

**Advisory Board on Alcoholism
and Drug Abuse**



Alaska Mental Health Board

ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
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January 22, 2015

Senator Bill Stoltze, Chairman
Senate State Affairs Committee
Alaska State Capitol, Room 125
Juneau, Alaska 99801

Re: Information Related to January 22, 2015 Committee Hearing

Senator Stoltze,

The Advisory Board on Alcoholism and Drug Abuse offers the enclosed information to support your committee's consideration of implementation of Ballot Measure 2/A.S.17.38. The Advisory Board on Alcoholism and Drug Abuse (ABADA) is the state planning and advisory board for substance abuse in Alaska. ABADA has a statutory mandate to "act in an advisory capacity to the legislature, the governor, and state agencies" in matters related to alcoholism and drug abuse (A.S. 44.29.140(a)). We provide this information pursuant to these statutory responsibilities. We make no recommendations, instead offering objective information in response to questions and issues raised during this morning's hearing. Our board members and staff are available as a resource to you and your colleagues as you consider these and other issues related to Ballot Measure 2 and A.S. 17.38.

Local Control

Committee members asked about how local communities can respond to legalization of marijuana enterprises. While communities cannot prohibit personal use or cultivation as described in A.S. 17.38.020-17.38.030,¹ Ballot Measure 2 does provide that local governments can prohibit or regulate commercial marijuana enterprises through an ordinance or voter initiative (A.S. 17.38.110(a)-(b)). How local governments enforce these decisions is limited. Ballot Measure 2 expressly limits violations of local ordinances and regulations related to commercial marijuana enterprises to civil penalties (A.S. 17.38.110(b)).

In addition to the powers granted in the new laws, local governments have existing authority over areas related to marijuana enterprises. For example, municipalities can levy taxes and special assessments (A.S. 29.35.010(6)). Boroughs can levy property, sales, and use taxes (A.S. 29.35.170). First and second class boroughs and first and second class cities can regulate land use (A.S. 29.35.180; A.S. 29.40.010; A.S. 29.35.260).

¹ See also *Ravin v. State*, 537 P.2d 494 (Alaska 1975).

Local governments have the opportunity to make decisions based on local principles and values related to marijuana cultivation, production, sale, and use. Considerations for local governments include:

- How does marijuana cultivation and/or production fit into existing land use plans and zoning ordinances? Are changes to land use/zoning codes necessary to achieve the goals of the local community related to commercial marijuana enterprises?
- Do existing licensing standards refer to similar business or production enterprises in defining health and safety standards for day care facilities? Are changes to licensing standards necessary to achieve the goals of the local community related to commercial marijuana enterprises?
- Do existing taxes and assessments meet the goals of the local community related to commercial marijuana enterprises? Are changes to the local tax structure needed to meet those community goals?

Driving Under the Influence of or Impaired by Marijuana

Committee members asked about setting standards for driving under the influence of marijuana. Ballot Measure 2 does not make it legal to drive under the influence of marijuana.² However, the newly enacted A.S. 17.38 does not establish a legal standard for the crime of driving under the influence of marijuana, nor does it address the active use of marijuana while driving or riding in a car.

Prevalence of Driving Under the Influence of Marijuana: In the 2007 study performed by the National Highway Traffic Safety Administration, 4.46% of daytime drivers and 7.66% of nighttime drivers tested positive for marijuana alone in oral fluid samples.³ The most frequently identified individual drug, other than alcohol, was marijuana.⁴ This may underestimate the overall prevalence of drivers under the influence of marijuana during this study because drivers that tested positive for multiple drugs were not included in these percentages.⁵ (It is important to note that this data reflects the prevalence of marijuana use among drivers and not the incidence of impaired driving.)

According to the 2013 National Survey on Drug Use and Health (NSDUH), 9.9 million people – 3.8% of persons age 12 and up – reported that they had driven under the influence of illicit drugs, including cannabis, within the past year.⁶ This is consistent with the 2012 NSDUH prevalence data (3.9% of persons age 12 and up).⁷ The 2013 NSDUH showed a decrease among the group

² A.S. 17.38.120(b) provides that driving under the influence of marijuana remains subject to existing impaired driving laws.

