

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 25, 2015

1:08 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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 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
02/13/15	(H)	Heard & Held
02/13/15	(H)	MINUTE(JUD)
02/16/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/16/15	(H)	-- MEETING CANCELED --
02/18/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/18/15	(H)	Heard & Held
02/18/15	(H)	MINUTE(JUD)
02/20/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/20/15	(H)	Scheduled but Not Heard
02/23/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/23/15	(H)	<Bill Hearing Canceled>
02/25/15	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

THOMAS BROWN, Staff
 Representative Gabrielle LeDoux
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented committee substitute for HB 79 on behalf of the House Judiciary Standing Committee, sponsor by request, chaired by Representative LeDoux.

NANCY MEADE, General Counsel
 Office of the Administrative Director
 Alaska Court System
 Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, answered questions in her capacity as General Counsel for the Alaska Court System.

HILARY MARTIN, Attorney
 Legislative Legal Counsel
 Legislative Legal and Research Services
 Legislative Affairs Agency
 Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, answered questions in her capacity as drafter of the legislation.

CYNTHIA FRANKLIN, Director
Alaska Alcohol Beverage Control Board
Department of Commerce, Community, and Economic Development,
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, answered questions in her capacity as Director of the Alaska Alcohol Beverage Control Board and its interpretation of certain provisions.

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Alaska Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing of CSHB 79 in her capacity as Assistant Attorney General, in the Alaska Department of Law

DENNIS CASANOVAS, Major
Deputy Director
Division of Alaska State Troopers
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Answered questions in his capacity as Major in the Department of Public Safety regarding legislative history and grams of marijuana related to CSHB 79.

ACTION NARRATIVE

[1:08:38 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Gruenberg, Keller, Lynn, Millet, and LeDoux were present at the call to order. Representatives Foster and Claman arrived as the meeting was in progress.

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

[1:09:04 PM](#)

CHAIR LEDOUX announced that the only 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."

[1:09:41 PM](#)

REPRESENTATIVE KELLER moved to adopt committee substitute (CS) for HB 79, Version 29-LS0409\S, Martin, 2/23/15, as the working document. There being no objection, Version S was before the committee.

[1:10:12 PM](#)

CHAIR LEDOUX advised that the intent is not to amend or move this bill today in that the House Judiciary Standing Committee will amend [SB 30] when it arrives in committee. In the meantime, there will be discussions regarding CSHB 79, in order to determine what this body wants in the bill.

[1:11:33 PM](#)

THOMAS BROWN, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, paraphrased the following sectional analysis [original punctuation provided]:

Sections 1 - 43 are conforming amendments dealing with under age consumption, impaired driving, weapons misconduct and medical use of marijuana.

Section 44 relates to the personal possession limits of marijuana.

Sections 45 - 49 create new crimes associated with the new marijuana industry.

Sections 50 relates to options for local governments.

Section 51 creates new crimes associated with the misconduct of marijuana.

Sections 53 - 56 are conforming amendments dealing with treatment.

Sections 57 - 78 are conforming amendments dealing with drug testing in the workplace and employment.

Sections 79 - 126 are conforming amendments dealing with drivers licenses and operating motor vehicles while under the influence of marijuana.

Sections 127-128 creates new sections dealing with enforcement and municipal control.

Sections 129-138 are conforming amendments concerning landlords and tenants.

Sections 139-158 are conforming amendments dealing with substance abuse, testing and treatment.

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

Section 1 Amends AS 02.30.030(b) Operation of an aircraft under the influence. A person cannot operate an aircraft with a crew member or passenger who is intoxicated. Adds "marijuana."

Section 2 Amends AS 04.16.050(e) Possession, control, or consumption by a person under the age of 21. Requires the court to prohibit the use of alcohol as a condition of probation. Adds "marijuana."

Section 3 Amends AS 05.45.100(c) Duties and responsibilities of skiers. Prohibiting the use of a tramway, ski slope or trail under the influence. Adds "marijuana."

Section 4 Amends AS 08.68.270 Grounds for denial, suspension, or revocation. Grounds for denial, suspension, or revocation of a nursing license for habitual use of alcohol. Adds "marijuana."

Section 5 Amends AS 08.72.272 Prohibited prescriptions in the practice of optometry. Removes VIA from the list of controlled substances an optometrist is prohibited from prescribing.

Section 6 Amends AS 08.76.170(a) Customer and transaction limitations. Prohibiting a pawnbroker from entering into a transaction with someone who is impaired. Adds "marijuana."

Section 7 Amends AS 09.50.170 Abatement of places used for certain acts. Prohibits illegal activity involving alcoholic beverages, gambling, controlled substances and prostitution. Adds "marijuana "and "illegal activity involving marijuana."

Section 8 Amends AS 09.60.070(c) Attorney fees for victims of serious criminal offenses. The insurer is liable in cases of a serious criminal offense. The list of these types of offenses includes driving under the influence of alcohol. Driving under the influence of "marijuana" is added.

Section 9 Amends AS 09.65.210 Damages resulting from commission of a felony while under the influence of alcohol or drugs. Prohibits a person who is operating a vehicle under the influence from collecting damages in certain circumstances. Adds "marijuana"

Sections 10 and 11 Amends AS 09.65.315(a) Damages resulting from driving the vehicle of a person under the influence of alcoholic beverages. This statute excludes a person from personal liability beyond the limits of an applicable insurance policy for damages resulting from a motor vehicle accident, if the owner of the vehicle was impaired. Adds "marijuana"

Section 12 Amends AS 09.65.320(b) Nonrecovery for damages for economic losses resulting from operating a motor vehicle while uninsured. Prohibits recovery of noneconomic losses in cases of drivers under the influence. Adds "marijuana"

Section 13 Amends AS 11.41.110(a) Murder in the second degree. Relating to misconduct in the second degree of a controlled substance. Line 17, removes the reference to 11.71.040(a)(2) which is repealed in this draft (noted on page 91, section 160.)

