

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

February 13, 2015

1:05 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Vice Chair  
Representative Bob Lynn  
Representative Matt Claman  
Representative Max Gruenberg  
Representative Neal Foster

**MEMBERS ABSENT**

Representative Gabrielle LeDoux, Chair  
Representative Charisse Millett

**COMMITTEE CALENDAR**

HOUSE BILL NO. 8

"An Act relating to powers of attorney and other substitute decision-making documents; relating to the uniform probate code; and providing for an effective date."

- 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 8

SHORT TITLE: POWERS OF ATTORNEY

SPONSOR(S): REPRESENTATIVE(S) HUGHES

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	JUD
02/13/15	(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
02/11/15	(H)	Heard & Held
02/11/15	(H)	MINUTE(JUD)
02/13/15	(H)	JUD AT 1:00 PM CAPITOL 120

#### WITNESS REGISTER

GINGER BLAISDELL, Staff  
Representative Shelley Hughes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 8, on behalf of Representative Hughes, prime sponsor.

PAMELA VAN HOUTEN  
Petersburg, Alaska

**POSITION STATEMENT:** Presented the concept of public cafes for consumption of marijuana with regard to CSHB 79.

KAREN O'KEEFE  
Marijuana Policy Project  
West Hollywood, California

**POSITION STATEMENT:** Testified regarding concerns with CSHB 79.

JOHN FARLEIGH  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on CSHB 69, noted concerns.

GEORGE PIERCE  
Kasilof, Alaska

**POSITION STATEMENT:** During the hearing on CSHB 69, noted concerns.

MYSTIEK LOCKERY  
Fairbanks, Alaska

**POSITION STATEMENT:** During the hearing on CSHB 69, noted concerns.

MARY JANE PETERSON  
Palmer, Alaska

**POSITION STATEMENT:** During the hearing on CSHB 69, offered support.

#### **ACTION NARRATIVE**

[1:05:42 PM](#)

**VICE CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Lynn, Claman, Gruenberg, and Keller were present at the call to order. Representative Foster arrived as the meeting was in progress.

#### **HB 8-POWERS OF ATTORNEY**

[1:06:43 PM](#)

**VICE CHAIR KELLER** announced that the first order of business would be HOUSE BILL NO. 8 "An Act relating to powers of attorney and other substitute decision-making documents; relating to the uniform probate code; and providing for an effective date."

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**REPRESENTATIVE SHELLEY HUGHES** spoke as prime sponsor on HB 5 and advised the intent is to protect seniors and individuals at vulnerable stages of their lives from fraud and abuse in power of attorney relationships. She offered that the Alaska Commission on Aging, American Association of Retired Persons (AARP), and the Association of Mature American Citizens (AMAC), have communicated with her in support of this legislation. She described "principle" as the individual granting power, and "agent" as the individual being granted power, as two new

definitions. She further described "jargon" such as "hot powers" wherein an individual must seriously consider granting power. The intention of this legislation includes fewer investigations, lawsuits, and court proceedings focusing around [fraud and abuse] and that sometimes the power of attorney for a child or senior or a [vulnerable individual] moves across state lines and this legislation improves the undertaking for the principle and the agent, she contends.

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The committee took an at-ease from 1:11 p.m. to 1:13 p.m., due to technical difficulties.

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REPRESENTATIVE LYNN requested a legal definition of a senior.

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GINGER BLAISDELL, Staff, Representative Shelley Hughes, Alaska State Legislature, advised that this legislation is not necessarily solely for seniors but is used more often when an individual gets older. The legislation could also be used for someone going into surgery or cancer treatments where they know it will take a few months and would like someone to handle their financial affairs. She opined that the powers could be for anyone of any age.

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REPRESENTATIVE LYNN questioned whether the word "senior" is used in HB 8, and if so, what is the definition.

MS. BLAISDELL replied that she would check.

[1:15:28 PM](#)

REPRESENTATIVE GRUENBERG asked if an individual from the Uniform Commission would be available to testify.

MS. BLAISDELL, in response to Representative Gruenberg, advised that Deborah Behr, Uniform Law Commissioner, is in the audience.

REPRESENTATIVE GRUENBERG inquired whether anyone from the Chicago staff is available.

MS. BLAISDELL answered "Not anybody from Chicago."

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REPRESENTATIVE CLAMAN questioned whether Alaska enacted the Uniform Probate Code, in the 60's, which had power of attorney provisions in it.

