

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

February 11, 2015

1:06 p.m.

**MEMBERS PRESENT**

Representative Gabrielle LeDoux, Chair  
Representative Wes Keller, Vice Chair  
Representative Neal Foster  
Representative Bob Lynn  
Representative Matt Claman  
Representative Max Gruenberg  
Representative Charisse Millett

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 5

"An Act relating to the persons who may be appointed conservators of a protected person."

- HEARD & HELD

HOUSE BILL NO. 79

"An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 5

SHORT TITLE: CONSERVATOR OF PROTECTED PERSONS

SPONSOR(S): REPRESENTATIVE(S) HAWKER

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	JUD
02/06/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/06/15	(H)	<Bill Hearing Canceled>
02/11/15	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 79

SHORT TITLE: MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES

SPONSOR(S): JUDICIARY

01/26/15	(H)	READ THE FIRST TIME - REFERRALS
01/26/15	(H)	JUD, FIN
01/26/15	(H)	JUD AT 1:00 PM BUTROVICH 205
01/26/15	(H)	Heard & Held
01/26/15	(H)	MINUTE(JUD)
01/28/15	(H)	JUD AT 1:00 PM CAPITOL 120
01/28/15	(H)	Heard & Held
01/28/15	(H)	MINUTE(JUD)
01/30/15	(H)	JUD AT 1:00 PM CAPITOL 120
01/30/15	(H)	-- MEETING CANCELED --
02/02/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/02/15	(H)	-- MEETING CANCELED --
02/06/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/06/15	(H)	Heard & Held
02/06/15	(H)	MINUTE(JUD)
02/09/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/15	(H)	-- MEETING CANCELED --
02/11/15	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

CECILE ELLIOTT, Staff

Representative Mike Hawker

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Presented HB 5 on behalf of Representative Mike Hawker, prime sponsor.

TERRY BANNISTER, Attorney

Legislative Legal and Research Services

Legislative Affairs Agency

Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 5, answered questions.

DEB ETHRIDGE, Deputy Director

Central Office

Division of Senior and Disabilities Service

Department of Health & Social Services

Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 5, answered questions regarding conflict of interest and its fiscal note.

DARIN COLBRY

Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 5, offered his support.

THOMAS BROWN, Staff

Representative Gabrielle LeDoux

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Presented CSHB 79, together with a sectional analysis, on behalf of the House Judiciary Standing Committee, sponsor by request, chaired by Representative LeDoux.

RICK SVOBODNY, Deputy Attorney General

Central Office

Criminal Division

Department of Law

Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 79, answered questions.

MICHELE HOLLY

Soldotna, Alaska

**POSITION STATEMENT:** During the hearing on HB 79, testified as to her concerns.

TINA CURTISS

Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 79, testified as to her concerns.

LEIF ABEL

Kasilof, Alaska

**POSITION STATEMENT:** During the hearing on HB 79, testified as to his concerns.

ROBERT DAVIS

Houston, Alaska

**POSITION STATEMENT:** During the hearing on HB 79, testified as to his concerns.

TIMOTHY HALE

Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 79, testified as to his concerns.

DOLLY PHELPS

Nikiski, Alaska

**POSITION STATEMENT:** During the hearing on HB 79, testified as to her concerns.

**ACTION NARRATIVE**

[1:06:06 PM](#)

**CHAIR GABRIELLE LEDOUX** called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Claman, Gruenberg, Foster, Keller, Lynn and LeDoux were present at the call to order. Representative Millet arrived as the meeting was in process.

**HB 5-CONSERVATOR OF PROTECTED PERSONS**

[1:06:59 PM](#)

CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 5 "An Act relating to the persons who may be appointed conservators of a protected person."

[1:07:27 PM](#)

CECILE ELLIOTT, Staff, Representative Mike Hawker, Alaska State Legislature, stated that HB 5 expands the definition of conservator under AS 13.26.210. She explained that under certain statutes certain criteria prohibits a person from being appointed conservator unless they are a relative. However, she noted, the list of relatives is specific to spouse, adult child, parent, or sibling, thereby excluding other relatives. House Bill 5 expands the definition to an adult related by blood, marriage or adoption, allowing for greater control in making decisions in the best interests of their family. She advised this statutory limitation was pointed out by Darin Colbry, whose desire is to be conservator for his daughter-in-law except was thwarted by current statute. She offered that the judicial process is not changed by the legislation in appointing a conservator, or weakens the court's authority to act in the best interest of the protected person. She conveyed the bill is supported by the Alaska Commission on Aging.

[1:10:42 PM](#)

REPRESENTATIVE CLAMAN surmised that the proposed bill is to remove the language "the spouse, adult child, parent, or sibling" and replace it with "an adult related by blood,

marriage, or adoption." He said that within the definition section there is no definition of those three terms, but that he believes the four terms being deleted are defined. He questioned whether there is a definition being incorporated, and if so, where.

MS. ELLIOTT deferred to the drafter, Terry Bannister.

[1:11:33 PM](#)

TERRY BANNISTER, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, responded that she does not believe there are definitions of the new terms in the legislation at this time.

[1:12:58 PM](#)

REPRESENTATIVE CLAMAN noted that in today's legal environment, the definition of marriage is receiving a tremendous amount of litigation, and he asked why Ms. Bannister elected to use the word "marriage," in that it is an undefined term. He surmised the goal for this legislation is to expand the scope of people recognized as reasonable people to be considered a conservator.

MS. BANNISTER voiced that at least two people [in Legislative Legal and Research Services] worked on the [drafting of HB 5]. She advised she does not recall choosing those terms, however, there is an interpretation requirement. She offered that she would tend to interpret "by marriage" as someone who is related through the person who is married.

REPRESENTATIVE CLAMAN pointed out that "adult related by blood" appears to be a term with the potential for ambiguity and questioned if thought was given for more clarity for that definition.

MS. BANNISTER reiterated that she did not prepare that particular item and "it could certainly be clarified if you wanted to clarify it. We always recommend clarifying anything that is ambiguous."

[1:14:42 PM](#)

REPRESENTATIVE GRUENBERG noted the law was initially enacted in 1972, and amended a number of times. He questioned whether, when it was enacted, it was part of the Uniform Probate Code.

MS. BANNISTER advised she assumed so but she would have to double check.

1:15:30 PM

REPRESENTATIVE GRUENBERG questioned if anyone had reviewed the Annotated Version of the Uniform Probate Code to determine the interpretation of other courts with this subsection.

MS. BANNISTER advised she has not reviewed it.

MS. ELLIOTT remarked she is aware it is from 1972, and was proposed in 1994, but believes the recommendations of the Uniform Probate Code were not adopted. However, she stated, she could not expounded on Representative Gruenberg's question.

1:16:19 PM

REPRESENTATIVE GRUENBERG advised he would like an answer to this question as he does not know why the subsection was drafted the way it was drafted. He posited there is no reason to limit subsection (c) to a spouse, adult child, parent or sibling. The only issue should be that the court determines the potential conflict of interest in (b) is not substantial and it should not make a difference who the person is as long as there is no conflict of interest. He suggested cutting the language and allowing a sister-in-law, brother-in-law, cousin-in-law, as long as there is no conflict of interest.