³ 2007 National Roadside Survey of Alcohol and Drug Use by Drivers, National Highway Traffic Safety Administration, U.S. Department of Transportation.

⁴ *Id.*

⁵ *Id.*

⁶ *Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings*, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, at 31.

⁷ *Id.*

with the highest prevalence: 18 to 25 year-olds (10.6% reported in 2013 compared to 11.9% reported in 2012).⁸

Effect of Marijuana on Driving: Research and study of how marijuana and its active ingredients affect people has shown that individuals can experience impairments in attention and concentration, time and distance perception, hand-eye coordination, reaction time, vigilance, short-term memory, and decision making.⁹ Acute cannabis consumption is associated with an increased risk of a motor vehicle crash, especially for fatal collisions.¹⁰

Most laboratory research of the effects of marijuana has been conducted with low doses of marijuana.¹¹ Research shows that a person's level of impairment is dose-related and can last two to four hours after consumption.¹² This is relevant to Alaska law makers, as recreational use of marijuana may exceed the low-doses used in laboratory studies.

Concurrent Use: Use of marijuana and alcohol together exacerbates the effects of – and impairments caused by – each substance. Driving has been found to be impaired with use of both substances more than if either substance were used alone.¹³ It may be appropriate to set variable tetrahydrocannabinol (THC) concentration limits based on simultaneous concentrations of blood alcohol levels. For example, if a blood alcohol concentration is found to be 0.03% or more, the limit of acceptable THC blood or fluid concentration may be lower than if THC were the only regulated substance detected in the body.¹⁴ Ohio has enacted limits to marijuana metabolites of 5 nanograms per milliliter of blood “when the person is under the influence of alcohol, a drug of abuse, or a combination of them” as a way of addressing concurrent use.¹⁵

Intoxication and Impairment Definition and Limits: Both Colorado and Washington have set limits for driving while using recreational marijuana at five nanograms of THC per milliliter (5ng/ml) of whole blood.¹⁶ Blood concentrations of THC 5ng/ml or higher are punished in the same way as other substance use infractions. In Nevada, it is unlawful to drive with more than 2ng/ml marijuana per milliliter of blood.¹⁷ Ohio has adopted the 2ng/ml limit as well.¹⁸ Research has found that drivers with whole blood concentrations below 5ng of THC per milliliter of blood

⁸ *Id.*

⁹ *Marijuana and Driving - Research Brief*, National Cannabis Prevention and Information Centre (Australia), republished by the University of Washington Alcohol and Drug Abuse Institute, reporting findings from laboratory studies of the effects of marijuana.

¹⁰ *Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis*, Asbridge et al. THE BMJ (formerly THE BRITISH MEDICAL JOURNAL), February 9, 2012.

¹¹ *Marijuana and Driving - Research Brief*, NCPIC.

¹² *Id.*

¹³ *Developing Science-Based Per Se Limits of Driving Under the Influence of Cannabis (DUI/C); Findings and Recommendations by an Expert Panel*, Grotenherm et. al. 2005.

¹⁴ *Id.*

¹⁵ ORC 4511.19(j)(viii)(I).

¹⁶ RCW 46.61.504(1)(b); CRS 42-4-1301(6).

¹⁷ NRS 482.110(3)(g). It is unlawful to drive with more than 5 nanograms of marijuana metabolite per milliliter of blood. NRS 482.110(3)(h).

¹⁸ ORC 4511.19(j)(vii).

are no more likely to crash than sober drivers, though few studies have been conducted with drivers having high blood concentrations of THC.¹⁹

Setting a limit to the amount of THC or marijuana metabolites a person can have in his blood (or urine) does not equate to a ban on using marijuana while driving. The Washington State Legislature is currently considering legislation to address active use while driving (SB 5002 was filed December 5, 2014 and was first heard by the Senate Committee of Law and Justice January 15, 2015).