REPRESENTATIVE HUGHES responded that the Uniform Probate Code was enacted in 1972.

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REPRESENTATIVE CLAMAN indicated there was recognition within all states to update their Probate Code as to powers of attorney. He questioned whether [HB 8] is an effort to be consistent on a national level that has been perceived to be best practices.

REPRESENTATIVE HUGHES responded "yes" and "no" because the items were reviewed one-by-one and included those that made sense, but did not adopt all of the recommendations. Therefore, the Uniform Law Commission did not provide a letter of support for HB 8, but it does improve the ability to work across state lines.

REPRESENTATIVE CLAMAN asked whether Representative Hughes would be identifying the areas in which the recommendation is to not follow the Uniform Law Commission's recommendations.

REPRESENTATIVE HUGHES offered that she will do her best to point out where the legislation is in alignment and what they did not adopt.

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REPRESENTATIVE GRUENBERG remarked it would be helpful to him that someone from the Chicago staff of the Uniform Commissioners be involved.

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MS. BLAISDELL paraphrased the sectional analysis as follows [original punctuation provided]:

Section 1, Pg 1, ln 4. Replaces the current definition of an "agent" The term attorney-in-fact appears similar but should be distinguished from the term

attorney-at-law. An attorney-at-law in the United States is a lawyer – someone licensed to practice law in a particular jurisdiction. The Uniform Power of Attorney Act and this bill employ the term Agent. As an Agent, an attorney-in-fact is a fiduciary for the principal, so the law requires an attorney-in-fact to be completely honest with and loyal to the principal in their dealings with each other. An Agent would be held to the same level of honesty.

Section 2, Pg 1, ln 9. Corrects the definition of "state" by including the United States Virgin Islands technical.

Section 3, Pg 1, ln 13. Adds new definitions for "durable", "electronic", "power of attorney", "principal", "record" and "sign" as they pertain to this act. It was brought to our attention that a signature or initials could be quite difficult for someone with arthritis. Under this definition, a variety of ways for a person to "sign" would be allowed.

Section 4, Pg 2, ln 17. In this bill an Agent is the person granted powers and the finances belong to the Principal. AS 13.26.326 Agent's acceptance and liability In the event the Agent violates a provision in this act, the Agent must restore the value of the property and reimburse any fees/costs paid associated with the liability. Section 4, Pg 2, ln 28. Agent's duties clearly defines the responsibilities of managing the Principle's financial best interests. An Agent acting in good faith will not be held liable if the Principle's plan cannot be preserved. Section 4, Pg 4, ln 22. AS 13.26.328 Acceptance of Power of Attorney This section pertains to a third party accepting the responsibilities of an Agent – such as an accounting firm, family lawyer, court appointed person, or others. Section 4, Pg 6, ln 10. AS 13.26.329 Termination of Power of Attorney; agent's resignation notice. Identifies the circumstances when a Power of Attorney is terminated.

Section 5, Pg 7, ln 1. AS 13.26 amended to recognize a power of attorney executed in another state. A power of attorney executed in another state is valid in

Alaska if the POA complied with the issuing jurisdiction's law or requirements of the military.

Section 6, Pg 7, ln 9. AS 13.26.332 Statutory Form Power of Attorney This section edits the actual form recognized by the State of Alaska. The most substantive change to the form is requiring the Principle to mark a box for each category. This action will provide the opportunity for the principle to award POA in whole or part to an Agent(s). The form also provides optional grant of specific authority to: Create, amend, revoke, or terminate a trust; make a gift; create or change beneficiaries; or revoke a transfer on death deed.

Section 7, Pg 11, ln 10. Sec 13.26.335 Additional optional provisions Changes the term "attorney-in fact" to Agent.

Section 8, Pg 12, ln 8. Sec 13.26.341 applicability of provisions Changing the terms for consistency; "mark" and "incapacity."

Section 9, Pg 13, ln 2, Pg 14, ln 3. "revoke, create or modify a trust" Removes the option to "revoke, create or modify a trust" in this section. Revoke, Create or Modify a Trust is now.

Section 10-11, Pg 14, ln 27, Pg 15, ln 26.  
Section 11, Pg 16, ln 22, Pg 18, ln 5. A separate selection on the POA form.

Section 12, Pg 19, ln 19. AS 13.26.344(d) Allows the Agent to use credit and debit cards, and electronic transactions.

