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29th Alaska State Legislature



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Senate Judiciary Committee

CS for SENATE BILL 30 (*Version F*)

SECTIONAL ANALYSIS

Overview

Secs. 1 – 40, 42, & 43 are conforming amendments to current law which show marijuana, hash and hashish oil to not be a controlled substance.

Sec. 44 – 49 relates to the use of marijuana as provided in the initiative.

Sec. 50 relates to the rulemaking powers of the Marijuana Control Board.

Sec. 51 establishes local control for established villages.

Sec. 52 creates new crimes associated with the misconduct of marijuana

Secs. 53 – 54 establishes definitions.

Secs. 55 – 57 are conforming amendments dealing with protective orders and victim compensation.

Secs. 58 – 78 are conforming amendments dealing with drug testing in the workplace and employment.

Secs. 80 – 125 are conforming amendments dealing with drivers licenses and operating motor vehicles while under the influence of marijuana.

Secs. 126-127 creates new sections dealing with enforcement and municipal control.

Secs. 128-132 are conforming amendments addressing parole administration and prison management.

Secs. 133-137 are conforming amendments concerning landlords and tenants.

Secs. 139-157 are conforming amendments dealing with substance abuse, testing and treatment.

Sec. 158 are repealers.

Sec. 159-160 repealed sections of law and effective date.

Section 1 - CONFORMING

Page 1

AS 02.30.030(b). Reckless Operation of Aircraft.

A person may not operate an aircraft occupied by a crew member or passenger who is “obviously” under the influence of intoxicating liquor or a controlled substance. Adds “marijuana.”

Section 2 - CONFORMING

Page 2

AS 04.16.050(e). Possession, control, or consumption by persons under 21.

Requires the court, as a condition of probation, to prohibit the use of inhalants, controlled substances and alcohol as a condition of probation. Adds “marijuana.”

Section 3 - CONFORMING

Page 2

AS 05.45.100(c). Duties and responsibilities of skiers.

Prohibits skiers from moving uphill on a tramway, or using a ski slope or trail while impaired by alcohol or a controlled substance. Adds “marijuana.”

Section 4 - CONFORMING

Page 3

AS 08.68.270. Grounds for denial, suspension, or revocation of a license.

The board or nursing may deny, suspend, or revoke a nursing license for habitual abuse of alcohol or illegal use of controlled substances. Adds “marijuana.”

Section 5 - CONFORMING

Page 3

AS 08.72.272. Prohibited prescriptions in the practice of optometry.

Removes marijuana from the list of controlled substances an optometrist is prohibited from prescribing.

Section 6 - CONFORMING

Page 4

AS 08.76.170(a). Customer and transaction limitations.

Prohibits a pawnbroker from entering into a transaction with a person under the influence of alcohol or a controlled substance. Adds “marijuana.”

Section 7 - CONFORMING

Page 4

AS 09.50.170. Abatement of places used for certain acts.

A person in control of property used for illegal activities involving prostitution, alcoholic beverages, gambling and controlled substances is guilty of maintaining a nuisance which may be abated (removed). Adds “marijuana “and definition for “illegal activity involving marijuana.”

Section 8 - CONFORMING

Page 5

AS 09.60.070(c). Attorney fees for victims of serious criminal offenses.

Adds to a “serious criminal offense” listing of offenses for which a person may recover from an offender full reasonable attorney fees the act of driving under the influence marijuana or any other crime committed by the offender while driving under the influence of marijuana.

Section 9 - CONFORMING

Page 5

AS 09.65.210. Damages resulting from commission of a felony or while under the influence of alcohol or drugs.

Provides that a person, or the person’s estate, may not recover damages for personal injury or death if the injury or death occurred while the person was engaged in certain criminal conduct. Adds operating a vehicle while under the influence of marijuana to this list of criminal conduct.

Section 10 - CONFORMING

Page 7

AS 09.65.315(a). Limitation of liability and damages resulting from driving vehicle of a person under the influence of alcoholic beverage.

This statute excludes a person from personal liability beyond the limits of an applicable insurance policy for damages resulting from a motor vehicle accident, if the person was not under the influence of alcohol, inhalants or controlled substances; was driving the vehicle to the owner’s or operator’s residence at the request of the owner or operator or a law enforcement officer because the owner of the vehicle was under the influence of an alcoholic beverage. Adds “marijuana”.

Section 11 - CONFORMING

Page 7

AS 09.65.315(e). Definition of “marijuana”.

Provides that definition of marijuana is to be found in 17.38.900 (see. P.37)

Section 12 - CONFORMING

Page 7

AS 09.65.320(b). Nonrecovery for noneconomic losses resulting from operating a motor vehicle while uninsured.

Prohibits recovery of noneconomic losses (i.e., pain, inconvenience, loss of enjoyment of life) in cases where the person who is liable for the personal injury or death was driving under the influence of an alcoholic beverage, inhalant, or controlled substance. Adds “marijuana”.

Section 13 - CONFORMING

Page 8

AS 11.41.110(a). Murder in the second degree.

Line 21 - Removes reference to marijuana [11.71.040(a)(2)] as a controlled substance, and provides a stylistic drafting change using the language “this chapter” rather than “AS 11.41”.

Section 14 - CONFORMING

Page 9

AS 11.41.150 (a). Murder of an unborn child.

Line 19 - Removes reference to marijuana [11.71.040(a)(2)] as a controlled substance.

Section 15 - CONFORMING

Page 10

AS 11.61.200(a). Misconduct involving weapons in the third degree.