Testing Drivers for THC: Testing for THC can be done by testing saliva, urine, or blood. The need for a body fluid based test limits the options for effective roadside testing with current technology. Some jurisdictions (Los Angeles, Arkansas, Australia) have implemented the use of oral swab (saliva) tests for suspected driving under the influence. However, marijuana proponents have argued that blood tests are the only effective test for marijuana. Therefore, the protocols for testing by Alaska law enforcement and the designation of (and possible regulation of) laboratories will be required.

Workplace Safety, Drug Policies

The issue of how employers can ensure workplace safety after Ballot Measure 2 arose during this morning's hearing. Employers retain the right to restrict use of marijuana on the premises and to have policies that restrict use of marijuana by employees (A.S. 17.38.120(a)). The impact of Ballot Measure 2 on workplace safety policies will vary depending on the industry and the nature of the work performed.

In the transportation industry, the federal standards for drug-free workplaces still apply. The U.S. Department of Transportation has promulgated regulations with which air, road, marine, and other carriers must comply.²⁰ These include having strong drug and alcohol testing programs and protocol for removing employee who violate drug-free workplace standards from safety-sensitive duties.

Alaska employers operating with contracts or grants from the federal government are still subject to the requirements of the Drug-Free Workplace Act of 1998.²¹ Any Alaska business, non-profit, school district, governmental entity, or other recipient of federal dollars must continue to certify and maintain a drug-free (inclusive of marijuana, still a controlled substance under federal law) workplace.²² Employers not subject to federal oversight can maintain or establish drug-free workplace and safety policies and procedures. There are guidelines and standards for these policies, to ensure that employers and employees are treated equitably.

¹⁹ *Developing Science-Based Per Se Limits of Driving Under the Influence of Cannabis (DUIC); Findings and Recommendations by an Expert Panel*, Grotenherm et. al. 2005.

²⁰ See 49 CFR Part 40.

²¹ See 41 USC 81.

²² See 41 USC §8102 (contractors); 41 USC §8103 (grantees).

Definition of “Public Use”

Alaska is not alone in grappling with what “public” means when applied to marijuana use. Ballot Measure 2/A.S. 17.38 protects the right of personal cultivation and use/consumption – in private and away from public view.²³ There are no similar provisions regarding where a commercial marijuana cultivation facility may be located, and no proscription on public or plain sight growing operations. Whether express legislation, regulation, or ordinances are needed to meet state and community public health objectives should be considered.

Defining what “in public” means for the purposes of A.S. 17.38.020 is not necessarily a *pro forma* exercise. Analogies to prohibitions on drinking alcohol outside licensed premises or smoking in restaurants may not serve. Colorado’s Implementation Task Force was unable to agree on a recommendation as to what “public consumption” means under Amendment 64.²⁴ Whether use/consumption is permitted on front porches or back yards, social clubs, and other venues that could be considered private and public at the same time has plagued Colorado authorities.²⁵ Local jurisdictions in Colorado have acted, but not uniformly.²⁶ We see the same confusion arising here in Alaska, as communities discuss how they will respond to Ballot Measure 2.²⁷

The definition of “public view” is better defined by A.S. 17.38.030(a)(1): a place that cannot be seen “without the use of binoculars, aircraft, or other optical aids.” This provision is limited to personal cultivation of marijuana, and not expressly extended to locations for licensed marijuana cultivation facilities. This may due to the expectation that commercial growing will be indoors rather than in an open field (prevalence of indoor cultivation operations is discussed below).

State and local governments may consider whether clarification of permissible locations for commercial marijuana cultivation and production facilities may operate is necessary. Review of where communities allow alcohol breweries and distilleries to operate shows a desire to sequester these operations away from residential and public areas. In Anchorage, breweries are considered “industrial” operations²⁸ suitable for light industrial districts.²⁹ The same is true in Fairbanks³⁰ and in Juneau.³¹

²³ A.S. 17.38.020(d); A.S. 17.38.030(a)(1).