Section 13, Pg 23, ln 4. (10-14) adds additional responsibilities and clarification responsibilities of the Agent to manage the affairs of the Principal's business(es):

(10) allows the Agent to operate, buy, sell, etc. the Principal's interest in a business

(11) allows the Agent to put additional capital into a business

(12) allows the Agent to participate in reorganization of a business

(13) sell or liquidate the business  
(14) establish the value under a buy-out agreement.

Section 14, Pg 25, ln 18. (13) exercise investment powers available under a contract of insurance or annuity. Identifies an additional function of managing the Principal's insurance or annuity.

Section 15, Pg 25, ln 24. AS 13.26.344(h) Repealed section with respect to gifts and replaced with instructions regarding retirement plans. Provides the Agent with all powers to effectively manage the Principal's retirement plan(s).

Section 16, Pg 26, ln 6. AS 13.26.344(j) amends section regarding personal relationships May or May not include gifts. Requires the Agent to maintain the customary standard of living of the spouse, children, and other dependents of the principal. Includes court ordered financial support. Acts as the Principal's personal representative under HIPAA rules.

Section 17, Pg 28, ln 28. AS 13.26.344(k) amends section regarding government or military service. Includes civil service. Includes allowance and reimbursement for transportation of the individuals. Also allows the Agent to enroll in, apply for, select, reject, change, amend or discontinue a program.

Section 18, Pg 30, ln 7. AS 13.26.344 adds a new subsection: (q) specific authority with respect to gift transactions. This is an optional designation on the POA Form where a Principal can designate the Agent to have the powers to designate gifts.

Section 19, Pg 31, ln 15. AS 13.26.347 is amended to relieve an Agent of liability for breach of duty unless is was committed dishonestly. For example: if the Agent makes a late payment on behalf of the Principal, the Agent would not be held liable for that action. IF the Agent purposefully paid for unauthorized expenditures from the estate, or consistently made late payments and the late fees were significant, the courts could determine that the Agent did not act in the best interest of the Principal and could impose a mediating action.

Section 20, Pg 32, ln 6. AS 13.26.350 amends this section replacing the term "disability or incompetence" to "incapacity". The definition of "incapacity" is on page 36 of this act.

Section 21, Pg 33, ln 2. AS 13.26.353 (a) repealed and reenacted: establishing the incapacity of an individual. Clarifies the grounds for determining incapacity of an individual and includes additional provisions such as if the Principal is missing, detained, unable to return to the United States.

Section 22, Pg 33, ln 24. Technical amendment Inserts the term Agent and updates statutory reference.

Section 23, Pg 33, ln 31. AS 13.26 adds new sections: Sec. 13.26.354 Judicial relief. Sec 13.26.355 Relationship to other laws. Judicial relief allows specified individuals to petition the court regarding the Agent's conduct. This act does not supersede any other law applicable to a financial institution or other entity; allows for electronic signatures.

Section 24, Pg 35, ln 3. Technical amendment inserts the terms Agent, incapacity, and Power of Attorney.

Section 25, Pg 35, ln 23. Technical amendment Removes term Attorney-in-Fact.

Section 26, Pg 35, ln 28. AS 13.26 adds new definitions: "benefits from government programs or civil or military service," "good faith," "incapacity," "retirement plan."

Section 27, Pg 36, ln 30. Adds a new chapter to read: Recognition of Substitute Decision-Making Documents. Sec 13.28.010 Validity of substitute decision making document. Requires that the state of Alaska deem decision-making documents valid for a Principal as long as the documents were executed in compliance with the law from the jurisdiction from which they come. A photocopy or electronically transmitted copy of an original has the same effect as the original. Sec 13.28.020 Meaning and effect of substitute decision-making document. The meaning and effect of the document and the authority of the decision maker are

determined by the law of the jurisdiction where the document was executed. Sec 13.28.030 Reliance on substitute decision making document. A person in good faith accepts the document without the knowledge that the document is genuine, valid and in effect. A person may request that the document be translated and may obtain an opinion of counsel regarding the document. Sec 13.28.040 Obligation to accept substitute decision-making document. Defines circumstances where a person should or may not accept a document. If the document is deemed to be genuine, a person who refuses to accept a document is subject to court action. Sec 13.28.050 Remedies under other law Remedies do not abrogate and right or remedy under a law of this state. Sec 13.28.060 Uniformity of application and construction. When applying a uniform law, Alaska may edit the language to "fit" Alaska law. Sec 13.28.070 Relation to Electronic Signatures in Global and National Commerce Act. This act does not supersede Sec 13.28.090 Definitions. "Decision maker," "good faith," "health care," "person," "personal care," "property," "record," "substitute decision-making document." Sec 13.28.095 Short Title. Uniform Recognition of Substitute Decision Making Documents Act.