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MS. ELLIOTT advised the sponsor defers to the will of the committee on that.

1:18:10 PM

REPRESENTATIVE KELLER referred to the indeterminate fiscal note and noted it is puzzling and requested the rationale because it reads: "However, expanding the number of individuals exempt from prohibition from appointment as conservator may increase the number of vulnerable adults who become victims of financial abuse and exploitation." He questioned how the call could be made between the numbers of extra options for vulnerability against that which may be avoided because the court has a broader choice in selection. The Department of Health & Social Services (HESS) will likely have input if the language is removed as has been suggested. He advised he intends to make a

motion, as the bill now stands, to eliminate the indeterminate fiscal note and go back to a zero fiscal note.

[1:20:07 PM](#)

DEB ETHRIDGE, Deputy Director, Central Office, Division of Senior and Disabilities Service, Department of Health & Social Services, answered that the Division of Senior and Disabilities Services submitted an indeterminate fiscal note because it anticipates an increased pool and opportunity for more conservators, and it also realizes there is a potential for more conflicts of interest. Essentially, the bill expands the number of people with a potential conflict of interest, and because a person is a conservatee they are automatically a vulnerable adult. She pointed out that the division could see people with have a conflict of interest, or a provider, be the conservator, thereby causing an increase in numbers of maltreatment reports. She stipulated she was not saying there would be an increase in maltreatment, just numbers of reports.

[1:21:15 PM](#)

REPRESENTATIVE KELLER questioned whether that would be an extra burden on the court in that the court would have a broader spectrum of people they could pick from, and presumably in that broader spectrum there could be both sides of the issue. There may be the option of appointing someone more responsible or honest with the broader spectrum of choice, he stated.

[1:21:39 PM](#)

CHAIR LEDOUX asked whether one of the categories of spouse, adult child, parents, or sibling, had been eliminated would there have been a negative fiscal note.

[1:21:54 PM](#)

MS. ELLIOTT answered that the division cannot anticipate the numbers of maltreatment reports that will come in and cannot put an estimate on that issue. She related that the division does know with the conflict of interest there is more potential or less potential.

[1:22:13 PM](#)

CHAIR LEDOUX reiterated her question of whether the division would have given the committee a negative fiscal note.

[1:22:18 PM](#)

MS. ELLIOTT responded that she can't answer that question.

[1:22:22 PM](#)

CHAIR LEDOUX advised she is still very uncomfortable with this fiscal note.

[1:22:55 PM](#)

REPRESENTATIVE CLAMAN commented that he shares concerns regarding the fiscal note and assessed the legislation would mean an in-law could be appointed as a conservator, whereas today an in-law could not be appointed. He asked whether there is evidence that in-laws are more likely to take advantage of seniors than people related by blood.

MS. ELLIOTT responded that an in-law could become a conservator barring a condition or conflict of interest. She remarked that within the new language there is an exception so there could be a conflict of interest. She explained the division knows that within the percentage of financial exploitation allegations made to Adult Protection, approximately 45-47 percent involve family members as the alleged perpetrator.

REPRESENTATIVE CLAMAN asked whether the 45-47 percent of family members investigated suggests the legislation should be looking outside the family for more conservators than inside the family.

MS. ELLIOTT responded the division does not have an opinion as to whether a family member would or would not perpetrate financial exploitation. She remarked that her prior response was regarding general financial exploitation reports, not by a conservator, that almost half are by family members.

[1:25:33 PM](#)

REPRESENTATIVE CLAMAN assessed that being a family member does not prevent one from being accused of exploiting a senior.

MS. ELLIOTT responded "No, it does not."

[1:26:29 PM](#)

REPRESENTATIVE GRUENBERG [noted that AS 13.26.210(b) read]:

(b) The court may not appoint a person to be a conservator of a protected person if the person

(1) provides, or is likely to provide during the conservatorship, substantial services to the protected person in a professional or business capacity, other than in the capacity of conservator;

(2) is or is likely to become, during the conservatorship, a creditor of the protected person, other than in the capacity of conservator;

(3) is likely to have, during the conservatorship, interests that may conflict with those of the protected person; or

(4) is employed by a person who would be disqualified under (1) - (3) of this subsection.

REPRESENTATIVE GRUENBERG determined that (3) is what the division is getting into as the others are subsections of examples of people who may have conflicts of interest. He advised that subsection [4] is whether the person is an employee. He surmised the simplest way of cutting the Gordian Knot is to say the court may not appoint a person who is likely to have, during the conservatorship, interests that may conflict with the protected person, or be employed by "somebody like that."

[1:28:05 PM](#)

DARIN COLBRY advised that his father is his conservator, and his wife's conservator is a family friend. He said he preferred his father is assigned as conservator for both of them. He explained that they live with his parents, his parents are aware of their needs and finances, and he and his wife's finances could be together rather than separate. Previously, the court deemed that his father could not be his wife's conservator because his wife lives with his parents, and that his parents are basically rental property owners because they are renting to Mr. Colbry and his wife.

CHAIR LEDOUX closed public testimony after ascertaining no one further wanted to testify.

[1:30:05 PM](#)

REPRESENTATIVE GRUENBERG remarked he would like to take a brief period of time to check with the Uniform Commissioners to understand why [the statute] was drafted in this manner as it appears cumbersome.

[1:30:45 PM](#)

CHAIR LEDOUX advised HB 5 would be held over. She requested Ms. Elliott to work with Representative Gruenberg.

CHAIR LEDOUX suggested to Ms. Ethridge that the division reconsider its fiscal note.

[1:31:41 PM](#)

The committee took an at-ease from 1:31 to 1:34 p.m.

**HB 79-MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES**

[1:34:21 PM](#)

CHAIR LEDOUX announced that the final order of business would be HOUSE BILL NO. 79 "An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

[1:34:39 PM](#)

REPRESENTATIVE KELLER moved proposed committee substitute (CS) to HB 79, Version 29-LS0409\P, Martin, 2/9/15, as the working document. There being no objections, the committee substitute was before the committee.

[1:35:56 PM](#)

THOMAS BROWN, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, advised that [Version P] revises Alaska's criminal statutes to ensure that the will of the people is respected by "cleaning up" some of the now-contradictory laws regarding marijuana. He described the version as large step toward the goal of marijuana conduct being lawful. Mr. Brown then paraphrased the following sectional analysis:

LANGUAGE IN UPPERCASE DESCRIBES CHANGES TO THE SECTION FROM THE PREVIOUS DRAFT

Section 1 - if an aircraft passenger or crew member is under the influence of marijuana the plane is forbidden from flying.

Section 2 - defines the prohibition of marijuana-use as a condition for probation.

NEW SECTION.

Section 3 - re-includes marijuana as a substance which a person may not be under the influence of and use ski trails or equipment.