In subsection (4) adds prohibition to knowingly sell or transfer a firearm to a person who is substantially impaired by marijuana. In subsection (7) M.I.W. 3 is committed if during the act of Criminal Trespass in the first degree the person possesses a firearm and is under the influence of alcohol or a controlled substance. Adds “marijuana”.

Section 16 - CONFORMING

Page 11

AS 11.61.210(a). Misconduct involving weapons in the fourth degree.

In subsection (1) adds prohibition to possess on the person or in the vehicle in which the person is present a firearm if the person is impaired by marijuana.

Section 17 - CONFORMING

Page 12

AS 11.71.030(a). Misconduct involving a controlled substance - third degree.

Line 30 - Removes reference to VIA (marijuana) as a controlled substance.

Section 18 - CONFORMING

Pages 13 & 14

AS 11.71.040(a). Misconduct involving a controlled substance – fourth degree.

Removes reference to VIA (marijuana).

Section 19 - CONFORMING

Page 15

AS 11.71.110(a). Controlled Substances Advisory Committee.

Removes AS 11.71.190 (marijuana) from the list of drugs the committee is presently tasked to advise the governor concerning the need to add, delete, or reschedule substances in the Controlled Substances schedule in AS 11.71.

Section 20 - CONFORMING

Page 16

AS 11.71.120(a). Authority to schedule controlled substances.

Removes AS 11.71.190 (marijuana) from committee recommendations to governor for rescheduling of controlled substances.

Section 21 - CONFORMING

Page 16

AS 11.71.180(a). Schedule VA Controlled Substances.

Removes reference to VIA (marijuana) as a controlled substance.

Section 22 - CONFORMING

Page 16

AS 11.71.311(a). Restriction on prosecution for certain persons in connection with a drug overdose.

Provides that a person may not be prosecuted for certain misconduct involving controlled substances offenses if the person seeks medical or law enforcement assistance for another person they believe is experiencing a drug overdose and the evidence was obtained as a result of the person seeking assistance. Repeals reference to marijuana conduct now allowed under the initiative, and retains the reference to controlled substance conduct that remains illegal.

Section 23 - CONFORMING

Page 17

AS 11.71.900(4). Definitions.

Removes 11.71.190 (Schedule VIA) from definition of “controlled substances.”

Section 24 - CONFORMING

Page 17

AS 11.71.900(13). Definitions.

Removes reference to marijuana from the definition of “manufacture” in Controlled Substances definitions.

Section 25 - CONFORMING

Page 17

AS 11.81.900(b)(34). Definitions.

Adds “marijuana” to the definition of “intoxicated” in Title 11 Criminal Law definitions.

Section 26 - CONFORMING

Page 17

AS 12.30.011(b). Release before trial.

Provides that a judicial officer may, as a condition of bail, prohibit a person from using or possessing marijuana; require a person to enroll in the 24/7 testing program (SB64) if the person was charged with a marijuana related unclassified felony; and prohibit a person from entering a registered marijuana establishment, as provided in 17.38.

Section 27 - CONFORMING

Page 19

AS 12.30.016. Release for before trial in certain cases.

Adds new subsection (g), providing that in prosecutions for new Misconduct Involving Marijuana offenses (17.38.200-210) a judge may prohibit the person from using and/or possessing marijuana; require a person to submit to searches based on reasonable suspicion of a peace officer that the person is violating terms of release prohibiting marijuana related activities; require a person to submit to drug testing; require a person to enroll in the 24/7 testing program; and prohibiting a person from entering a place where marijuana is used, manufactured, or sold.

Section 28 - CONFORMING

Page 20

AS 12.30.080. Definitions of marijuana related terms.

Provides that definitions for “marijuana”, “marijuana accessories” and “marijuana products” have the meanings given in AS 17.38.900.

Section 29 - CONFORMING

Page 20

AS 12.45.084(a). Laboratory report of a controlled substance.

Provides that in prosecutions for new misconduct involving marijuana offenses, a copy of the DPS laboratory report is prima facie evidence of the content, identity and weight of marijuana, or usable marijuana, and establishes required content for such reports. Adds “marijuana” and “usable marijuana” as defined in AS 17.38.900.

Section 30 - CONFORMING

Page 20

AS 12.55.015(a). Authorized sentences (sentencing and probation).

Provides that a court at sentencing may order a person to refrain from using marijuana for a period of time.

Section 31 - CONFORMING

Page 21

AS 12.55.015(j). Authorized sentences (sentencing and probation).

Provides that the court is not limited or restricted from ordering restrictions on the use of marijuana at the time of sentencing or probation, just as they are not limited in their orders about the consumption of alcohol.

Section 32 - CONFORMING

Page 21

AS 12.55.155(c)(5). Factors in aggravation and mitigation.

Provides that it is an aggravator at sentencing that the person knew the victim was particularly vulnerable or incapable of resistance due to consumption of marijuana, and other factors.

Section 33 - CONFORMING

Page 21

AS 12.55.155(c)(30). Factors in aggravation and mitigation.

Provides that it is an aggravator at sentencing that a person convicted of a sexual offense knowingly supplied marijuana to a victim in furtherance of the offense with the intent to incapacitate the victim.

Section 34 - CONFORMING

Page 22

AS 12.55.155(g). Factors in aggravation and mitigation.

Provides that voluntary marijuana intoxication or addiction may not be considered an aggravating or mitigating factor.

Section 35 - CONFORMING

Page 22

AS 12.55.185. Definitions – Sentencing and Probation.

Provides that “marijuana” has the definition provided in AS 17.38.900.

Section 36 - CONFORMING

Page 22

AS 17.21.010(b). Illicit synthetic drugs.

Relating to illicit synthetic drugs, adds marijuana in places that refer to controlled substances.

