

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

**A. GENERAL INFORMATION**

1. Date

2018-01-29

2. Department

Department of Justice

3. Organizational Placement (Division/Branch/Office Name)

Civil Law Division - Cannabis Control Section

4. CEA Position Title

Senior Assistant Attorney General (SAAG)

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The Office of the Attorney General (AG) proposes to allocate the above position to the CEA category. The SAAG plans, organizes and directs the work of the statewide Cannabis Control Section staff. The Cannabis Control Section represents state agencies that issue licenses under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) in administrative, trial court and appellate proceedings to deny, revoke or suspend licenses in cases brought against state-license holders.

6. Reports to: (Class Title/Level)

Chief Assistant Attorney General, CEA Level B

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain):

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

**B. SUMMARY OF REQUEST**

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The SAAG is responsible for leadership and supervision of the Cannabis Control Section's litigation and advice functions; serves as the AG's principal liaison and point of contact for legal services with the section's clients; serves as technical and legal advisor to the AG on matters within the section's program and on legal issues and proposed legislation impacting the Department of Justice (DOJ); represents the AG before courts, the Legislature, the public, and other governmental agencies and the Governor's Office; consults with the Chief Assistant Attorney General in the development and formulation of legal and litigation policy and program objectives, personnel management, and employee utilization and independently decides these policies; has principal responsibility for personnel management and employee utilization within the section; provides direction and guidance to subordinates through the supervising deputy structure; personally assists subordinates in complex litigation; prepares annual budget requests and performs ongoing programmatic monitoring and reporting functions.

Since the passing of Proposition 64 on November 8, 2016, more than 20 legislative bills have been introduced in connection with cannabis use, regulation, licensing, and distribution in California. The SAAG will serve as a subject matter expert and advisor on cannabis legislation, licensing, and policy matters for state agencies such as the Bureau of Cannabis Control, Department of Food and Agriculture, CalCannabis Cultivation Licensing, and Department of Public Health, Manufactured Cannabis Safety Branch. The SAAG will provide consultation and guidance to senators on proposed cannabis legislation that may impact California's citizens and resources. As additional legislation or licensing regulations are introduced and enforced, the SAAG will provide consultation with both local and state law enforcement agencies and their stakeholders on unlicensed enterprises. The SAAG's role will be to support law enforcement in the development of statutes regarding cannabis licensing and illegal activity and will consult with various state and law enforcement agencies on the strategic eradication of black market activity.

**B. SUMMARY OF REQUEST (continued)**

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The mission of the AG's office and its employees is to provide leadership, information, and education in partnership with state and local governments and the people of California to enforce and apply all of California's laws fairly and impartially; ensure justice, safety, and liberty for everyone; encourage economic prosperity, equal opportunity, and tolerance; and safeguard California's human, natural, and financial resources for all generations. The Office of the Attorney General is also required by law to represent state agencies in judicial and administrative proceedings. (Government Code section 11040 et seq.)

The SAAG is responsible to represent the three new licensing agencies described above in line with the mission of the AG's office and the requirements of Government Code section 11040. As one segment of the AG's office, the Cannabis Control Section and its SAAG position are critical to the mission of the AG, as a whole. There is no other resource in the AG's office which is able to perform this work. The new CEA will be the head of the section, to provide leadership and supervision of the section's litigation and advice functions, and serve as the technical and legal advisor to the AG on all aspects of the state's new, regulated cannabis market, which is critical to the interest of the state and its citizens.

**B. SUMMARY OF REQUEST (continued)**

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

In November 1996, voters approved Proposition 215 which decriminalized the use of medicinal cannabis in California. Since the proposition was passed, most, if not all, the regulation was left to local governments. In 2015, the Legislature passed and the Governor signed into law three bills (Assembly Bills 243 and 266, and Senate Bill 643) that created a state licensing and regulatory framework for medical cannabis with licenses to be issued beginning on January 1, 2018. In November 2016, voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). Under Proposition 64, beginning on January 1, 2018, adults 21 years of age or older may legally grow, possess, and use cannabis for non-medicinal (recreational) purposes with certain restrictions. In addition, beginning on January 1, 2018, the AUMA made it legal to sell and distribute cannabis through a regulated business. Finally, in June 2017, the Legislature passed and the Governor signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) (Senate Bill 94) which created one regulatory system for both medicinal and adult-use cannabis, effective January 1, 2018. The intention of the Legislature was to combine all the prior laws described above into a single state regulatory licensing scheme.

