in the number of heavy cannabis users, including minors to whom the legal product would leak just as alcohol and tobacco leak around their age barriers.

That leaves the question of production. It could either be left illegal, as is the case in the Netherlands, with or without provisions for reduced penalties and enforcement, or made legal, perhaps by allowing holders of alcoholic-beverage licenses to grow the material on land they own or lease. In either case, there would need to be enforcement against “exports” across state lines.

The result would be far from the ideal taxation-and-regulation system, but it would be possible to describe and defend it with a straight face.

Either a straight-repeal proposition or an alcohol-sales-based proposition could reasonably be written in less than two pages of legalese. In practice, either new system would compete with the dispensaries, but neither proposition needs to mention them in its text.