Section 37 - CONFORMING

Page 23

AS 17.21.090(3). Definitions - Synthetic drug.

Includes marijuana in places referencing controlled substances.

Section 38 - CONFORMING

AS 17.30.070(c). Order forms; prescriptions.

Relating to regulation of manufacture, distribution, prescription and dispensing of controlled substances- removes AS 11.71.190 (marijuana) as a controlled substance.

Section 39 - CONFORMING

Page 23

AS 17.30.080(a). Unlawful administration, prescription, and dispensation of controlled substances.

Relating to the Federal Controlled Substances Act and prescribers, removes AS 11.71.190 (marijuana).

Section 40 - CONFORMING

Page 23

AS 17.30.080(b). Unlawful administration, prescription, and dispensation of controlled substances.

Removes state statutory reference to AS 11.71.190 (marijuana) in the Federal Controlled Substances Act.

Section 41 - SUBSTANTIVE

Page 24

AS 17.30.140. Education and research.

Directs the Department of Health and Social Services, working in cooperation with the Departments of Law and Public Safety, to develop educational programs for the public regarding alcohol and marijuana abuse prevention.

Section 42 - CONFORMING

Page 25

AS 17.37.030. Privileged medical use of marijuana.

Provides an affirmative defense to a prosecution related to marijuana for registered caregivers charged with offenses related to medical marijuana as previously provided in AS 11.71.090, is now provided in AS 17.38.270 (see p.34).

Section 43 - CONFORMING

Page 25

AS 17.37.070(8). Definitions.

Concerning the definition of medical use of marijuana. Provides the definition of “medical use” for marijuana as previously provided in AS 11.71.090.

Section 44 - INITIATIVE

Page 25

AS 17.38.020. Personal use of marijuana.

Deletes [notwithstanding any other provision of law, except as otherwise provided in this chapter, the] and makes other Uniform Rules Legislative Drafting changes to conform ballot initiative language to legislative drafting standards. This section states that certain marijuana related activities are legal and not a basis for seizure or forfeiture, and prohibits use of marijuana in a public place.

Additionally provides that the definition of “assisting” does not include growing, possessing, processing, using, displaying, purchasing, or transporting marijuana and marijuana plants in excess of the amount allowed in this section.

Section 45 - INITIATIVE

Page 26

AS 17.38.070(a). Lawful operation of marijuana-related facilities.

Relating to retail marijuana stores. Deletes [notwithstanding any other provision of law, the] and makes other Uniform Rules legislative drafting changes to conform ballot initiative language to legislative drafting standards. Provides that certain marijuana related acts are legal and not a basis for seizure or forfeiture when performed by a registered retail marijuana store, or a person 21 years of age or older acting in the person’s capacity as an owner, employee or agent of the store.

Section 46 - INITIATIVE

Page 27

AS 17.38.070(b). Lawful operation of marijuana related facilities.

Relating to marijuana cultivation facilities. Deletes [notwithstanding any other provision of law, the] and makes other Uniform Rules legislative drafting changes to conform ballot initiative language to legislative drafting standards. Provides that certain marijuana related acts are legal and not a basis for seizure or forfeiture when performed by a registered marijuana cultivation facility, or a person 21 years of age or older acting in the person’s capacity as an owner, employee or agent of the facility.

Section 47 - INITIATIVE

Page 27

AS 17.38.070(c). Lawful operation of marijuana related facilities.

Relating to marijuana product manufacturing facilities. Deletes [notwithstanding any other provision of law, the] and makes other Uniform Rules legislative drafting changes to conform ballot initiative language to legislative drafting standards. Provides that certain marijuana related acts are legal and not a basis for seizure or forfeiture when performed by a registered marijuana product manufacturing facility, or a person 21 years of age or older acting in the person’s capacity as an owner, employee or agent of the facility.

Section 48 - INITIATIVE

AS 17.38.070(d). Lawful operation of marijuana related facilities.

Relating to marijuana testing facilities. Deletes [notwithstanding any other provision of law, the] and makes other Uniform Rules legislative drafting changes to conform ballot initiative language to legislative drafting standards. Provides that certain marijuana related acts are legal and not a basis for seizure or forfeiture when performed by a registered marijuana testing facility, or a person 21 years of age or older acting in the person's capacity as an owner, employee or agent of the facility.

Section 49 - INITIATIVE

Page 29

AS 17.38.070(e). Lawful operation of marijuana related facilities.

Provides that is is lawful and not a basis for forfeiture or seizure for a person or business to lease or allow the use of property for marijuana related activities allowed under Secs. 45-48. Deletes [notwithstanding any other provision of law, it] and makes stylistic drafting changes.

Section 50 – SUBSTANTIVE

Page 29

AS 17.38.090. Rulemaking.

Directs the marijuana control board to adopt a regulation that will prohibit a retail marijuana store from selling more than five grams of marijuana concentrate per day to a customer.

Section 51 - SUBSTANTIVE

Page 29

AS 17.38.110(a). Local Control.

Allows for a local governments and established villages to prohibit the operation of marijuana cultivation, manufacturing, testing, or retail facilities through the act of an ordinance.

Section 52 - SUBSTANTIVE

Pages 29 through 37

AS 17.38.200. Misconduct involving marijuana in the first degree.