²⁴ See *Marijuana Legalization in Colorado: Learned Lessons*, Blake, D. and Finlaw, J. HARVARD LAW AND POLICY REVIEW, Vol. 8-2 at 359. (August, 2014) at 374.

²⁵ *Id.* at 374-375.

²⁶ *Id.* citing *Denver Council Flips Vote on Pot Smoking in Front Yards*, Meyer, J. DENVER POST (December 3, 2013); *Club Ned Cannabis Cafe to Open in Nederland*, Byars, M. DAILY CAMERA (Boulder, March 7, 2014); *Marijuana Social Club Back Open in Colorado Springs After Panel Grants Appeal*, Wells, G. THE GAZETTE (Colorado Springs, February 21, 2014).

²⁷ See *Marijuana Town Hall: Sitkans Offer Ideas on Cafes, Kids*, Woolsey, R., KCAW-SITKA (January 21, 2015).

²⁸ AMC 21.05.060(b)(3)(a).

²⁹ AMC 21.40.200 I-1(B)(2)(b).

³⁰ FNSBC 18.38.020(A)(6).

³¹ CBJ Code 49.25.240.

Regulation of Potency and Quality

Committee members spoke to many public health considerations related to marijuana enterprise, and specifically to product quality. The potency of marijuana is measured by the amount of the psychoactive compound, tetrahydrocannabinol (THC), present.³² The 2009 World Drug Report released by the United Nations Office of Drugs and Crime reports that the potency of marijuana in the United States has increased over time, with an average potency of 10% in 2008.³³ The University of Mississippi, with funding from the National Institute on Drug Abuse, has conducted a Potency Monitoring program analyzing cannabis preparation. It reported an increase in potency of confiscated cannabis, from 3.4% in 1993 to 8.8% in 2008.³⁴

The 2009 World Drug Report lists multiple factors that influence the potency of the product including the part of the plant used and the cannabis product type. The method of cultivation also affects the product potency. Higher potencies reported when growth conditions are optimized through indoor, hydroponic operations (a prevalent cultivation method in Alaska). Most potency data are obtained via the testing of samples seized by law enforcement, thus the representativeness of these samples is difficult to determine. Proper sample storage is required as exposure to light and air initiates the conversion of THC to cannabinol, therefore samples stored improperly will yield test results of inaccurately low potencies.

A.S. 17.38 does not specify requirements for the regulation of the potency of marijuana sold in Alaska. A.S. 17.38.090(a)(6) states that labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment shall be included in the regulations adopted by the board. A.S. 17.38.090(a)(7) states that regulations adopted by the board shall include health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana.

A.S. 17.38 does not specify requirements for enforcement of potency levels of marijuana sold in Alaska. Colorado selected potency testing as a regulatory feature.³⁵ The state Department of Public Health and Environment inspects, and the Department of Review certifies, these testing facilities. All retail marijuana cultivation facilities and retail marijuana product manufacturing facilities are required to have at least 10% of their harvest or production batches sampled each year for potency or contaminants.³⁶ The state of Colorado requires the documented destruction of the entire batch of product that has failed a potency test. If the proper corrective actions are not taken after a failed potency test, a license violation may be issued on the basis of public safety.³⁷

Regulation of the quality of marijuana products sold for consumption by eating or drinking would appear to rest on the same public health and safety interests as regulation of other foods

³² 2009 World Drug Report: *Why Does Cannabis Potency Matter?* United Nations Office on Drugs and Crime, at 97.

³³ *Id.*

³⁴ *Potency Trends of D9-THC and Other Cannabinoids in Confiscated Cannabis Preparations from 1993 to 2008*, Mehmedic et al. JOURNAL OF FORENSIC SCIENCES (September 2010).

³⁵ CR 1502-1503.

³⁶ R 712 – Retail Marijuana Testing Facility: Mandatory Sampling and Testing Program (F)(4) at 43.

