

Q&A Proposition 64 would legalize recreational use of marijuana though it's illegal under federal law. How will that work?



Customers buy products at a medical marijuana dispensary in San Francisco in April. (Haven Daley / Associated Press)

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Proposition 64 on the Nov. 8 ballot would legalize the recreational use of marijuana in California and allow the state to issue licenses to those who grow, transport and sell cannabis. Marijuana is an illegal substance under federal law, which will not change if the initiative is approved by voters. Legal experts believe the California initiative can take effect despite the conflict in law.

What does Proposition 64 do?

The [initiative](#) would allow Californians to possess, transport and use up to an ounce of marijuana for recreational purposes, and would allow people to grow as many as six plants. The measure would also impose a 15% tax on retail sales of the drug.

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How can Proposition 64 allow marijuana use when it is listed by the federal government as an illegal drug in the same category as heroin and LSD?

States have the power to decide that they will not make it a state crime to grow, transport and use small amounts of marijuana. The federal government retains the authority to enforce federal laws in California, even if Proposition 64 passes, but has notified states it is not a priority to take enforcement actions in such cases, especially in states that adopt strict rules.

“The federal Controlled Substances Act makes it a federal crime to possess any marijuana, but the United State government does not prosecute possession of small amounts of marijuana,” said Erwin Chemerinsky, dean of the UC Irvine School of Law. “It’s a value decision that it’s not worth law enforcement resources to do so.”

Could federal authorities enforce marijuana laws against large growing operations and dispensaries?

Theoretically, yes. But federal officials have said the government does not plan to enforce many marijuana laws in states — including Colorado and Washington — that have legalized recreational use of marijuana but with robust regulations to avoid abuses, including marijuana being sold to minors. Proposition 64 has similar restrictions, according to Sam Kamin, a professor at the University of Denver who specializes in marijuana law.

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What is Congress’ position on enforcing marijuana laws in the states?

A bipartisan effort in Congress has attached a rider to the budget prohibiting the Drug Enforcement Agency from using federal funds for enforcement actions against marijuana operations that comply with its state's medical marijuana laws, according to Aaron Herzberg, a Santa-Ana-based attorney who is invested in several cannabis dispensaries.

“I’m not terribly concerned with the intersection with federal law as far as it would result in raids or any interference by the federal government,” Herzberg said. “That’s just not going to happen.”

He noted that a [federal judge](#) in May upheld the barring of enforcement action, including the foreclosure of real estate owned by marijuana industry firms complying with state medical marijuana laws.

What other assurances do states have that federal authorities will not enforce marijuana laws in states that legalize cannabis?

In 2009 and again in 2013, the [U.S. Department of Justice](#) issued guidelines to federal prosecutors that said their priority should include eight significant issues raised by drugs, including the operation of drug cartels, narcotics activity leading to violence and preventing drugs from being provided to minors. Lesser priorities, wrote Deputy Atty. Gen. James M. Cole in 2013, should be left to enforcement by the state.

“For states such as Colorado and Washington that have enacted laws to authorize the production, distribution and possession of marijuana, the Department expects these states to establish strict regulatory schemes that protect the eight federal interests identified in the Department’s guidance,” Cole wrote. Non-priority issues involving marijuana should be left to the states to decide whether to enforce, he added.

Does that mean there is no chance for enforcement?

No. If California approves Proposition 64 but fails to enforce its restrictions on marijuana being sold to minors or pot trafficked to other states, federal authorities could step in with enforcement, Kamin said.

How long will that federal policy of non-enforcement apply to California if it approves Proposition 64?

The non-enforcement policy comes from the Obama administration, Kamin said.

“The Obama administration won’t be the one making those decisions for much longer, and it remains to be seen what the sort of priorities the next president will have with regard to federal enforcement of the Controlled Substances Act,” he said.

What are the positions of presidential candidates [Hillary Clinton](#) and [Donald Trump](#) on legalizing marijuana?

Clinton has said she supports allowing medical marijuana use and that states should be allowed to vote to legalize and regulate adult recreational use.

“But I want to see what the states learn from that experience, because there are still a lot of questions we still have to answer on the federal level,” she said on ABC’s “Jimmy Kimmel Live!”

Trump also has said he is in favor of permitting marijuana use for medical purposes and that he supports allowing states to decide whether they will legalize adult recreational use.

Banks are federally regulated, so will they accept business from marijuana firms?

One significant problem in states that have legalized marijuana is that banks have generally refused to handle the money generated because the drug is still illegal on the federal level. In Colorado, that has led some marijuana businesses to form holding companies that do not include the word “marijuana” their names in order to get banking services, including acceptance of credit card purchases, Kamin said.

But the banks usually cut off services after routine audits determine money is coming from drug sales. An effort to form a credit union in Colorado has been stymied because it was denied access to the federal reserve system, he said. However, with nine states including California set to vote on legalization of marijuana, Lt. Gov. Gavin Newsom said pressure will build on federal officials to work out a solution to the banking problem.

Broadcast television and radio stations are regulated by the Federal Communications Commission, so how will that affect the ability of marijuana businesses to advertise over the airwaves?

Because of federal regulation, television and radio stations in other states where cannabis is legal have generally not accepted marijuana ads, and their attorneys have advised them not to. Proposition 64 includes a provision restricting TV and radio ads so they are not targeted to minors, but that was only included in case federal law one day changes, according to Richard Miadich, an attorney advising the Proposition 64 campaign.

“Proposition 64 can’t change federal law and federal prohibitions remain in place,” Miadich said.

If Proposition 64 passes, when does it take effect and when can Californians legally buy marijuana for recreational use?

The initiative would allow Californians to possess and use up to an ounce of marijuana on the next day, Nov. 9. However, the state would have until Jan. 1, 2018 to come up with a system for licensing those who would grow, transport and sell marijuana for recreational use. Supporters say a change in the law could allow temporary licenses before then but even then it would not likely be until mid-2017 that such sales could begin.

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