A person commits the crime of MIM in the 1st degree, which is a class A misdemeanor, if they do any of the following without a license:

- Possesses 25 or more marijuana plants.
- Manufactures more than six marijuana plants.
- Delivers or transports more than one ounce of usable marijuana or more than six marijuana plants.
- Gives any amount of marijuana to a person under 21.
- Manufactures a marijuana concentrate using a volatile or explosive gas.
- Delivers or transports one ounce or less of usable marijuana for remuneration.
- Delivers or transports up to six immature plants for remuneration;

A person with a registered marijuana establishment commits the crime of MIM in the 1st degree if they do not comply with the license requirements and knowingly:

- Possesses 25 or more marijuana plants.
- Manufactures more than six marijuana plants.
- Transports more than one ounce of usable marijuana or more than six marijuana plants.
- Delivers any amount of marijuana to a person under 21.
- Manufactures a marijuana concentrate using a volatile or explosive gas.

A person with a registered marijuana establishment commits the crime of MIM in the 1st degree if they do the following with criminal negligence:

- Allows a person to deliver marijuana to a person under 21 who is not a medical marijuana patient 18 years of age or older.
- Allows a person under 21 years to enter and remain in the licensed premise who is not a medical marijuana patient 18 years of age or older.
- Allows a person under 21 years to use marijuana within the licensed premises.
- Allows a person under 21 to deliver marijuana.
- Delivers marijuana to a person under 21 who is not a medical marijuana patient 18 years of age or older.

AS 17.38.210. Misconduct involving marijuana in the second degree.

A person commits the crime of MIM in the 2nd degree, which is a class B misdemeanor, if, at the time of the misconduct, the person:

- Is at least 21 years of age, is not a registered marijuana establishment and knowingly:
 - o Possesses 6-25 marijuana plants or possesses; or
 - o Delivers more than one ounce of usable marijuana in a public place or possesses or delivers more than six marijuana plants.
- Is a registered marijuana establishment not in compliance with the registration requirements and knowingly:
 - o Possesses 6-25 marijuana plants
 - o Delivers or sells any amount of marijuana
- Is not a registered marijuana establishment and knowingly sells any amount of marijuana.

AS 17.38.220. Misconduct involving marijuana in the third degree.

A person commits MIM in the 3rd degree, which is a violation, if they:

- Manufacture marijuana in a location where the plants are in public view, not secure from unauthorized access, or on property not in possession of the person or without consent of the property owner.

- Are under 21 and attempts to purchase marijuana with false identification, or otherwise misrepresents the person's age.
- Are under 18 and possesses, uses, or displays any amount of marijuana.
- This section does not apply to a person assisting enforcement.

AS 17.38.230. Misconduct involving marijuana in the fourth degree.

A person commits MIM in the 4th degree, which is a violation, if they:

- Are over 21 and use any amount of marijuana in a public place
- Are between 18-20 and use, display, or possess 1 ounce or less of marijuana.

AS 17.38.240. Proof of registration to be exhibited on demand; penalty.

Requires a licensee to have a copy of their marijuana license at all times when transporting more than one ounce of marijuana, and shall present the license on demand by a peace officer.

AS 17.38.250. Bail forfeiture for certain offenses.

Requires the court to make a bail schedule allowing defendants to pay the fine for violations without a court appearance for MIM 3rd (AS 17.38.220) and MIM 4th (AS 17.38.230.)

AS 17.38.260. Restriction on prosecution for certain persons in connection with a significant adverse marijuana reaction.

A person may not be prosecuted for various marijuana misconduct crimes if that person seeks, in good faith, medical or law enforcement assistance for another person who is believed to be experiencing a significant adverse marijuana reaction and the person remains at the scene until assistance arrives and cooperates with medical or law enforcement personnel.

AS 17.38.270. Affirmative defense to a prosecution under AS 17.38.200 – AS 17.38.230; medical use of marijuana.

In a prosecution for certain MIM crimes, it is an affirmative defense that the defendant is a patient, or the primary caregiver for a patient, and:

- At the time of the alleged misconduct, the person is a medical marijuana cardholder.
- The alleged misconduct complies with requirements of AS 17.37 and the defendant is the primary or alternate caregiver.

AS 17.38.280. Court records of violations by minors confidential.

The court records of a MIM crime or violation are confidential if the person is under 18 years of age.

AS 17.38.290. Local option.

An established village shall prohibit the operation of marijuana establishments if a majority of the voters in the election approve the ban. A ballot to adopt a local option must contain language substantially similar to the following: "Shall (name of village) adopt a local option to prohibit the operation of marijuana establishments? (yes or no)."

AS 17.38.300. Removal of local option.

An established village shall remove a local option if a majority of the voters vote to remove the option. The option is repealed effective the first day of the month following certification of the election results. A ballot question to remove a local option must at least contain language similar to the following: “Shall (name of village) remove the local option currently in effect, that prohibits the operation of marijuana establishments, so that there is no longer any local option in effect? (yes or no).” When issuing a registration in an area that has removed a local option, the board shall give priority to an applicant who was formerly licensed.

AS 17.38.310. Effect of local option on registrations of prohibition of marijuana establishments.

If a local option is in effect, the board may not issue, renew, or transfer a registration for a marijuana establishment located within the perimeter of the village.

AS 17.38.320. Procedure for local option elections.

An election to adopt or remove a local option shall be conducted as follows:

- The lieutenant governor shall place on a separate ballot at a special election the content from a petition that received at least 35 percent of registered voters within the village.
- The election may not be conducted during the first 24 months after the local option was adopted or more than once in a 36-month period.
- Another petition may not be filed until after the question presented in the first petition has been voted on. Only one local option question may be presented in an election.
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AS 17.38.330. Establishment of perimeter of established village.

For purposes of the local option law, the perimeter of a village is a circle around the village that includes an area within a five-mile radius of the post office of the village, or a five-mile radius of another site selected by the local governing body, or the board, if the village doesn’t have a local governing body. If the perimeter overlaps with another village’s perimeter, and that other village has not adopted a local option, then the local option does not apply in the overlapping area.