Sec 28, Pg 40, ln 8. AS 13.26.338(a) repealed AS 13.26.353(c) repealed Principal no longer draws a line through the sections that he/she DOES NOT want the Agent to manage. Requirement for a person to accept the POA or could receive a \$1,000 civil penalty plus actual costs.

Sec 29, Pg 40, ln 9. Applicability.

Sec 30, Effective Date January 1, 2016.

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MS. BLAISDELL advised that page 9 is a new section "Grant of Specific Authority (Optional)." There is no requirement for an individual to select any of the items, and noted if the individual does not select either "yes" or "no," it is automatically "no." She described "hot powers" as a broad and more impactful transaction an individual would perform. The first one is create, remand, revoke or terminate a trust which, she offered, is a significant responsibility someone may or may not want to give their agent. She offered that making a gift is

very broad, such as, buying a raffle ticket for a student, or a gift to a charity of many thousands of dollars, or to a family member, or to themselves. She described the changing of a beneficiary designation as a significant item that a principle may or may not award to their power of attorney. There are four other items requested from the Uniform Law Commission and "truly I don't know why we didn't get all eight items in, but one of the recommendations would be to add those other items." She said it was not adopted in this version of the bill from the Uniform Law Code, "and certainly we would be happy to entertain those few items."

REPRESENTATIVE HUGHES advised the intention is that all eight items are included in the legislation, but they accidentally fell through the cracks in the drafting.

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REPRESENTATIVE CLAMAN questioned the definition of "hot powers."

MS. BLAISDELL, in response to Representative Claman, advised "hot powers" is a user term she learned from the Uniform Law Commission. "Hot powers" is something independently chosen and not part of a form, and otherwise would not be awarded to the agent. The power must be specifically selected - on the form it is the section "Optional."

REPRESENTATIVE HUGHES added that "hot powers" are very substantial in that the principle is giving hefty power to the agent, such as creating or revoking a trust, or changing a beneficiary, something important the principle consider seriously so it is included in a separate section.

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REPRESENTATIVE GRUENBERG reiterated he would like a document or testimony from the Chicago staff of the Uniform Commissioners, as to the difference between this and the Uniform Act. He is aware the Uniform Probate Code is large and complex and that they do not list in the Uniform Acts Annotated as there are too many.

MS. BLAISDELL remarked that last year she provided to the committee a word-for-word every sectional compared to the Alaska Uniform Code including notes the Uniform Law Commission offered. She advised she will provide copies to the committee of the

entire document of the language the sponsor accepted, and did not accept.

REPRESENTATIVE KELLER suggested Representative Gruenberg work with the sponsor.

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REPRESENTATIVE CLAMAN opined that the Uniform Law Commission chose not to endorse the proposed amendments and asked whether Ms. Deborah Behr would testify, or offer it in writing.

VICE CHAIR KELLER suggested he get together with Representative Gruenberg and the House Judiciary Standing Committee staff, including the items left out by Legislative Legal and Research Services.

REPRESENTATIVE CLAMAN stated he is interested in the areas the Uniform Law Commission differs with HB 8, and the reasons why.

MS. BLAISDELL, in response to Representative Gruenberg, advised that HB 8 enters strictly into financial powers.

REPRESENTATIVE GRUENBERG questioned whether the Uniform Act is limited accordingly.

MS. BLAISDELL answered in the affirmative.

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MS. BLAISDELL responded to Representative Claman and stated that when first looking at the drafting of the bill, with regard to Alaska fraud, it appears to be more toward seniors or elderly parents. When initially drafting, the Uniform Law Commission compared every statute and created the document she previously spoke to. She then met with the long-term care Ombudsman and its attorney, and went through every single line, section by section, and found that a portion of the language the Uniform Law Commission requested already existed in Alaska Statutes and they determined it was similar enough that it did not require a change. She noted there are very specific Alaska laws pertaining to Native rights, shareholder, Native Corporation rights that were not changed. The Uniform Law Commission has not spoken to her directly regarding which sections it felt were not being followed and she could not say which ones might be less impactful than others, she offered.