³⁷ R 1507 – Retail Marijuana Testing Program: Contaminated Product and Failed Test Results (C) at 57.

and beverages. For example, the State of Colorado requires contaminant testing on all retail marijuana products by a licensed, certified Retail Marijuana Testing Facility. Under CR 1501 C, this testing must include examination for the presence of (1) microbes, (2) mold and mildew, (3) filth, and (4) residual solvents. This type of contaminant testing should be considered by the State of Alaska to protect public health of consumers.

Existing law in Alaska may already provide for this public health and safety need. The Alaska Food, Drug, and Cosmetic Act (A.S. 17.20) governs many aspects of the production and sale of foods. Marijuana products sold with the intent that they be eaten or drunk fall within the scope of the Act,³⁸ which may limit what sorts of products may be sold or distributed to the public. The Department of Environmental Conservation (DEC) enforces this Act, and has authority to promulgate regulations pursuant to the Act.

A.S. 17.20.020 prohibits adulterated food. Adulterated food is defined as food that “bears or contains a poisonous or deleterious substance that may render it injurious to health.”³⁹ The standard for “poisonous or deleterious” is a quantity that has been deemed unsafe and therefore limited by regulation.⁴⁰ Sale of adulterated foods is expressly prohibited.⁴¹ To ensure quality and safety, DEC has free access to all premises where foods are made, packed or stored to conduct inspections and take samples for inspection.⁴² Under current Alaska law, violations of the laws related to food safety can result in civil (A.S. 17.20.315) or criminal penalties. Violations made with criminal negligence are a class A misdemeanor (A.S. 17.20.305; A.S. 11.81.900).

Title 3 of the Alaska Statutes governs the production and sale of agricultural products in Alaska. A.S. 03.05.040 gives the Department of Natural Resources (DNR) and DEC the power to conduct inspections of “agricultural products” and premises where “agricultural products are or have been raised, housed, kept, stored, processed, or sold.” Marijuana is defined as all parts of the cannabis plant, which is clearly an agricultural product within the broad definition at A.S. 03.05.100. Marijuana growers, processors, testers, and producers may all be subject to Title 3 and the regulations promulgated by DNR and DEC.

Regulation of Promotion and Packaging

Committee members asked many questions about the commercial sale of foods and drinks made with marijuana or marijuana derivatives. Existing state law is applicable to these newly legal products. The Alaska Food, Drug, and Cosmetic Act (A.S. 17.20) also governs advertising related to the sale of foods, which would include comestibles containing marijuana.

Mislabeling of food products is expressly prohibited (A.S. 17.20.290(a)(1).) The requirement that labels be complete and accurate provides a basis for ensuring that consumers know and understand that a food product contains marijuana, what the THC content is, and what health and

³⁸ A.S. 17.20.340.

³⁹ A.S. 17.20.020(a).

⁴⁰ A.S. 17.20.030.

⁴¹ A.S. 17.20.290(a)(1).

⁴² A.S. 17.20.200.

safety risks there may be in the consumption of the product. Colorado has promulgated extensive regulations for labeling of marijuana comestibles.⁴³

False advertising is also expressly prohibited. (A.S. 17.20.290(5).) Determination of whether advertisements are false or misleading is governed by A.S. 17.20.300, which expressly requires consideration of:

the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences that may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under customary or usual conditions of use.

False or misleading marketing and other unfair business practices are prohibited by A.S. 45.50.471. Unfair or deceptive business practices include misrepresenting the quality, standard, or grade of goods and intentionally using “deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact” that others rely upon in connection with the sale or advertisement of goods (A.S. 45.50.471(6), (12)). Violations of the laws related to true and accurate advertising can result in civil or criminal penalties. Violations made with criminal negligence are a class A misdemeanor (A.S. 17.20.305; A.S. 11.81.900).