AS 17.38.340. Notice of the results of a local option election.

If a majority of the voters approve or remove a local option, the lieutenant governor shall notify the board of the results immediately following the election, and the board shall immediately notify the Department of Law and the Department of Public Safety.

Section 53 - INITIATIVE

Page 37

AS 17.38.900(6). Definitions.

Establishes the definition for “marijuana” as defined in the ballot initiative.

Section 54 – INITIATIVE/SUBSTANTIVE

Page 37

AS 17.38.900. Definitions.

Defines “criminal negligence”, “deliver”, “established village”, “knowingly”, “manufacture”, “marijuana concentrate”, “public place” and “usable marijuana.”

Section 55 - CONFORMING

Page 38

AS 18.66.100(c). Protective orders: eligible petitioners; relief.

Allows for protective orders to prohibit the person from consuming marijuana or to require the respondent to participate in marijuana abuse treatment programs.

Sections 56 & 57 - CONFORMING

Pages 40-41

AS 18.67.080; AS 18.67.101. Violent Crimes Compensation.

Prohibits the violent crimes compensation board from denying a victim based on their use of marijuana or from being injured in a vehicle operated by someone under the influence of marijuana.

Section 58 - CONFORMING

Page 42

AS 21.42.365(b). Coverage for treatment of alcoholism or drug abuse.

Defines drug abuse, for insurance purposes, to include marijuana dependency.

Section 59 - CONFORMING

Page 42

AS 23.10.600(a). Employer protection from litigation.

Prohibits legal action against an employer for establishing a drug testing policy and for taking actions based upon the results of a positive drug test.

Section 60 - CONFORMING

Page 42

AS 23.10.600(b). Employer protection from litigation.

Creates an exception in cases when a false positive test result occurs and the employer knew that the result was in error and ignored the true test result because of reckless or malicious disregard for the truth.

Section 61 - CONFORMING

Page 42

AS 23.10.600(d). Employer protection from litigation.

Prohibits legal action against an employer for a false negative test.

Section 62 - CONFORMING

Page 43

AS 23.10.600(e). Employer protection from litigation.

Prohibits action against an employer for not implementing drug testing or prevention programs.

Section 63 - CONFORMING

Page 43

AS 23.10.610. Limits on causes of action for disclosures.

Prohibits action against an employer for defamation, slander or libel due to their use of a drug or alcohol test.

Section 64 - CONFORMING

Page 43

AS 23.10.620(a). Employer policy.

Prohibits employers from conducting drug and alcohol testing without first adopting a written policy and properly informing employees.

Section 65 - CONFORMING

Page 44

AS 23.10.620(b). Employer policy.

Describes the requirements for a written drug testing policy.

Section 66 - CONFORMING

Page 44

AS 23.10.620(c). Employer policy.

Allows employers to test for drug and alcohol testing and investigation.

Section 67 - CONFORMING

Page 45

AS 23.10.620(e). Employer policy.

Describes the parameters of employer drug and alcohol testing.

Section 68 - CONFORMING

Page 45

AS 23.10.620(f). Employer policy.

Clarifies that the requirements for alcohol and drug impairment testing are not an effort to hinder testing by employers.

Section 69 - CONFORMING

Page 45

AS 23.10.630(a). Collection of samples.

Allows employers to test potential employees for alcohol and marijuana impairment.

Section 70 - CONFORMING

Page 46

AS 23.10.630(c). Collection of samples.

Describes how alcohol and marijuana impairment testing should be scheduled.

Section 71 - CONFORMING

Page 46

AS 23.10.630(d). Collection of samples.

Requires employers to pay the entire cost for alcohol and marijuana testing.

Section 72 - CONFORMING

Page 46

AS 23.10.640(a). Testing procedures.

Requires employers to conduct drug and alcohol testing during, immediately before, or immediately after work, and be performed in a manner that guarantees the individual's privacy.

Section 73 - CONFORMING

Page 46

AS 23.10.645(a). On-site testing.

Adds marijuana to the list of substances an employer can include in an on-site testing policy.

Section 74 - CONFORMING

Page 47

AS 23.10.650. Training of test administrators.

Adds marijuana to the list of substances included in the certified test administrator training program.

Section 75 - CONFORMING

Page 47

AS 23.10.655. Disciplinary procedures.

Includes marijuana impairment testing to the list of tests that permit an employer to take adverse employment action if there is a positive drug test and it violates the employer's written policy.

Section 76 - CONFORMING

Page 48

AS 23.10.660. Confidentiality of results; access to records.

Includes "marijuana impairment testing to the types of tests that are privileged and confidential, and may only be disclosed to the employee in question, the individuals designated by the

employer to evaluate test results, or if the disclosure is ordered by a court or governmental agency.

Section 77 – CONFORMING

Page 48

AS 23.10.670. Effect of mandatory testing obligations.

Provides that an employer who is obligated by state or federal law to have drug and alcohol testing shall receive the full protections from litigation contained within AS 23-10.600 – 23.10.699.

Section 78 - CONFORMING

Page 49

AS 23.10.699. Definitions.

“Marijuana” has the meaning given in AS 17.38.900.

Section 79 - CONFORMING

Page 49

AS 25.20.061. Visitation in proceedings involving domestic violence.

Includes marijuana to the list of substances a domestic violence perpetrator shall abstain from possessing or consuming during parent/child visitation, including the 24 preceding hours.

Section 80 - CONFORMING

Page 49

AS 28.01.010(j). Provisions uniform throughout state.