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MS. BLAISDELL reiterated that the sponsor put four of the eight "hot powers" in the form and accidentally omitted four and suggested the committee may decide to add the four into a committee substitute. Clarification of certain definitions were necessary, such as, "guardian," "conservator," and on page 35, line 24, there is also a generic term "public home care provider." She advised that a "public home care provider" was previously in statute, and the sponsor's intent is to correct the "attorney-in-fact" language. A public home care provider can perform miscellaneous chores so the individual can continue living at home and, she indicated, the statute reads that the public home care provider should not be the individual's power of attorney. The reasoning is that they are being paid to perform a certain set of skills and having the power of attorney may create a conflict of interest as far as the wellbeing of the principle. She indicated that a better definition is necessary for the public home care provider and referred to page 35, line 29 "(c) A special power of attorney created before September 4, 1988 ..." but pled ignorance because she does not know what happened on September 4, 1988, that was so significant as to stay in statute. She advised she would research the issue for clarification.

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REPRESENTATIVE GRUENBERG noted that the House Judiciary Standing Committee is dealing with HB 5, which is regarding conservator and conflict of interest.

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REPRESENTATIVE CLAMAN indicated that one of the global changes in the legislation is changing from the term "disability" to "incapacity." He questioned whether that change is recommended by the Uniform Law Commission.

MS. BLAISDELL responded to Representative Claman that she would have to go through the large document from the Uniform Law Commission to make sure, but she did flag in an existing statute "a note to decision on AS 13.26.010." She remarked that it is talking about the definition of an incapacitated person, which was a court decision that she believes drove the definition change.

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REPRESENTATIVE KELLER referred to page 7, "Validity of power of attorney executed in another state." He noted that the growing sophistication of [Alaska's] powers of attorney may harm certain individuals. He offered a scenario of an individual going through the form marking off what "counts and what doesn't." He said his understanding is that there are two categories of power of attorney that are optional and questioned whether the Uniform Code, or anyone goes to different levels of power of attorney beyond that, like a power of attorney for business. He opined that if it gets too confusing it will end up hurting people because they can't understand it.

REPRESENTATIVE HUGHES answered that ultimately she believes the form is more user friendly and understandable for the individual filling it out as it breaks the form apart. The principle has to stop and think about each item and often a person is filling it out with the assistance of an attorney, she said.

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MS. BLAISDELL offered that an agent could manage all of a principle's financial effects while alive, and when the principle dies someone else might take over and disperse funds differently with a completely different action. She explained it depends upon what phase of life an individual is in and their expectations and offered that there is a wide variety of powers of attorney. Some can be very short term as for coaches when traveling to Canada for sports with a minor. House Bill 8, is strictly dealing with the financial responsibilities of a person when they become incapacitated.

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REPRESENTATIVE KELLER described the form as something that is filled out to prevent problems if there is an incapacity.

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REPRESENTATIVE GRUENBERG, in response to Representative Claman, suggested reviewing two laws passed last year, House Bill 88, 42 SLA 2013, and House Bill 211, 19 SLA 2014. These laws deal with statutory reference to mental retardation with using up-to-date terms, and the employment of persons with disabilities, he explained. He opined this is a sensitive issue to people with certain disabilities or incapacities and how it would fit with the terms used in HB 8. The Uniform Act is drafted nationally

and other states have not gone through the same history as Alaska in the last two years.

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REPRESENTATIVE HUGHES advised she would look at that issue.

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MS. BLAIDELL, in response to Representative Claman, advised that AS 13.26.010 is regarding incapacity versus disability, and the court case notes to the decision.

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REPRESENTATIVE KELLER referred to page 8, and questioned where the "hot powers" came from, how they relate, and he assumed Ms. Blaisdell would give the committee the whole list.

MS. BLAISDELL responded that page 8 is a list of routine financial transactions most individual's deal with on a regular basis, such as, investments, bank accounts, household effects, utility payments, and personal relationships and affairs. The list on page 8 already existed and for the most part is being kept the same, although "gift transactions" was removed, and "retirement plans" added as a separate item. She referred to page 9, "Grant of Specific Authority (Optional), which is the jargon "hot powers," and the grant of "hot powers" is strictly optional. She opined that this is where an agent could commit the greatest level of fraud by giving themselves a gift, changing the beneficiary designation so they receive everything in the end.