Section 4 - amends the licensing requirement for nurse practitioners to re-include marijuana abuse as a condition for denial, suspension or revocation.

Section 5 - removes schedule 6A controlled substances from the list of agents an optometrist cannot prescribe.

Section 6 - prohibits pawnbrokers from knowingly entering into a transaction with someone under the influence of marijuana.

Section 7 - defines illegal activity involving marijuana as a reason for abatement of certain places.

Section 8 - re-includes operating a vehicle under the influence of marijuana as a serious criminal offense.

Section 9 - re-establishes the liability of someone who commits a felony while under the influence of marijuana for personal injury or wrongful death.

NEW SECTION.

Section 10 - re-establishes that someone driving a car not under the influence of marijuana or driving on behalf of someone reasonably believed to be under the influence of marijuana cannot be held liable beyond the limits of their individual insurance policy.

NEW SECTION.

Section 11 - defines marijuana for the previous section.

NEW SECTION.

Section 12 - re-establishes the liability of someone driving under the influence of marijuana for personal injury or wrongful death.

Section 13, 14 - removes schedule 6A controlled substances from the statutes defining murder in the second degree and murder of an unborn child.

Section 15, 16 - re-includes marijuana into the statutes defining weapons misconduct in the third and fourth degrees.

Section 17, 18 - removes marijuana from crimes of misconduct with a controlled substance in the third and fourth degrees.

Section 19-24 - amend the controlled substances advisory committee substance schedules to conform with marijuana's new status.

Section 25 - specifies marijuana in the general provisions definition of intoxication.

Section 26, 27 - allows for the prohibition of marijuana use as a condition for pre-trial release.

Section 28 - clarifying definitions of marijuana, accessories and products.

Section 29 - establishes that law enforcement agency laboratory reports are evidence of the weight of marijuana.

Section 30, 31 - allows for the prohibition of marijuana as an authorized sentence or for a term of probation.

Section 32 - restrains the court from sentencing to imprisonment defendants not on parole or probation to be found in violation of statutes now inapplicable.

NEW SECTION. IT IS RECOMMENDED THAT THIS SECTION BE REPEALED ENTIRELY.

Section 33-36 - clarifies that marijuana can be an aggravating or mitigating factor in the sentencing of certain crimes and defines marijuana.

Section 37, 38 - clarifies that synthetic drugs which resemble marijuana are illegal.

Section 39-41 - eliminates the requirement to defer to federal substance scheduling standards in the case of marijuana.

Section 42 - directs HSS to include alcohol and marijuana in the department's educational programs to prevent and deter substance abuse.

NEW SECTION.

Section 43, 44 - provides an affirmative defense for registered caregivers charged with offenses related to marijuana and states the definition of medical use of marijuana.

DEFINED STATUTE HAS BEEN CHANGED FROM PREVIOUS VERSION.

Section 45 - establishes that a person 21 years of age or older may own, operate, be an agent of or be employed by a retail marijuana store with a valid registration and perform all of the related duties and activities and not be prosecuted for it or have it be a basis for seizure or forfeiture.

"NOTWITHSTANDING ANY OTHER PROVISION OF LAW" HAS BEEN DELETED FROM THIS SECTION BECAUSE IT DOES NOT CONFORM WITH MANY STANDARD DRAFTING CONVENTIONS AND COULD SERVE TO ELIMINATE THE EFFECT OF ANY OTHER LAW.

Section 46 - establishes that a person 21 years of age or older may own, operate, be an agent of or be employed by a marijuana cultivation facility with a valid registration and perform all of the related duties and activities and not be prosecuted for it or have it be a basis for seizure or forfeiture.

"NOTWITHSTANDING ANY OTHER PROVISION OF LAW" HAS BEEN DELETED FROM THIS SECTION BECAUSE IT DOES NOT CONFORM WITH MANY STANDARD DRAFTING CONVENTIONS AND COULD SERVE TO ELIMINATE THE EFFECT OF ANY OTHER LAW.

Section 47 - establishes that a person 21 years of age or older may own, operate, be an agent of or be employed by a marijuana product manufacturing facility

with a valid registration and perform all of the related duties and activities and not be prosecuted for it or have it be a basis for seizure or forfeiture.

"NOTWITHSTANDING ANY OTHER PROVISION OF LAW" HAS BEEN DELETED FROM THIS SECTION BECAUSE IT DOES NOT CONFORM WITH MANY STANDARD DRAFTING CONVENTIONS AND COULD SERVE TO ELIMINATE THE EFFECT OF ANY OTHER LAW.

Section 48 - establishes that a person 21 years of age or older may own, operate, be an agent of or be employed by a marijuana testing facility with a valid registration and perform all of the related duties and activities and not be prosecuted for it or have it be a basis for seizure or forfeiture.

"NOTWITHSTANDING ANY OTHER PROVISION OF LAW" HAS BEEN DELETED FROM THIS SECTION BECAUSE IT DOES NOT CONFORM WITH MANY STANDARD DRAFTING CONVENTIONS AND COULD SERVE TO ELIMINATE THE EFFECT OF ANY OTHER LAW.

Section 49 - technical changes to initiative language. "NOTWITHSTANDING ANY OTHER PROVISION OF LAW" HAS BEEN DELETED FROM THIS SECTION BECAUSE IT DOES NOT CONFORM WITH MANY STANDARD DRAFTING CONVENTIONS AND COULD SERVE TO ELIMINATE THE EFFECT OF ANY OTHER LAW.

Section 50 - describes the crime of misconduct involving marijuana in the first degree and classifies it as a class A misdemeanor; describes the crime of misconduct involving marijuana in the second degree and classifies it as a class B misdemeanor; describes the crimes of misconduct involving marijuana in the third and fourth degrees and classifies them as violations; allows for bail forfeiture for marijuana related violations; describes offenses defined by amounts; provides for an affirmative defense for medical marijuana related offenses; provides definitions.

REDEFINES POSSESSION TO 4 OZ INSTEAD OF 1 OZ FOR FIRST DEGREE, MAKES POSSESSION OF BETWEEN 7-24 PLANTES A SECOND DEGREE, MAKES POSSESSION BY UNDER MINORS UNDER 18 A THIRD DEGREE, ALLOWS UNDER 21 YEAR OLDS TO ENTER A MARIJUANA ESTABLISHMENT AT THE REQUEST OF A PEACE OFFICER, MANDATES PEOPLE TRANSPORTING MORE THAN 1 OZ OF MARIJUANA TO KEEP THEIR REGISTRATION ON THEM AT ALL TIMES AND TO PROVIDE IT FOR INSPECTION WHEN REQUESTED BY A PEACE OFFICER, ESTABLISHES THE CALCULATION

MEASURES FOR LIVE MARIJUANA PLANTS, ALLOWS FOR REHABILITATION OF OFFENDERS, RESTRICTS PROSECUTION FOR PERSONS RELATED TO OVERDOSE, DEFINES WHAT MAY BE FORFEITED OR SEIZED IN RELATION TO MARIJUANA OFFENSES.

