

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

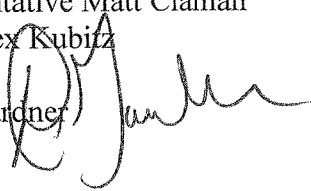
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 9, 2015

SUBJECT: Marijuana Initiative: the Legislature's "Bare Minimum" Responses
(Work Order No. 29-LS0528)

TO: Representative Matt Claman
Attn: Alex Kubitz

FROM: Doug Gardner 
Director

You asked what "is the bare minimum that will need to be done by the legislature so that the marijuana initiative will not conflict with existing statute"? The brief answer is that the legislature could choose to amend (but not repeal) the initiative, or not act and rely instead on the initiated law.

A review of the initiative reveals a proposed statutory structure for the regulation of marijuana establishments. The initiative is such that its provisions could be implemented by the respective executive branch agencies without any intervention by the legislature other than for appropriations that the agencies might need for their new duties.

The bill creates a new chapter, sec. 17.38, and the Alcohol Beverage Control Board (ABC Board) is designated as the board responsible for regulating the marijuana industry under that chapter.¹ The ABC Board is directed to adopt regulations to implement the marijuana statutes "not later than nine months after the effective date of this act." The effective date of the Act is February 24, 2015.² This would mean that if the initiative is

¹ The initiative contemplates that the legislature may instead choose to create a new board to regulate marijuana. See proposed sec. 17.38.080.

² The effective date of an initiative is 90 days after the lieutenant governor certifies the election. Article XI, sec. 6, Constitution of the State of Alaska provides:

SECTION 6. Enactment. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. **An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time.** An act

approved by the voters the ABC Board would not have to complete the regulation adoption process and start accepting applications until February of 2016.³ If the ABC Board does not act as required by the initiative then municipalities are provided the authority under the initiative to act in place of the ABC Board to regulate the marijuana industry.

The initiative also imposes a tax on the sale and transfer of marijuana.⁴ But until marijuana establishments are licensed under the regulations adopted by the ABC Board (or a municipality in place of the ABC Board) there will be no tax to collect.

More problematic will be the provisions of the initiative dealing with the personal use and personal cultivation of marijuana.⁵ These provisions seemingly supplant existing criminal statutes and unlike the regulatory and tax provisions, will take effect when the initiative takes effect 90 days after certification of the election. There may be some confusion for law enforcement and the public about what the current state of the law is with regard to personal use and cultivation of marijuana. This confusion will be ameliorated at least somewhat due to the familiarity that law enforcement and the public may have with *Raven v. State*, 537 P.2d 494 (Alaska 1975), and its progeny that currently recognize a constitutional limitation on the state's authority to restrict the use and possession of at least some quantities of marijuana by an adult in their home. Other criminal aspects of the initiative will be less problematic as the initiative specifically disclaims any effect on laws relating to driving under the influence, possession or sale by persons under 21 years of age, or possession of marijuana in public.⁶

The initiative also disclaims any effect on the right of an employer or a property owner to restrict the use or possession of marijuana.

rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law. [Emphasis added.]

³ See also proposed sec. 17.38.100(b) of the initiative:

(b) The board shall begin accepting and processing applications to operate marijuana establishments one year after the effective date of this act.

⁴ See proposed secs. 43.61.010 - 43.61.030 of the initiative.

⁵ See proposed secs. 17.38.020 and 17.38.030 of the initiative.

⁶ The initiative does create some new criminal penalties that, in at least some cases, provide punishment that is less than is currently provided in statute. These conflicts should be addressed by the legislature.

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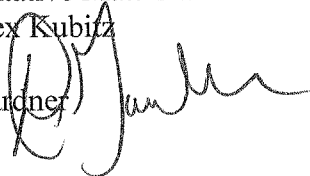
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Representative Matt Claman

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The costs associated with the initiative (personnel, equipment, and otherwise) will presumably be addressed by the legislature in the budget requests of the respective departments.

Even if the legislature does nothing, the initiative itself appears to be at least sufficient to allow executive branch agencies to proceed with the regulation and licensing of the marijuana industry. However, if the legislature does nothing the courts will probably have to sort out some aspects of how the personal use and cultivation provisions of the initiative and the conflicts between the new offenses and the new penalties being created by the initiative relate to the current criminal code. I would not anticipate that process as being overly difficult considering the current state of the law with regard to personal use and possession of marijuana and previous decisions of the courts with regard to statutory construction. Until these issues and conflicts are resolved, persons wishing to avail themselves of the new laws created by the initiative and law enforcement seeking to enforce the existing laws may face significant uncertainties.

In summary, the legislature has a viable option of not taking action, and allowing the ABC Board, or in a year the municipalities, to act with regard to regulating the marijuana industry. In addition, if the legislature does not act the courts, and the executive branch, will be required to interpret the initiative language consistent with existing criminal law. If the legislature is not willing to accept the process in which the courts are required to interpret criminal laws, consistent with the initiative language, then the "bare minimum" the legislature should do is focus its energy on resolving the conflicts between Title 11 (existing criminal laws) and the initiative.

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