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MS. BLAISDELL referred to pages 8-9, and stated she does not yet have an answer as to what happens when a "yes" or "no" block is not marked in some manner. She pointed out that the legislation has a zero fiscal note.

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REPRESENTATIVE GRUENBERG referred to page 9, line 14, revoking a transfer on death deed and suggested expanding it as currently there can be a transfer on death bank accounts, and transfer on death securities accounts. He further suggested the sponsor

speak with Legislative Legal and Research Services on those issues.

[HB 8 was held over.]

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

[2:18:47 PM](#)

VICE CHAIR KELLER 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."

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PAMELA VAN HOUTEN suggested that public cafes for consumption of marijuana could have darkening windows, high window above seven feet, or in rooms where there are no windows, out of view of the public. She stated when the [initiative] was passed, the U.S. Coast Guard advised on the radio that it would prosecute people on marine waters [for consumption of marijuana], and considers it illegal. She opined it is setting up a "huge" area of conflict for the voters who voted for the initiative. To protect the public, tourists, travelers and citizens, not on boats, a public cafe offers a safe location that is open, friendly, and respectable, where people can congregate for public use and consumption. In addition, she stated, bartenders are presently required to monitor patrons at their level of [alcohol] intoxication and, she opined, it could be the café owners' responsibility to monitor people so when the patron leaves the [marijuana café] they are mobile and functioning. She offered that more research should be performed into the café model as they have been successful in Amsterdam and Holland, or they would have been closed down. She would like the state to help to create successful, responsible business models for public distribution and usage.

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KAREN O'KEEFE, Marijuana Policy Project, stated the current draft is a dramatic improvement over previous drafts in taking marijuana out of controlled substances. With regard to the removal of "Not Withstanding any other Provision of Law" at the beginning each of the protections for both marijuana businesses and adults using marijuana, she opined, is in Alaska statutes in a number of places and the intention of that phrase is to make

it crystal clear that these protections enacted by voters trump anything to the contrary. She pointed out that there are many parts of the statutes in Alaska, and possibly something may have inadvertently not have been changed to conform to Measure 2, and that phrase is paramount. If there were a decision that constitutionally makes amendments in future, "except as provided in ...." could be added, and cite a specific [provision]. She stated the project is hopeful the phrase is reinserted and also in keeping Sec. 17.38.020 for adult's protection for possessing, growing and giving marijuana away to others, and that the limits are not reduced in any manner.

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JOHN FARLEIGH, read a paragraph from the 2/13/15, Anchorage Dispatch Publishing, regarding Colorado's experience [article title unknown]:

Colorado has implemented a \$700,000,000 marijuana market without any of the dire consequences that legalization upon it is warned about. Fatal car accidents in the state are flat and well below the past decade average and crime is down in Denver and the surrounding area. While some societal effects of marijuana legalization may not make themselves fully known until several years down the line, the first year of legal weed in Colorado went smoothly.

MR. FARLEIGH encouraged the committee members to read the entire front page article. He pointed to page 17, Sec. 24. AS 11.71.900 and objected to the drafter deleting the sentence "However, the growing of marijuana for personal use is not manufacturing." He opined there should be a distinction between someone growing for their own use at home and someone manufacturing for sale. With regard to Sec. 45-48, relating to seizure or forfeiture and, he opined, there has been a typo - "bases" should be "basis". Mr. Farleigh then related a personal incident with the state troopers due to being at a residence where unbeknownst to him, his friend was growing marijuana in his crawl space. Mr. Farleigh had \$900 in his pocket which was confiscated because the troopers believed he was at the residence to buy marijuana, but he wasn't. He said that he shouted "So, how much money can you have before the police rob you?" The police officer did not answer his question but after a period of time did give back his money. He suggested that there are several aspects to the forfeiture law that need to be addressed as police have been known to abuse that law and seize

property "just because they get to keep it." He opined there should be a provision that property seized could in no manner go to the law enforcement agency that seized it. He suggested seizure should be appropriate only when ordered by a judge as part of the sentencing. He expressed it is not fair for the law enforcement officer to be "judge, jury and executioner."

VICE CHAIR KELLER related that it sounds like Mr. Farleigh has an appreciation for the task before the House Judiciary Standing Committee, in that regulating marijuana at the same level as alcohol is a tall order. He noted that Mr. Farleigh's input is taken seriously and the committee does not want to create a situation where law enforcement is inappropriate.

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REPRESENTATIVE GRUENBERG explained that "bases" is the plural of "basis," and is grammatically correct.