Section 51 - defines marijuana.  
NEW SECTION.

Section 52 - defines associated terms, including manufacture of marijuana and marijuana concentrate.  
NEW SECTION.

Section 53 - allows for protective orders to require the respondent to participate in marijuana abuse treatment programs.

Section 54, 55 - 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 56 - for insurance purposes defines drug abuse to include marijuana dependency.

Section 57 - prohibits actions against the employer for actions based on the result of the test.  
NEW SECTION.

Section 58 - prohibits employers from knowingly using the results of flawed tests as a basis for action.  
NEW SECTION.

Section 59 - prohibits action against an employer based on the results of a false negative test.  
NEW SECTION.

Section 60 - prohibits action against an employer for not testing for marijuana.  
NEW SECTION.

Section 61 - prohibits action against an employer for defamation, slander or libel due to their use of a marijuana test.  
NEW SECTION.

Section 62 - prohibits employers from conducting marijuana testing without first adopting a written policy and properly informing employees.

NEW SECTION.

Section 63 - describes what a written policy on marijuana testing should consist of.

NEW SECTION.

Section 64 - allows employers to test for marijuana use.

NEW SECTION.

Section 65 - describes the parameters of employer marijuana testing.

NEW SECTION.

Section 66 - statement of how to interpret the previous sections regarding marijuana testing.

NEW SECTION.

Section 67 - allows employers to test employees or potential employees for marijuana.

NEW SECTION.

Section 68 - describes when a marijuana test may be scheduled by employers.

NEW SECTION.

Section 69 - requires employers to pay the entire cost for marijuana testing.

NEW SECTION.

Section 70 - requires collection and testing for marijuana samples to be performed under sanitary conditions and for the documentation thereof.

NEW SECTION.

Section 71 - allows for on-site marijuana testing by employers and requires employers to use only FDA approved equipment.

NEW SECTION.

Section 72 - describes the training requirements of marijuana test administrators.

NEW SECTION.

Section 73 - describes the allowed disciplinary procedures an employer may take based on the results of marijuana tests.

NEW SECTION.

Section 74 - requires the confidentiality of marijuana test results and describes possible exceptions.

NEW SECTION.

Section 75 - describes the benefits received by employers obligated to test employees.

NEW SECTION.

Section 76 - defines marijuana for the purposes of the preceding sections.

NEW SECTION.

Section 77, 78 - prohibits workers compensation claims by employees whose injuries were caused by the intoxication of marijuana.

NEW SECTION.

Section 79 - allows for parental visitation rights to be conditioned on the abstention of marijuana use.

Section 80 - Provisions uniform throughout state, includes "marijuana" in the list of substances that could incur DUIs, pertaining to the requirement that ignition interlock devices must be applied to all DUI crimes.

NEW SECTION.

Section 81 - 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.

NEW SECTION.

Section 82 - Licensing of school bus drivers, pertaining to disqualifications from being issued a school bus driver's license, adds "marijuana" to the list of substances that can incur a DUI. Mainly conforming language to the DUI statutes.

NEW SECTION.

Section 83 - Licensing of school bus drivers, pertaining to persons permitted to receive a school bus driver's license, adds "marijuana" to the list of substances that can incur a DUI.

NEW SECTION.

Section 84 - Examination of applicants, adds "marijuana" to the list of substances that every applicant for a driver's license must undergo a test of the applicant's knowledge of the laws and effects of list of substances.

NEW SECTION.

Section 85 - a person applying for a new license after expiration of the person's license on reaching 21 years of age must pass a test regarding alcohol, marijuana, and drug awareness and safety and the laws relating to alcohol, marijuana, drugs, and driving before the license may be issued or renewed.

NEW SECTION.

Section 86 - Administrative revocations and disqualifications resulting from chemical sobriety tests and refusals to submit to tests.

NEW SECTIONS.

Section 87 - Administrative review of revocation, adds "marijuana" to the list of substances that can incur a DUI.

NEW SECTION.

Section 88 - Administrative revocation of license to drive for consumption or possession of alcohol, marijuana, or drugs, adds "marijuana" to the section title.

NEW SECTION.

Section 89 - 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.

NEW SECTION.

Section 90 - Administrative revocation of license to drive, includes "marijuana" into the administrative license revocation statutes as it relates to the crime

of a minor operating a vehicle after consuming alcohol.

NEW SECTION.

Section 91 - Administrative revocation of license to drive, adds "marijuana" and "marijuana abuse treatment" to ensure that the juvenile ASAP program, if required before issuing a new license, is waived if marijuana treatment is unavailable where that person resides.

NEW SECTION.

Section 92 - 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.

NEW SECTION.

Section 93 - Court and parole board reports to department; surrender of license or identification card, adds "marijuana" to provide that 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.

NEW SECTION.

Section 94 - Court and parole board reports to department; surrender of license or identification card, adds "marijuana" to the section of law that requires the court to surrender someone's ID card, enable the court to order a person from refraining from marijuana consumption, in the same fashion as alcohol, as part of a sentence for conviction under 28.35.030, 28.35.032, or some other similar thing.

NEW SECTION.

Section 95 - 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.

NEW SECTION.

Section 96 - 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.

NEW SECTION.

Section 97 - Proof of financial responsibility for the future, adds "marijuana" to the list of substances that can incur a DUI or refusal charge.

Section 98 - Operating a commercial motor vehicle while under the influence of an alcoholic beverage, marijuana, inhalant, or controlled substance.

NEW SECTION.

Section 99 - Implied consent for operators of commercial motor vehicles, adds "marijuana" to statutes relating to DUI and refusal.

NEW SECTION.

Section 100 - Out-of-service orders, adds "marijuana" to the list of substances that are prohibited from being consumed in the past four hours while 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.

NEW SECTION.

Section 101 - Conviction resulting in disqualification from driving commercial vehicle, adds "marijuana" to offenses that are grounds for immediate disqualification from driving a commercial motor vehicle.

NEW SECTION.

Section 102 - Defines "marijuana" as having the same meaning given in AS 17.38.900.

NEW SECTION.

Section 103 - Court-ordered treatment, includes "marijuana" into the definitions of "court-ordered treatment program" and "treatment plan."

NEW SECTION.

Section 104 - Open container, provides that a person may not drive a motor vehicle when there is an open marijuana container in the passenger compartment.

Section 105 - Open container, creates exceptions to an open marijuana container being in the vehicle, such as when 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 106 - Open container, defines "open marijuana container" as a receptacle that contains marijuana and is open and there is evidence that marijuana has been consumed in the vehicle.

Section 107 - 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 - 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 109 - 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.

NEW SECTION.

Section 110 - 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.

NEW SECTION.

Section 111 - Refusal to submit to chemical test, adds "marijuana" to the refusal statutes.

NEW SECTION.

Section 112 - amends AS 28.35.032(e) (Refusal to submit to chemical test) 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.

NEW SECTION.