Federal Issues – Financial Institutions

During the hearing today, there were questions related to the conflict between state law legalizing marijuana industry and federal laws related to national drug policy. The U.S. Department of Justice (DOJ) provided express guidance on August 29, 2013 to all federal assistant attorneys general related to continued federal enforcement of the Controlled Substances Act. In a memorandum issued by Deputy Attorney General James Cole (“Cole Memo”), the prosecutorial priorities of the DOJ were affirmed as preventing:

- distribution of marijuana to minors;
- revenue from marijuana sales from going to criminal enterprises;
- diversion of marijuana from states where it is legal under state law to states where it is not;
- use of state-authorized marijuana activity to conceal illegal drug trafficking;
- violence and use of firearms in marijuana enterprises;
- impaired driving and worsening of other adverse public health consequences of marijuana use;
- growth of marijuana on public lands and the attendant public safety hazards; and
- possession of marijuana on federal property.⁴⁴

⁴³ CR 1004.5 – Retain Marijuana Product Packaging and Labeling Requirements (effective February 1, 2015).

⁴⁴ “Guidance Regarding Marijuana Enforcement,” Cole, J. U.S. Department of Justice (August 29, 2013).

The Cole Memo reaffirms the federal authorities' reliance on state and local law enforcement to deal with marijuana activities outside of these priorities (specifically mentioning personal possession and use of small quantities in private settings). However, it also asserts that states "that have implemented systems that provide for regulation of marijuana activity must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner than ensures they do not undermine federal enforcement priorities."⁴⁵ In jurisdictions that manage to do this, "enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."⁴⁶ The Cole Memo warns that, in jurisdictions that cannot meet this expectation, "the federal government may continue its own enforcement efforts and even "seek to challenge the regulatory structure itself."⁴⁷

Ensuring that marijuana enterprises are not inadvertently forced to operate as cash-only businesses is a priority for federal and state governments. Certain public safety issues arise from cash-only business operations. Accounting for tax purposes is made more complicated for both businesses and regulatory/revenue agencies when the operations only use cash. Payroll and the tracking of employment-related taxes and assessments become problematic without access to financial institutions' services. Recognizing that the unexpected lack of access to bank services was a significant impediment to implementation of state laws – and a contributor to the very crimes that the DOJ had prioritized for prevention in the Cole Memo – the U.S. Treasury Department provided express guidance to financial institutions in February 2014.⁴⁸ Based on that guidance, financial institutions can offer services to marijuana enterprises and remain in compliance with their obligations under the Bank Secrecy Act.

Financial institutions retain the discretion as to whether to provide services to marijuana enterprises. While financial institutions are prohibited from refusing to provide services due to discrimination on the basis of a suspect class, they are encouraged to consider the institution's business objectives, evaluation of risks associated with offering a particular financial product or service, and capacity to manage those risks effectively.⁴⁹ The Treasury Department encouraged financial institutions to

"conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of 3 products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi)

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ "BSA Expectations Regarding Marijuana-Related Business," U.S. Department of Treasury (February 14, 2104).

⁴⁹ *Id.*

ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.”⁵⁰

The guidance on how to offer services to marijuana enterprises in a responsible manner specifically reiterates the obligation of financial institutions to file reports on accounts with suspicious activity. The Treasury Department has created “Marijuana Limited” Suspicious Activity Reports for filing on accounts that, after due diligence, the financial institution reasonably believes is not engaged in activity identified in the Cole Memo as a federal priority for prosecution.⁵¹ For those accounts the financial institution has reason to believe are part of an effort to conceal proceeds of illegal activities or other unlawful purposes, a “Marijuana Priority” Suspicious Activity Report is required.⁵² Currency transaction reports on transactions of more than \$10,000 cash are always required of marijuana enterprises.⁵³ Banks in Colorado were not reassured by the Treasury Department’s guidance.⁵⁴ Many financial institutions are waiting for federal legislation, such as the Marijuana Businesses Access to Banking Act (H.R. 2652, introduced by Rep. Ed Perlmutter on July 10, 2013 but never heard).