Includes marijuana to the list of substances that could incur DUI, pertaining to the requirement that ignition interlock devices must be applied to all DUI crimes,

Section 81 - CONFORMING

Page 50

AS 28.15.031(b). Persons not to be licensed.

Adds marijuana to the list of substances that, if used habitually to the degree that the person is incapable of safely driving, precludes the department from issuing a driver’s license to that person.

Section 82 – CONFORMING

Page 50

AS 28.15.046(d). Licensing of school bus drivers.

Adds marijuana to the list of substances that can incur a DUI, pertaining to disqualifications from being issued a school bus driver’s license.

Section 83 - CONFORMING

AS 28.15.046(k). Licensing of school bus drivers.

Adds marijuana to the list of substances that can incur a DUI, pertaining to persons permitted to receive a school bus driver's license.

Section 84 - CONFORMING

Page 51

AS 28.15.081(a). Examination of applicants.

Applicants for a driver's license must undergo a test of the applicant's knowledge of the laws and effects of certain substances, including marijuana.

Section 85 – CONFORMING

Page 52

AS 28.15.085. Alcohol and drug awareness and safety examination of applicants.

Adds marijuana to the list of substances included in a test intended for a person applying for a new license after expiration of the previous license upon reaching 21 years of age.

Section 86 - CONFORMING

Page 52

AS 28.15.165(c). Administrative revocations and disqualifications resulting from chemical sobriety tests and refusals to submit to tests.

Adds marijuana to the list of substances that can incur a DUI.

Section 87 - CONFORMING

Page 53

AS 28.15.166(g). Administrative review of revocation.

Adds marijuana to the list of substances that can incur a DUI.

Section 88 - CONFORMING

Page 53

AS 28.15.181(a). Court suspensions, revocations, and limitations.

Adds marijuana to the list of substances that can incur a DUI or refusal, which leads to immediate license revocation if convicted.

Section 89 – CONFORMING

Page 54

AS 28.15.183(a). Administrative revocation of license to drive.

Includes marijuana in the administrative license revocation statutes as it relates to the crime of a minor operating a vehicle after consuming alcohol.

Section 90 – CONFORMING

Page 55

AS 28.15.183(h). Administrative revocation of license to drive.

The department may waive marijuana abuse treatment if the person resides in an area where drug rehabilitation is unavailable.

Section 91 – CONFORMING

Page 55

AS 28.15.184(g). Administrative review of revocation of a minor's license.

Adds marijuana to a provision referencing the crime of a minor operating a vehicle after consuming alcohol.

Section 92 - CONFORMING

Page 55

Amends AS 28.15.191(e). Court and parole board reports to department; surrender of license or identification card.

The court shall report to the department every legal change of name of any person considered to be afflicted with a mental disability or is an habitual user of alcohol, marijuana, or another drug.

Section 93 - CONFORMING

Page 55

AS 28.15.191(g). Court and parole board reports to department; surrender of license or identification card.

After a court has ordered a person to refrain from consuming alcohol or marijuana as part of a DUI or refusal conviction, the court shall require the surrender of that person's ID.

Section 94 – CONFORMING

Page 56

AS 28.15.191(h). Court and parole board reports to department; surrender of license or identification card.

Adds marijuana to a statute relating to conditions of parole and notification.

Section 95 - CONFORMING

Page 56

AS 28.15.271(e). Fees.

Adds "marijuana" to a statute relating to the issuance of new licenses to replace a cancelled license due to being restricted from purchasing alcohol. If the person has been ordered to refrain from consuming alcoholic beverages under Title 4.

Section 96 – CONFORMING

Page 56

AS 28.20.230(c). Proof of financial responsibility for the future.

Adds “marijuana” to the list of substances that can incur a DUI or refusal charge.

Section 97 - CONFORMING

Page 57

AS 28.33.030. Operating a commercial motor vehicle.

Operating a motor vehicle while under the influence of an alcoholic beverage, marijuana, inhalant, or controlled substance.

Section 98 – CONFORMING

Page 57

AS 28.33.031(a). Implied consent for operators of commercial motor vehicles.

Adds “marijuana” to statutes relating to DUI and refusal.

Section 99 – CONFORMING

Page 58

AS 28.33.130(a). Out-of-service orders.

Adds “marijuana” to the list of substances that are prohibited from being consumed within four hours of operating a commercial motor vehicle. This also includes possession of marijuana, unless the marijuana is manifested and documented as part of an authorized shipment of cargo.

Section 100 – CONFORMING

Page 59

AS 28.33.140(a). Conviction resulting in disqualification from driving commercial vehicle.

Adds “marijuana” to offenses that are grounds for immediate disqualification from driving a commercial motor vehicle.

Section 101 - CONFORMING

Page 60

AS 28.33.190. Definitions.

Defines “marijuana” as having the same meaning given in AS 17.38.900.

Section 102 – CONFORMING

Page 60

AS 28.35.028(h)(1). Court-ordered treatment.

Includes “marijuana” into the definitions of “court-ordered treatment program” and “treatment plan”.

Section 103 - SUBSTANTIVE

Page 60

AS 28.35.029(a). Open container.

Provides that a person may not drive a motor vehicle when there is an open marijuana container in the passenger compartment with the exceptions provided below (b.)

Section 104 – SUBSTANTIVE

Page 61

AS 28.35.029(b). Open container.

Creates exceptions to an open marijuana container being in the vehicle: the container is in the trunk of the vehicle; behind the last upright seat in certain vehicles; behind a solid partition that separates the driver from the passengers, or certain types of passenger vehicles.