Section 113 - amends AS 28.35.033(a) (Presumptions and chemical analysis of breath or blood) 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; and makes a stylistic change by amending AS 28.35.033(a)(1), (2), and (3) by substituting the new term "for each" for the existing term "per" with respect to measuring the ratio of alcohol present in a person's blood to that person's blood volume and with respect to measuring the ratio of alcohol present in a person's breath to that person's breath volume.

NEW SECTION.

Section 114 - amends AS 28.35.035(a) (Administration of chemical tests without consent) 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.

NEW SECTION.

Section 115 - amends AS 28.35.035(b) (Administration of chemical tests without consent) 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.

NEW SECTION.

Section 116 - amends AS 28.35.039(1) (Definitions: Alcohol safety and controlled substances) to include marijuana as a substance coming within the purview of the subsection ("alcohol safety action program").

NEW SECTION.

Section 117 - amends AS 28.35.039 (Definitions: Marijuana) by adding a new paragraph giving "marijuana" the meaning set forth in AS 17.38.900.

NEW SECTION.

Section 118 - amends AS 28.35.280(a) (Minor operating a vehicle after consuming alcohol) by adding the consumption of marijuana to the offense of a minor operating a vehicle after consuming alcohol (any quantity of either substance). The section includes the operation of motor vehicles, aircraft, or watercraft. It permits a peace officer acting with probable cause to place the minor under arrest, request that he or she submit to chemical tests, including, in the case of marijuana, the test of "blood or urine for the purpose of determining the marijuana content of the person's blood or urine"; and transport the person to a testing site.

NEW SECTION.

Section 119 - amends AS 28.35.280(b) (Minor operating a vehicle after consuming alcohol) by treating the discovery of marijuana in a minor's blood as the same as discovering alcohol in a minor's blood (any quantity of either substance).

NEW SECTION.

Section 120 - amends AS 28.35.280(d) (Minor operating a vehicle after consuming alcohol) by making the infraction of a "minor operating a vehicle after consuming alcohol" applicable to minors operating a vehicle after consuming marijuana. The amendment adds the word "marijuana" where appropriate to ensure commensurate applicability of the section to alcohol and marijuana. The amendment also makes grammatical changes.

NEW SECTION.

Section 121 - amends AS 28.35.285(a) (Minors refusal to submit to chemical test) by adding marijuana to the section and by adding the provision that the refusal to submit to a chemical test of a person's breath, "blood, or urine" 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.

NEW SECTION.

Section 122 - amends AS 28.35.285(c) (Minors refusal to submit to chemical test) by adding marijuana to the existing evidentiary rule regarding a minor's refusal to submit to a chemical test authorized by law.

NEW SECTION.

Section 123 - amends AS 28.35.285(d) (Minors refusal to submit to chemical test) by adding "blood or urine" to the type of chemical tests described in the section (breath) and by adding marijuana to the provisions addressing treatment and work-service. The amendment also makes grammatical changes.

NEW SECTION.

Section 124 - amends AS 28.35.290(a) (Driving during the 24 hours after being cited for alcohol or breath test offenses) by adding marijuana to the section and treating marijuana the same as alcohol under the section.

NEW SECTION.

Section 125 - amends AS 28.35.290(b) (Driving during the 24 hours after being cited for alcohol or breath test offenses) by adding marijuana to the section and treating marijuana the same as alcohol under the section. The amendment also makes grammatical changes.

Section 126 - amends AS 28.37.140(a) (Effect of conviction in party state) by adding marijuana to the list of intoxicating substances.

Section 127 - amends AS 29.10.200 (Limitation of home rule powers) by adding subsection (65) (general powers of municipalities), which refers to AS 29.35.148 (marijuana).

Section 128 - amends AS 29.35 (Municipal powers and duties) to include a new section to Article 1, which reserves to the state, except as specifically provided by statute, the authority to regulate marijuana. The new section specifies that a municipality may not enact or enforce an ordinance that is inconsistent with AS 17.38. The section applies to home rule and general law municipalities.

Section 129 - amends 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 130 - amends AS 33.16.150(b) (conditions 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 and by treating marijuana in the same manner as alcohol under the section. The amendment also 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 131 - amends AS 33.16.900(3) (Definitions -- Board, Commissioner, controlled Substance, crime against person, crime involving domestic violence) by defining "controlled substance" as a substance set forth in the schedules at AS 11.71.140 - 11.71.180 (replacing references to AS 11.71.140 - 11.71.190). This amendment makes the definition of "controlled substance" consistent with the removal of marijuana from the controlled substance schedules.

Section 132 - amends AS 33.30.015(a) (Living conditions for prisoners) by adding subsection (a)(3)(k) which denies the commissioner of corrections the ability to permit a prisoner in a state prison to use marijuana or marijuana products.

Section 133 - amends AS 33.30.065(b) (Service of sentence by electronic monitoring) adding marijuana to the list of substances falling within the purview of the subsection (considerations for determining whether electronic monitoring is appropriate).

Section 134 - amends AS 34.03.120 (Tenant obligations-- Landlord Tenant Act) by including "an illegal activity involving marijuana" in the list of activities a tenant may not knowingly engage in on rented premises.

Section 135 - amends AS 34.03.360(7) (Landlord Tenant Act Definitions -- Abandonment, Building and housing codes, dwelling unit, fair rental value, good faith) by removing from the definition of "illegal activity involving a controlled substance" the reference to AS 11.71.040(a)(2) (the provision which makes marijuana a schedule VIA drug--a designation removed under the instant version of SB 30).

Section 136 - amends AS 34.03.360(24)- Definitions (Landlord Tenant Act -- Illegal activity involving a controlled substance) by adding subsection (24), which defines the phrase "illegal activity involving marijuana" to mean a violation of AS 17.38.200(a)(2).

Section 137 - amends AS 34.05.100(a) (Tenant responsibilities in premise not subject to AS 34.03) by including "an illegal activity involving marijuana" in the list of activities a tenant who is not subject to the Landlord Tenant Act may not knowingly engage in on rented premises.

Section 138 - amends AS 34.05.100(d)(1) (Tenant responsibilities in premise not subject to AS 34.03 -- Illegal activity) by adding "illegal activity involving marijuana" to the list of terms assigned the definition provided in AS 34.03.360 (Landlord Tenant Act).

Section 139 - amends AS 44.19.645(a) (Alaska Criminal Justice Commission) by directing the Commission to take into account the new SB 30 Version I controlled substances sections AS 11.71.140 - 11.71.180 (removing marijuana from the controlled substances schedules) when making its assessment of the efficacy of sentencing laws and criminal justice practices.

Section 140 - amends AS 47.10.900(17) (Child in Need of Aid Definitions -- Intoxicant) by adding marijuana to the definition of "intoxicant."

Section 141 - amends AS 47.12.030(b) (Delinquent minors) by adding subsection 7, which includes the violations described in AS 17.38.220(a)(3) (relating to the possession, use, or display of marijuana) to the section's exclusion of such offenses from the Alaska Delinquency Rules and the other provisions of Title 47, Chapter 12. This provision effectively places a violation of AS 17.38.220(a)(3) in District Court subject to the same procedures and sanctions as an adult.