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MR. FARLEIGH referred to possession in the third degree, page 31, line 27, subsection (4) on his draft, and read "knowingly possesses marijuana with an aggregate weight or more than one ounce and less than four ounces ...". He stated that the language does not "line up" with Ravin v. State, 537 P.2d 494 (Alaska 1975), decision allowing four ounces in an individual's home. He stated it should not be possession in the third degree to be consistent with other court rulings. He remarked that when Washington State opened their stores, there was not a legal supply to sell and recommends that licenses for production be issued approximately three months before licensed for sale as that is approximately how long it takes to grow and process the plant.

REPRESENTATIVE KELLER recommends Mr. Farleigh check with the Anchorage LIO on Monday for a new CS.

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GEORGE PIERCE stated that cannabis is not physically addictive, which he noted is not true for tobacco users, heroin, alcohol, and pharmaceutical users. He surmised there is nothing in cannabis programming the brain to crave harder drugs, it does not cause brain damage, and it does suppress violence. Marijuana, he remarked, should be regulated like alcohol and nothing more. He then referred to a study by the U.S. National Highway Safety

Administration regarding marijuana and driving performance in which the study concluded that intoxication in drivers does have some effect but unlike alcohol which appears to encourage risky driving, cannabis appears to produce caution in drivers. He surmised that cannabis may provide a safer substitute for alcohol and other harmful drugs. He said that police should not perform blood testing, as they are not doctors, and lawsuits will come. There are too many restrictions in that legislators are trying to punish, yet it is less dangerous than alcohol or harder drugs. He further said legislators are trying to change the referendum "to do how they want, regulate it and don't change it your way. Educate yourselves and stop listening to the people who do not know anything about it." Mr. Pierce stated he disagrees with Senator Wielechowski's statement that "alcohol, heroin, and cocaine have no medicinal purposes," as "they" use all of those for medicinal purposes. Governor Walker, he noted, said that marijuana could be developed by a new marijuana board that shares resources with the Alcoholic Beverage Control Board.

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MYSTIEK LOCKERY said that a close look should be taken with regard to the forfeiture laws and recommends that for businesses to be prepared for opening it requires four months or longer of growth. Sec 17.38.020, must not be repealed and the legal protections must stay intact. She pointed out that an individual is allowed, under the initiative, to grow six plants including the [harvest] of those plants in a person's home as it would be wrong to make it a crime to grow healthy, well producing plants. She described it as underhanded to attempt to legislate away Ravin. She pointed out that a privately owned business chooses to allow marijuana on its premises, or a business set up to include that purpose should be allowed to do so, she expressed. The smoke of marijuana does not have the same harmful effects as cigarette smoke and it does not pose the same danger to patrons or employees. She said that Dr. Donald P. Tashkin, the lead pulmonologist research scientist for the federal government over 30 years, proved that marijuana does not cause lung cancer and does not lead to chronic obstructive pulmonary disease (COPD). She mentioned that THC and CBD and many other useful compounds of marijuana can be absorbed in several ways and it is important to let people use it in the best manner for them. Whether it is being used medically or recreationally, edibles should in no manner be kept from individuals. She opined it is unreasonable to keep something from adults because you don't want children to have it and

mentioned she heard that Cynthia Franklin, director, ABC board, said she would be able to have regulations ready, including edibles, in a timely manner causing no delays. Ms. Lockery remarked it is not THC that stays in the body for 60-90 days, it is leftover residue waiting to leave the body.

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MARY JANE PETERSON advised she has been an activist for this cause for many years and encouraged the committee to support CSHB 79. She further stated that legislators must not repeal voter enacted legal protections for personal possession, use, and cultivating.

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REPRESENTATIVE KELLER read Dr. George L. Stewart's 2/13/15 opinion into the record (original punctuation included):

HB 79 is Critically Needed ! Marijuana is a toxic substance with known effects on cognitive performance. Its use must be regulated in the same way alcohol is - no driving, flying airplane or other activities which require a high level of cognitive performance. Although use of marijuana is a personal choice, people using it should not put others at risk. Police should be able to arrest those driving under the influence of marijuana, just as they do those driving under the influence of alcohol. HB 79 clarifies the legal issues related to arrests and court procedures resulting from marijuana consumption and is critically needed to protect the safety of non-consumers in Alaska.

PLEASE - VOTE YES on HB 79.

[HB 79 was held over.]

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:52 p.m.