Alaska regulates banks under A.S. 06. Major changes to the state’s statutory and regulatory framework may not be warranted, though there are areas for consideration by policy and law makers. For example, A.S. 06.05.240 permits a state bank acquisition of property to satisfy or protect a loan. While this is typically a business decision to be made by the financial institution, there are public health and safety considerations involved in whether a bank should take marijuana enterprises’ assets – specifically the marijuana plants and products themselves – to secure a loan. Thus, there may be a need for DCCED and the Alaska Legislature to review the Alaska Banking Code and regulations promulgated under such authority to assure that state law and policy align with federal and state public health and safety objectives.

Regulatory Entity

Committee members explored whether a separate regulatory board for marijuana enterprises is needed. Regarding whether marijuana enterprises should be regulated by the Alcoholic Beverage Control Board or a new board, ABADA takes no position. As noted above, regulation of marijuana enterprises will fall within the jurisdiction of multiple executive branches. In deliberations on how to proceed, the Legislature may consider the following issues and points of information.

Based on Alaska’s experience with unlawful marijuana enterprises, it is expected that the demand for marijuana products will spur significant cultivation of marijuana plants and manufacturing of marijuana derivatives and products:

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Colorado Bankers Association Statement Regarding DOJ and Treasury Guidance on Marijuana and Banking*, last visited November 10, 2014 at <http://www.coloradobankers.org/?page=60&terms=%22marijuana%22>.

Demand for Alaskan-grown marijuana continues to be high as a result of its exceptional tetrahydrocannabinol (THC) content. Because Alaskan produced marijuana is extremely high quality; Alaska is considered a marijuana exporting state.

Alaska State Troopers 2013 Annual Drug Report

The Alaska State Troopers (AST) Statewide Drug Enforcement Unit (SDEU) reports that “most [unlawful] commercial marijuana growing operations are found in communities along Alaska’s road system,” and that these operations include “extremely sophisticated indoor growing operations.”⁵⁵ Between 2011 and 2013, 199 marijuana grow operations were closed down by state and local law enforcement.⁵⁶ During that same period, over 15,000 marijuana plants and nearly 1,000 pounds of processed marijuana have been seized by state and local law enforcement agencies.⁵⁷ These figures probably do not represent the entire extent of unlawful marijuana production in Alaska, and so may or may not provide an estimate of the demand for lawful production. These figures do inform the discussion of how State and local governments will address the significant public health and safety interest in regulating not just how much marijuana is cultivated or produced, but also ensuring the safety and quality of the raw and finished products.

It is reasonable to expect that these and other growing operations not closed down by law enforcement will seek licenses to operate lawfully. Using the number of known unlawful growing operations between 2011 and 2013, an average of at least 66 applications for cultivation licenses can reasonably be expected, with unknown numbers of applications for production and retail licenses. As a point of reference, the ABC Board currently has three dedicated licensing staff responsible for an average of 149 licenses processed annually.⁵⁸

In conclusion, the Advisory Board on Alcoholism and Drug Abuse appreciates the Legislature’s efforts to implement Ballot Measure 2/A.S. 17.38 in the best interests of all Alaskans, and stand ready to support those efforts.

Sincerely,



J. Kate Burkhart
Executive Director

cc: Members, Senate State Affairs Committee
Members, Advisory Board on Alcoholism and Drug Abuse

⁵⁵ Alaska State Troopers, Alaska Bureau of Investigation Statewide Drug Enforcement Unit, 2013 Annual Drug Report at 10.

⁵⁶ *Id.* at 11.

⁵⁷ *Id.* The U.S. Drug Enforcement Agency seized another 45.1 pounds of marijuana during this time. *Id.* at 15.

⁵⁸ Review of public reports of active alcoholic beverage licenses published by the Department of Revenue showed that 147 licenses expired in 2013, 144 licenses expired in 2014, and 157 licenses expired in 2015. License queries run November 11, 2014 at https://online-tax.alaska.gov/ATP/WebDoc/_/#4 and <http://www.tax.alaska.gov/programs/programs/queries/alcohol/license/license.aspx?60165>.