Section 142 - amends AS 47.17.024(a) (Duties of practitioners of the healing arts) 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 (requirement that practitioner notify closest office of Department of Health and Social Services if practitioner determines infant adversely affected).

Section 143 - amends AS 47.37.010 (Declaration of policy) to include the use of marijuana, in addition to alcohol, in the State's policy of recognizing, appreciating, and reinforcing examples of sobriety; and in its policy of not criminally prosecuting "alcoholics and intoxicated persons . . . for their consumption of alcoholic beverages or marijuana," finding treatment to be a better option.

Section 144 - amends AS 47.37.030 (Powers of Department of Health and Social Services) by adding "marijuana abuse" to 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 145 - amends AS 47.37.040 (Duties of Department of Health and Social Services) by adding "marijuana abuse" and "marijuana abusers" to the list of types of activity for which the Department is required to implement prevention-of-abuse programs.

Section 146 - amends 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 facility.

Section 147 - amends AS 47.37.170(d) by including marijuana in the 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 148 - amends AS 47.37.170(f) (Treatment and services for intoxicated persons and persons incapacitated by alcohol or drugs) by specifying that

marijuana is to be treated in the same manner of alcohol: to wit, if a person is not incapacitated by marijuana (and other enumerated substances), that person, if admitted to an approved treatment facility, can request that his or her next of kin not be notified.

Section 149 - amends AS 47.37.170(g) (No action for damages) by including marijuana in the list of incapacitating substances which, if causing 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 150 - amends AS 47.37.170(i) (Detention) adding marijuana incapacitation to the rules governing length of time an incapacitated person may be held in a detention facility.

Section 151 - amends AS 47.37.180(a) (Emergency commitment) by adding 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 152 - amends AS 47.37.190(a) (Involuntary commitment) by adding marijuana to the list of substances which, if abused, can, along with other criteria, form the basis for involuntary commitment.

Section 153 - amends AS 47.37.205(a) (Procedure for recommitment following 30-day commitment) by adding marijuana to the list of substances which, if abused, can, along with other criteria, form the basis for extended involuntary commitment.

Section 154 - amends AS 47.37.270(1) (Definitions -- Alcoholic or drug abuser, commissioner, department, drugs) by including marijuana and marijuana abuser in the defined terms.

Section 155 - amends AS 47.37.270(4) (Definitions -- Drugs) by defining the term "drugs" in reference to statutes which no longer include marijuana as a controlled or scheduled substance.

Section 156 - amends AS 47.37.270(7) (Definitions -- incapacitated by alcohol, marijuana) by adding marijuana to the definition of what it means to be incapacitated.

Section 157 - amends AS 47.37.270(10) (Definitions -- Intoxicated person) by adding marijuana to the definition of what it means to be intoxicated.

Section 158 - amends AS 47.38.020(a) (Alcohol and substance abuse monitoring program) by adding marijuana to the list of substances prohibited from use by a parolee enrolled in certain programs.

Section 159 - amends AS 47.38.020(c) (Alcohol and substance abuse monitoring program -- Twice a day testing) by adding marijuana to the provision for twice-a-day testing under the program of release and parole.

Section 160 - repeals the enumerated statutes.

Section 161 - amends the uncodified law of Alaska by adding a new section which provides that the Act applies to offenses committed on or after the effective date of the Act; except that certain exceptions apply to amendments affecting sentences imposed on or after the effective date for an offense committed on or after the effective date; to amendments that apply to causes of action accrued on or after the effective date of the Act; and to amendments that apply to conditions of parole ordered on or after the effective date of the Act.

Section 162 - provides for an immediate effective date pursuant to AS 01.10.070(c).

[1:40:02 PM](#)

CHAIR LEDOUX referred to Section 42, and asked whether previously this section related to controlled substances included marijuana.

MR. BROWN responded in the affirmative.

CHAIR LEDOUX assessed that in an effort to regulate marijuana as alcohol, the language basically adds to the work of the

Department of the Health & Social Services Commission as alcohol is added.

MR. BROWN responded "that is correct."

[1:41:33 PM](#)

CHAIR LEDOUX asked whether anyone could explain to the committee why the language "notwithstanding any other provision of the law" was taken out.

[1:42:01 PM](#)

MR. BROWN offered his understanding that the sentence "Notwithstanding any other provision of law" would unnecessarily restrict local governments and future legislatures from amending this portion of the law. He said the four provisions were strengthened by adding a section at the end establishing that the regulatory power of the state over marijuana ...

[1:43:55 PM](#)

RICK SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law, advised he has researched that phrase and he does not know what it does. The legislature can always change a statute and "to me it has no meaning one way or the other."

[1:44:42 PM](#)

CHAIR LEDOUX noted that the committee would have to wait for an understanding until Hilary Martin, Legislative Legal and Research Services, is online.

MR. BROWN highlighted that other than the "Notwithstanding any other provision of law" being deleted from these sections, there are no other real changes from previous versions.

[1:46:50 PM](#)

CHAIR LEDOUX clarified that as far as the possession of marijuana is concerned, Section 50 allows more than the amount allowed pursuant to the initiative, but conforms with the Ravin v. State of Alaska, 537 P.2d 494 (Alaska 1975), decision.

MR. BROWN agreed and stated that the amount is four ounces under Ravin, and one ounce under the ballot initiative.

[1:47:20 PM](#)

MR. BROWN continued that Sections 51 and 52 are conforming amendments mainly defining the terms marijuana, manufacture of marijuana, and marijuana concentrates.

CHAIR LEDOUX questioned why "salt" was removed.

MR. BROWN offered his understanding that the initiative drafters took the language from some other initiative in another state and no one involved has any idea what marijuana salt is.

REPRESENTATIVE CLAMAN offered he was fairly certain it is salt infused with marijuana.

CHAIR LEDOUX asked if that would come under an edible.

MR. BROWN responded "probably."

[1:51:11 PM](#)

MR. BROWN related that Sections 77 and 78 prohibit workers compensation claims by employees whose injuries were caused either directly or proximately by the intoxication of marijuana.

REPRESENTATIVE CLAMAN referred to Sections 77 and 78, and commented that "in the existing proposal it was just (a)(3), 'the injury is not proximately caused by the intoxication ...'" and now it is limiting that to alcohol and marijuana. He questioned how that would relate if the employer suspected the employee was experiencing an altered mental state related to illegal drugs.

MR. BROWN advised that is a drafting error.

[1:53:10 PM](#)

REPRESENTATIVE CLAMAN noted the legislation, as it relates to workers compensation claims, should not limit intoxication to alcohol and marijuana when there are other substances at issue.

CHAIR LEDOUX remarked it might read "due to intoxication from alcohol, marijuana, or another controlled substance."