Under MAUCRSA, licenses will be issued by three state agencies:

1. The Department of Consumer Affairs' Bureau of Cannabis Control is the lead agency in the regulation of cannabis and will issue licenses for retailers, distributors, testing laboratories and microbusinesses.
2. The California Department of Food and Agriculture's CalCannabis Cultivation Licensing section will issue licenses to cultivators of medicinal and adult-use cannabis and implement a track-and-trace system to record the movement of cannabis through the distribution chain.
3. The California Department of Public Health, Manufactured Cannabis Safety Branch, is responsible for regulating the manufacturers of cannabis-infused edibles for both medical and non-medical use.

Pursuant to Government Code section 11040 et. seq., the AG's office is required to provide legal services to these state agencies in administrative and judicial legal proceedings. Based upon Budget Change Proposals that have been approved by the Legislature for the Bureau of Cannabis Control and the California Department of Food and Agriculture, along with consultation with other states that regulate the cannabis industry, such as Colorado, it is estimated that the legal workload for these new cannabis licensing agencies will require the equivalent of 20 new legal professional positions in the AG's office to handle this work. The CEA position will lead the new section and assume duties related to this work.

### C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The state has authorized adult use of cannabis and medicinal use of cannabis for minors and adults in a legally regulated market, all while this same activity is illegal under the federal Controlled Substances Act. This dichotomy poses significant and challenging legal and policy issues that will fall within the purview of this CEA position. The CEA will take a leading role to advise the Cannabis Control Section's state licensing agency clients and the AG in this unprecedented area of state interest and responsibility.

The CEA will determine policy for application of MAUCRSA with respect to whether applications for new licenses submitted to the client licensing agencies can legally be denied under the law. The policy will impact all applicants for licenses, who can be denied, according to the application of MAUCRSA. To qualify for a state-issued license from one of these agencies, the applicant for a license must first obtain authorization to conduct business from the local jurisdiction where the business is to be conducted. Therefore, the policy will also affect consumers throughout the state and may impact some cities and counties of the state more than others.

The CEA will also determine policy on enforcement of state laws with respect to the illegal (unregulated) market for cannabis that currently exists in California and will be key in coordinating enforcement efforts among the state agencies to eradicate the illegal marketplace while fostering the growth of the legal, controlled marketplace.

Cannabis regulation is a new source of revenue for the state because all licensed activity will be taxed by the state. Policy decisions made by the CEA with respect to application of MAUCRSA to grant or deny licenses will have significant impact on state resources. The current black market for cannabis is estimated to be around \$6 billion. It is important to extinguish this unregulated market in order for the state to preserve this newly regulated and taxed industry. If the black market cannot be turned into a legal, regulated market, the state is at risk for federal intervention, based upon federal law, and could lose an industry that California voters have requested be established and one which will provide significant revenue for the state. As the market emerges, it will be the responsibility of the CEA to advise the Legislature on current and future legislative action pertaining to cannabis. As this is a new area of law in the state, and due to the complexity of interaction at the federal level, it demands the greatest attention be placed on the impact and development of legislation. This CEA will be integral to that development.

**C. ROLE IN POLICY INFLUENCE (continued)**

**13. What is the CEA position's scope and nature of decision-making authority?**

The SAAG will have decision-making authority with respect to staff within the Cannabis Control Section and their areas of assignment. The position will play a leading role in development of cannabis policy in the state as this new, regulated industry is just beginning. The CEA will determine policy in implementation of MAUCRSA, will serve as legal counsel and advisor to each of the state licensing agencies represented by the Cannabis Control Section, serve as advisor to the AG on all aspects of cannabis regulation and eradication of the illegal cannabis marketplace, and lead the Cannabis Control Section and supervise all of its staff to implement policies. These decisions will have impact both internally and externally, as the section provides legal advice, guidance, and representation to client agencies within the state. Because the position will serve in an advisory capacity, collaborating with regulatory agencies, the advice and guidance provided will directly affect the policy and decision-making in those agencies as well. The SAAG will also advise the Legislature as a subject matter expert on cannabis and will propose and advocate for further legislation related to cannabis as the regulated industry evolves.

**14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?**

The SAAG will develop new policy as well as implement any policy determined through enactment of MAUCRSA. The position will determine how the law is implemented, enforced, and how to approach the emerging market. The position will also play a key role in changing the illegal, unregulated cannabis market that currently exists in the state, into a legal, regulated market, which will provide significant tax revenues for the state and more jobs for Californians.