Section 105 – SUBSTANTIVE

Page 61

AS 28.35.029(c). Open container.

Defines “open marijuana container” as a receptacle that contains marijuana, is open or has a broken seal and there is evidence marijuana has been consumed in the vehicle.

Section 106 – CONFORMING

Page 61

AS 28.35.030(a). Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.

Adds “marijuana” to the DUI statutes.

Section 107 - CONFORMING

Page 62

AS 28.35.030(b). Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.

Adds “marijuana” to the DUI statutes.

Section 108 - CONFORMING

Page 63

AS 28.35.031(a). Implied consent.

Adds “marijuana” to the list of substances associated with DUI. A person is considered to have given consent to a chemical test if lawfully arrested for driving impaired on those substances.

Section 109 - CONFORMING

Page 64

AS 28.35.031(g). Implied consent.

Adds “marijuana” to the implied consent statute. With probable cause, consent is implied to test blood or urine for the presence of marijuana if the person is involved in a motor vehicle accident that causes death or serious physical injury to another person.

Section 110 - CONFORMING

Page 64

AS 28.35.032(a). Refusal to submit to chemical test.

Adds “marijuana” to the refusal statutes.

Section 111 - CONFORMING

Page 65

AS 28.35.032(e). Refusal to submit to chemical test.

Adds “marijuana” to the refusal statutes.

Section 112 - CONFORMING

Page 65

AS 28.35.033(a). Presumptions and chemical analysis of breath or blood.

Adds “marijuana” to the list of substances associated with DUI statutes.

Section 113 - CONFORMING

Page 66

AS 28.35.035(a). Administration of chemical tests without consent.

Adds “marijuana” to the statute providing that a chemical test can be administered without consent if the offender causes death or physical injury to another person.

Section 114 - CONFORMING

Page 66

AS 28.35.035(b). Administration of chemical tests without consent.

Adds “marijuana” to the statute that an unconscious person who is incapable of refusal is considered not to have withdrawn consent and a chemical test may be administered.

Section 115 - CONFORMING

Page 67

AS 28.35.039(1). Definitions: Alcohol safety and controlled substances.

Includes marijuana testing into the Alcohol Safety Action Program.

Section 116 - CONFORMING

Page 67

AS 28.35.039. Definitions for AS 28.35.029 – 28.35.039.

Adds a new paragraph providing “marijuana” has the meaning set forth in AS 17.38.900.

Section 117 - CONFORMING

Page 67

AS 28.35.280(a). Minor operating a vehicle after consuming alcohol.

A peace officer with probable cause can arrest or request a chemical test from a minor, who is at least 14 years of age, but not yet 21, for suspicion of operating a vehicle after consuming alcohol.

Section 118 - CONFORMING

Page 67

AS 28.35.280(b). Minor operating a vehicle after consuming alcohol.

In cases involving minors and vehicles if a chemical test is performed and the discovery of any amount of alcohol is found, the person is cited and released to their parental guardian or legal custodian.

Section 119 - CONFORMING

Page 67

AS 28.35.280(d). Minor operating a vehicle after consuming alcohol.

Involving sentencing, fines and community work for a minors found guilty of operating a vehicle under the influence of alcohol.

Sections 120-122 - CONFORMING

Pages 68

AS 28.35.285(a);(c);(d). Minors refusal to submit to chemical test.

The refusal to submit to a chemical test of a person's breath, is a violation subject to the same caveats and conditions attending a minor's refusal to submit to a request of a peace officer to undergo chemical testing.

Section 123 - CONFORMING

Page 70

AS 28.35.290(b). Driving during the 24 hours after being cited for alcohol or breath test offenses.

A person who has been cited for minor operating a vehicle after consuming alcohol or marijuana, or for refusal, may not operate a vehicle during the 24 hours following issuance of the citation.

Section 124-125 - CONFORMING

Pages 70 & 71

AS 28.35.290(a);(b). Minors Driving during the 24 hours after being cited for alcohol or breath test offenses.

Involving sentencing, fines and community work for a minors found guilty of operating a vehicle during the 24 hour period after being cited for operating a vehicle under the influence of alcohol.

Section 126-127 - SUBSTANTIVE

Pages 71 & 72

AS 29.10.200; AS 29.35. Limitation of home rule powers. Municipal powers and duties.

Provides the right to limit marijuana to the state and municipalities cannot enact or enforce an ordinance inconsistent with 17.38, except as specifically provided by state statute. The section applies to home rule and general law municipalities.

Section 128 - CONFORMING

Page 72

AS 33.16.060(c). Duties of the board of parole.

To conform to the removal of marijuana from inclusion under the definition of a “controlled substance” by separately identifying “marijuana” as a substance falling within the purview of the subsection

Section 129 - CONFORMING

Page 72

AS 33.16.150(b). Conditions of parole.

Adds subsection (b)(11) which permits prohibiting the entry into an establishment where marijuana is sold or otherwise dispensed as a condition of parole.

Section 130 - CONFORMING

Page 73

AS 33.16.900(3). Definitions.

Removes AS 11.71.190 or “marijuana” from the schedule of control substances definition provided for the chapter.

Section 131 - CONFORMING

Page 74

AS 33.30.015(a). Living conditions for prisoners.

Describes the authority and limitations of the commissioner of corrections. Subsection (a)(3)(k) relating to controlled substances and alcohol, adds “marijuana.”

Section 132 - CONFORMING

Page 75

AS 33.30.065(b). Service of sentence by electronic monitoring.

In determining whether to designate a prisoner to serve a term of imprisonment or period of temporary commitment by electronic monitoring. Adds “marijuana” to the list of substances of abuse for consideration for determining whether electronic monitoring is appropriate.