[1:54:38 PM](#)

MR. BROWN advised that Sections 80-90 are related to driving statutes. He explained that as marijuana is no longer a controlled substance, everything having to do with DUIs and licenses being revoked were rewritten to reflect that marijuana is no longer covered under controlled substances. Section 80 requires that marijuana is in the list of substances that could incur a DUI pertaining to the requirement that ignition interlock devices can be applied to all DUI crimes.

CHAIR LEDOUX requested clarification regarding ignition interlock devices in that when it is alcohol, the individual blows in it. She questioned how the interlock device recognizes marijuana.

MR. BROWN remarked that he was also confused by that issue.

[1:56:29 PM](#)

MR. BROWN pointed to Section 81, and advised it adds marijuana to the list of substances if used habitually to the degree that the person is incapable of safely driving precludes the department from issuing a driver's license. Section 82, pertains to disqualifications from being issued a school bus driver's license, adding marijuana to the list of substances.

MR. BROWN explained that most of these provisions are basically conforming amendments to one degree or another.

CHAIR LEDOUX highlighted that marijuana had been included as a controlled substance and that all of these matters that marijuana is going to preclude an individual from doing, alcohol is also listed.

[2:00:03 PM](#)

MR. BROWN informed the committee that Section 89 basically re-adds marijuana to the list of substances that can incur a DUI or a refusal that leads to immediate license revocation.

REPRESENTATIVE MILLETT noted that the legislation adds marijuana to the DUI statutes, and questioned how an individual is tested for being under the influence of marijuana in a DUI scenario.

[2:01:31 PM](#)

MR. SVOBODNY, in responding to Representative Millett, offered a scenario that when a police officer observes erratic behavior,

such as loss of coordination and cognitive process, the individual is then arrested for DUI. He advised the individual is then taken to a location that measures breath alcohol and if the result is .20, the individual is charged with the theory of being under the influence of alcohol. In the event the individual also has marijuana "on board," the police stop at that point. If, he pointed out, in this scenario the breath result is .000 and yet an impairment is observed, the police officer obtains a search warrant, obtains a sample of the individual's blood, sends it to the Washington State Patrol Crime Laboratory where they perform a toxicology on the "common" drugs, including marijuana, and send the report back to the Department of Law (DOL). He related that the Alaska Scientific Crime Detection Laboratory does not perform analysis of blood as it has a federal grant that pays for out-of-state services, together with [technicians/doctors] flying to Alaska to testify regarding their test results. He informed that committee that the state does not have presumptive levels of being under the influence of marijuana and it requires expert testimony in toxicology, as to what it is, and what it means. He noted that point five nanograms per milliliter suggests a person is under the influence, "the states are equally split between two nanograms and five nanograms per milliliter." He conveyed that Alaska requires a [toxicology] expert for marijuana, where an [alcohol] expert is not required because alcohol limits are set by statute.

[2:04:57 PM](#)

REPRESENTATIVE MILLETT surmised when a person is pulled over and no alcohol found in their blood, a search warrant is obtained and a blood test is performed. She questioned whether the person is arrested while blood tests are sent to Washington State.

[2:05:21 PM](#)

MR. SVOBODNY responded that it depends upon the location of the event as to whether the judicial district has a bail schedule, the person would be released from jail on bail. Anchorage, he noted, does not have a bail schedule and a "committee magistrate" will set bail at that time. In other communities the individual would appear before a court the next business day and the court would set bail, he explained.

[2:06:19 PM](#)

CHAIR LEDOUX questioned whether there is science allowing the toxicology test to be performed more quickly.

MR. SVOBODNY, in response to Chair Ledoux, stated there are companies claiming to have developed devices that can test through breath. He opined there are companies in Canada and Colorado, but it would most likely be four-five years down the line before becoming law.

CHAIR LEDOUX surmised that the science will likely "catch up with the law."

MR. SVOBODNY answered in the affirmative

[2:07:58 PM](#)

REPRESENTATIVE CLAMAN offered that there was a criminal investigation of a driver in Anchorage who hit a bicyclist. The [district attorney] elected not to prosecute because even though the driver's blood showed THC in his system, the absence of a standard that qualified as intoxication caused the prosecutors to conclude they did not have a basis to move forward.

[2:08:46 PM](#)

MR. SVOBODNY responded that there are general guidelines and roughly five states have said five nanograms and a person is impaired; and roughly five states have said two nanograms is impairment. He said that states have said if a person has marijuana it is a per se violation as with [minors]. Mr. Svobodny explained the definition of "salt" is a sodium and chloride molecules mix and the ions between the two minerals equals salt. He advised the state crime lab director said for marijuana "it is not a necessary part of the definition, it's been there for at least 30 years."

[2:11:36 PM](#)

REPRESENTATIVE GRUENBERG referred to the concept of bail.

CHAIR LEDOUX [advised it was not related to HB 79].

[2:12:38 PM](#)

REPRESENTATIVE KELLER questioned if the Department of Law could prepare a timeline of exactly what happens in the [marijuana] process. He opined that on February 24, 2015, possession in the

use issue is allowed if the individual is over 21-years of age. He further opined that no marijuana cannot be sold until February 2016 - and there is a time lag after that for licensure.

[2:13:48 PM](#)

MR. SVOBODNY answered that "the sky is not going to fall down if this bill doesn't pass by the 24th." He noted there will be legal issues that will be in dispute, for example hash oil, and different interpretations of what those [legal issues] will be. The state will not treat people driving under the influence of marijuana any differently than today. He opined that from the prosecution and law enforcement point of view it is almost more helpful to deal with the regulatory issues first and then move to criminal issues. He offered to provide the timeline tomorrow.

[2:15:52 PM](#)

REPRESENTATIVE CLAMAN advised that Legislative Legal and Research Services prepared a memo as to the bare minimum the legislature could do, and "sort of" let the [initiative] pass. He offered to share the memo with the committee.

[2:16:49 PM](#)

MR. BROWN related that Section 90, includes marijuana into the administrative license revocation statutes as it relates to the crime of a minor operating a vehicle after consuming alcohol. Section 91, re-inserts marijuana and marijuana use into the juvenile ASAP program, and such is required before issuing a license. Section 92, adds marijuana to a provision referencing the crime of a minor operating a vehicle after consuming alcohol. He advised that Section 93, adds marijuana to provide that the court shall report to the department every legal change of name of any person considered to be afflicted with a mental disability, or a habitual user of alcohol, marijuana, or another drug. Section 94, adds marijuana to the section of law that requires the court to surrender a person's identification and enables the court to order a person to refrain from marijuana consumption in the same fashion as alcohol. Section 95, returns marijuana to the statutes relating to conditions of parole. Section 96, offers that if a person has been ordered to refrain from consuming alcoholic beverages under Title 4, the person can have their issuance of a license suspended. He noted that for insurance purposes, Section 97, adds marijuana to the list of

substances includes marijuana to the list of substances that can incur a DUI, or refusal. Section 98, is a DUI statute, of returning marijuana to a conforming amendment. Section 99, is the same, and Section 100, returns marijuana to the list of substances prohibited from being consumed in the past four hours while operating a commercial motor vehicle, and includes possession. Section 101, refers to commercial motor vehicles and returns marijuana to substances that are an offense and grounds for immediate disqualification with driving a commercial vehicle. Sections 102-103, provide definitions. Section 104-108, are open container laws similar to alcohol statutes. He pointed out that in regulating marijuana like alcohol, these sections define relevant terms and prohibits an open container of marijuana from being in a car and adds exceptions. Sections 109-110, are implied consent of laws re-adding the term marijuana to the list of substances associated with DUIs. Section 111, is regarding chemical tests and returning marijuana to the list of substances.

[2:20:30 PM](#)

MR. BROWN responded to Representative Gruenberg that for the purposes of brevity he was lumping sections together as close as possible. Section 112, reads that after refusal to submit to a chemical test, returns marijuana to the list of definitions close to, for the purposes of refusal of a chemical test.

CHAIR LEDOUX asked Mr. Brown to move to areas not simply conforming amendments.

MR. BROWN advised in that case, he has completed his review.

[2:22:38 PM](#)

CHAIR LEDOUX questioned whether the forfeiture and seizure sections are conforming sections to add marijuana, wherein the state would perform seizures with respect to a violation to alcohol control laws.

MR. BROWN answered in the affirmative in that the bill regulates like alcohol and adds language so it is similar.

MR. BROWN advised Representative Gruenberg the forfeiture and seizure sections can be found on pages 33-34, 39, and 59.

[2:25:24 PM](#)

MICHELE HOLLY opined that repealing or significantly modifying any portion of the initiative is unconstitutional. She stated the National Highway Transportation Safety Administration published a statement, [approximately 2/6/15] "suggesting or saying outright" that marijuana use has not been found to increase the risk of car crashes according to a new federal report. She remarked that the legislature must preserve all legal protection supported by the voters and not repeal AS 17.38.020, which makes it unlawful for adults 21 and older to possess, use, produce, marijuana for personal use. The initiative provides that an individual 21 and older may grow up to six plants and possess all marijuana produced from those plants on the premises, she conveyed. She informed the committee that it must not ignore this important provision by criminalizing any possession over one ounces without creating an exception to marijuana personally produced.

CHAIR LEDOUX advised that the committee will try to do the will of the people, rest assured.

[2:29:40 PM](#)

The committee took an at-ease from 2:29 to 2:38 p.m. due to technical difficulties.

[2:38:33 PM](#)

TINA CURTISS advised she has grown her own medicine for the last 15 years and her interest in Ravin is as medical law. She has multiple sclerosis and had a \$12,000 per month pharmaceutical bill and, she advised, has to grow between three to five different strains [of marijuana] in order to control her symptoms. She informed the committee that it reduced her pharmaceutical bill to less than \$200, but she has to grow more than the law allows. She answered Chair LeDoux that it takes her between 18-24 plants for enough medication. "There is no way to control some of my symptoms without it, because there is nothing else that controls them." She related that for the last ten years she had never been able to sleep more than two hours in a row, until recently. "When I got the strain going, the first night I smoked some I was able to ... I slept six hours straight." She advised that her neurologist was happy when she found something that allowed her to sleep again, as with what she has, there are too many things to control and the neuropathies are bad. She pointed out that assisted living allowed her to smoke because "they were so bad I was screaming." She related that the same thing happened in October, [2014] at

Alaska Regional Hospital, and the doctor was impressed that she recovered in less than one day once she started taking her marijuana pills because for the previous four days he could not control her symptoms. She indicated her concern about blood tests in that, five years ago, she had not smoked in 28 days, and the doctor argued with her as the lab and chemist had advised that she had smoked that same day. She advised she has smoked marijuana regularly for 15 or 40 years, and it builds up in the system, and hopefully new testing will show the difference.

[2:43:39 PM](#)

CHAIR LEDOUX asked what disease she is suffering from that marijuana helps.

MS. CURTIS responded that she has multiple sclerosis.

[2:44:26 PM](#)

LEIF ABEL advised that the state should consider the definition of "public" and where tourists may consume marijuana. A smoking establishment, like a bar or event should be able to have an area much like a beer garden, he stated. Consumption of marijuana, unlike alcohol, is consumed in a variety of ways, smoking, vapor, tea, or edibles, and there could be concern regarding second-hand smoke unlike edibles.

He noted that medical users within the state do have more rights beyond the discussion here, but if the legislature includes broad language about not using in public the medical patients might get half (indisc.) as well. He opined that AS 17.38.020 and 030, should be retained as they were part of the original initiative. He further opined there is confusion among the public as to the definition of possession and whether possession in the home, or legal possession of transporting is being referred to. He expressed that extracts should not be banned for home use because they are one of the best ways to create edibles, and edibles are the most common manner to consume medically.

[2:49:08 PM](#)

ROBERT DAVIS remarked that in determining intoxication, the two-five nanograms previously discussed remains in an individual's body for several days, if not weeks. He suggested juicing the leaves of marijuana plant and using the raw cannabis to assist

with medical difficulties. Juicing is effective because THC and Cannabidiol (CBD) is not changed into a compound where an individual gets "high" and the individual does not realize that THC or CBD has been consumed other than it helps with maladies, he explained. He opined that the Ravin law should remain intact because it takes at least 30-40 leaves per days to be effective medically. He highlighted that the leaves, considered the "trash" part of the plant, are becoming an important part of the plant, and expressed it is important an individual can legally grow at least 24 plants at home, per patient. The legislature should hire experienced and qualified individuals to assist in the passage of [HB 79], he said.

[2:53:35 PM](#)

TIMOTHY HALE said he is opposed to repealing AS 17.38.020 and 030, and is concerned about the testing and intoxication requirements for driving and pre-employment drug testing. Currently, he explained, pre-employment drug testing is at [indisc.] nanograms per milliliter and at that level, depending upon an individual's body weight, THC can stay in the blood stream from 30-90 days. He questioned whether it would remain at that level for pre-employment alcohol screening with a breathalyzer test.

[2:56:37 PM](#)

DOLLY PHELPS stated that testing will be a difficult "bear to tackle." She read that Dr. Madelyn Butler had indicated that a CBD level should be determined for driving violations. Ms. Phelps opined that CBD has absolutely zero psychoactive effects whatsoever. She further opined that it should be excluded as medical patients must use CBD in very high concentrates in order to heal their physical ailments. She then referred to the testing method in that two-five nanograms used regularly will build up tolerance and she remarked that it is not fair to exclude licensed drivers from using a medication that helps them. She agrees with a previous caller that there are no psychoactive effects when juicing leaves and described a process called decarboxylation to where plant material must be heated to above 240 degrees before THC become active, and mentioned that in its raw form it is "THC acid" or "CBD acid." She questioned the term "registered" in the bill.

[2:59:33 PM](#)

CHAIR LEDOUX advised that "registered" refers to registered facilities for testing and sale.

[HB 79 was held over.]

[3:00:49 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.