Sections 133-137 - CONFORMING

Pages 76 & 77

AS 34.03.120; AS 34.03.360(7); AS 34.05.100(a); AS 34.05.100(d)(1). Tenant obligations; Landlord Tenant Act.

Includes illegal marijuana activities in the list of conduct a tenant may not knowingly engage in on rented premises.

Section 138 - CONFORMING

Page 77

AS 44.19.645(a). Alaska Criminal Justice Commission.

Removes AS 11.71.190 or “marijuana” from the list of controlled substances reviewed by the Alaska Criminal Justice Commission for the purposes evaluation of sentencing laws and criminal justice practices.

Section 139 - CONFORMING

Page 78

AS 47.10.900(17). Child in Need of Aid Definitions.

Adds “marijuana” to the definition of “intoxicant.”

Section 140 - CONFORMING

Page 78

AS 47.17.024(a). Duties of practitioners of the healing arts.

Requirement that a practitioner must notify closest office of Department of Health and Social Services if the practitioner determines infant adversely affected by alcohol, drug abuse or misuse of inhalants or hazardous materials.

Section 141 - CONFORMING

Page 78

AS 47.37.010. Declaration of policy.

The State’s policy of recognizing, appreciating, and reinforcing examples of sobriety; and in its policy of not criminally prosecuting “alcoholics and intoxicated persons” finding treatment to be a better option.

Section 142 - CONFORMING

Page 78

AS 47.37.030. Powers of Department of Health and Social Services.

The list of prevention and treatment programs the Department is empowered to establish and maintain; in addition, treats “marijuana abusers” throughout subsections in same manner as alcoholics and persons addicted to other substances.

Section 143 - CONFORMING

Page 80

AS 47.37.040. Duties of Department of Health and Social Services.

The Department of Health and Social Services with cooperation from the Department of Public Safety and Administration is required to implement prevention-of-abuse programs. Adds “marijuana abuse” and “marijuana abusers” to the list of types of activity for which these programs are developed.

Section 144 - CONFORMING

Page 84

AS 47.37.170(b). Protective custody.

By including marijuana in the list of causes of incapacitation requiring peace officers to take the incapacitated person into protective custody and deliver the incapacitated person to a treatment facility or secure facility. Minors are not permitted to be placed in jail or other secure facilities.

Section 145 - CONFORMING

Page 84

AS 47.37.170(d). Definitions.

List of causes of incapacitation for which an incapacitated person may not be held beyond his or her period of incapacitation, or for more than 48 hours in any event, at a facility.

Section 146 - CONFORMING

Page 84

AS 47.37.170(f). Treatment and services for intoxicated persons and persons incapacitated by alcohol or drugs.

If a person is admitted to an approved treatment facility, and not incapacitated by drugs or alcohol, they can request that his or her next of kin not be notified and this will be upheld. Adds a person can also not be incapacitated by use marijuana for this privilege.

Section 147 - CONFORMING

Page 84

AS 47.37.170(g). No action for damages.

List of incapacitating substances which, if caused an incapacitated person to be taken into custody, prevents an incapacitated person from bringing an action for damages, unless damages were caused by gross negligence or intentional misconduct.

Section 148 - CONFORMING

Page 85

AS 47.37.170(i). Detention.

Adds marijuana incapacitation to the rules governing length of time an incapacitated person may be held in a detention facility.

Section 149 - CONFORMING

Page 85

AS 47.37.180(a). Emergency commitment.

Adds incapacitation by marijuana to the list of incapacitating substances that qualify for committing an incapacitated person to an approved public treatment facility for emergency treatment.

Section 150 - CONFORMING

Page 85

AS 47.37.190(a). Involuntary commitment.

Establishes requirements for petitions for 30-day involuntary commitment orders. Adds marijuana to the list of substances which, if abused, can help form the basis for involuntary commitment.

Section 151 - CONFORMING

Page 86

AS 47.37.205(a). Procedure for recommitment following 30-day commitment.

Establishes requirements for the petitions of directors of approved treatment facilities for 180-day commitment orders for persons currently committed under a 30-day order. Adds continued marijuana abuse and marijuana incapacitation to petition allegations that form the basis for extended involuntary commitment.

Section 152 - CONFORMING

Page 86

AS 47.37.270(1). Definitions.

Adds “marijuana abuser” to definition of “alcoholic or drug abuser”, by including marijuana and marijuana abuser in the defined terms.

Section 153 - CONFORMING

Page 86

AS 47.37.270(4). Definitions.

Removes marijuana from the definition of “drugs” as identified in AS 11.71, the controlled substance schedules.

Section 154 - CONFORMING

Page 87

AS 47.37.270(7). Definitions.

Adds “marijuana” to the term “incapacitated by alcohol or drugs”, and to the definition of what it means to be incapacitated.

Section 155 - CONFORMING

Page 87

AS 47.37.270(10). Definitions.

Adds marijuana to the definition of “intoxicated person.”

Section 156 - CONFORMING

Page 87

AS 47.38.020(a). Alcohol and substance abuse monitoring program.

Adds marijuana to the list of substances offenders are prohibited from consuming while out on bail or on probation.

Section 157 - CONFORMING

Page 87

AS 47.38.020(c). Alcohol and substance abuse monitoring program twice a day testing.

Adds marijuana to the provision for twice-a-day testing under the program of release and parole.

Section 158 - SUBSTANTIVE

Page 88

Repeals the enumerated statutes.

Section 159 - SUBSTANTIVE

Page 88

Applicability provisions.

Section 160 - SUBSTANTIVE

Page 88

Provides for an immediate effective date.