Section 14 Amends AS 11.41.150 (a) Murder of an unborn child. Line 18, removing the reference to 11.71.040(a)(2) which is repealed in this draft (noted on page 91, section 160.)

Section 15 Amends AS 11.61.200(a) Misconduct involving weapons in the third degree. In subsection (4) knowingly sells or transfers a weapon to someone under the influence of alcohol or a controlled substance. In subsection (7) A violation of Crimes of trespass in the first degree and during the violation possesses a firearm and under the influence of alcohol or a controlled substance. Adds "marijuana" in subsections (4) and (7)

Section 16 Amends AS 11.61.210(a) Misconduct involving weapons in the fourth degree crimes. In subsection (1) it is misconduct to possess a firearm or have a firearm inside the vehicle when impaired and under the influence of alcohol or a controlled substance. Adds "marijuana" in subsection (1.)

Section 17 Amends AS 11.71.030(a) Misconduct involving a controlled substance in the third degree. Line 29 in subsection (2) removes reference to VIA.

Section 18 Amends AS 11.71.040(a) this section clarifies the repeals of AS 11.71.040(a)(2) and AS 11.71.040(F) noted on page 91, section 160. In subsection (3) on line 13, removes reference to VIA.

Sections 19 and 20 Amends AS 11.71.120(a) Controlled Substances Advisory Committee Removes 11.71.190 (marijuana) from the list of drugs reviewed by the Controlled Substances Advisory Committee.

Section 21 Amends AS 11.71.180(a) Definitions Schedule VA Substances Removes the reference of VIA (marijuana) from the definition of a Schedule VA substances.

Section 22 Amends AS 11.71.311(a) Restriction on prosecution for certain persons in connection with a drug overdose. In cases which someone seeks medical or law enforcement assistance in cases of an overdose of a controlled substance they are prevented from being prosecution under this section. Adds "marijuana"

Section 23 Amends AS 11.71.900(4) Definitions Controlled Substances. Removes 11.71.190 (Schedule VIA) from the definition of "controlled substances."

Section 24 Amends AS 11.71.900(13) Definitions Manufacture. Adds "the growing of marijuana for personal use is not manufacturing" to the definition of "manufacture."

Section 25 Amends 11.81.900(b)(34) Definitions Intoxicated. Adds "marijuana" to the definition of "intoxicated."

Sections 26 Amends AS 12.30.011(b) Release for trial. Conditions that a judicial officer may impose on a person who is released on bail. The judicial officer can (9) prohibit the person from using or possessing marijuana; (18) require them to enroll in the 24/7 testing program; and/or (19) prohibit them from entering a marijuana retail store, as additional conditions of release.

Section 27 Amends 12.30.016 Release for before trial in certain cases. Relating to release on bail in particular types of cases, by adding a new subsection (g) granting a judge in a case charging violations of the new marijuana offenses the ability to prohibit the person from using and/or possessing marijuana, require them to submit to searches without a warrant, require them to submit to drug testing, require them to enroll in the 24/7 testing program, and prohibiting them from entering a marijuana retail store.

Sections 28 and 29 Definitions & Laboratory report of a controlled substance. Amends AS 12.45.080; AS 12.45.084(a) AS 12.45.080 Provides the definitions for "marijuana," "marijuana accessories," and "marijuana products" in AS 12.30.080 are provided in AS 17.38.900. Requirements for laboratory test requirements for DPS and law enforcement. Adds "marijuana" and "usable marijuana" with the given meaning of marijuana given in AS 17.38.900.

Section 30 Amends AS 12.55.015 Fixing eligibility for discretionary parole at sentences. (a) Relating to sentencing by allowing a court to order a defendant to refrain from using marijuana as a probation condition, just as they can currently order a defendant to refrain from consuming alcohol. Adds "marijuana."

Section 31 Amends AS 12.55.015(j) Fixing eligibility for discretionary parole at sentences. To clarify that the courts are not limited or restricted from ordering restrictions on the use of marijuana at the time of sentencing or probation, just as they are not limited in their orders about the consumption of alcohol.

Section 32 Amends AS 12.55.15 (c) (30) Factors in aggravation and mitigation. This statute relates to

factors in aggravation and mitigation, and includes the use of controlled substances and alcohol as a factor in a crime if the substance was used incapacitate the victim. Adds "marijuana"

Section 33 Amends AS 12.55.155 (c) (5) Factors in aggravation and mitigation. This statute relates to factors in aggravation and mitigation, and includes the use of controlled substances and alcohol as a factor in a crime if the substance was used incapacitate the victim. Adds "marijuana"

Section 34 Amends AS 12.55.155(g) Factors in aggravation and mitigation. This statute relates to factors in aggravation and mitigation, and includes the use of controlled substances and alcohol as a factor in a crime if the substance was used incapacitate the victim this section provides this would not be used in cases when the substances were taken voluntarily. Adds "marijuana"

Section 35 Adds a new paragraph to AS 12.55.185 Definitions Adds "marijuana" with the definition provided in AS 17.38.900.

Section 36 Amends AS 17.21.010(b) Illicit synthetic drugs. Relating to illicit synthetic drugs, adds marijuana in places that reference controlled substances subsections (B); (C); and (E.)

Section 37 Amends AS 17.21.090(3) Definitions Synthetic drug. Relating to the definitions of synthetic drug to include marijuana in places referencing controlled substances subsections (B) and (C.)

Section 38 Amends AS 17.30.070(c) Controlled substances. Relating to the classification of controlled substances, removes AS 11.71.900 (marijuana.)

Section 39 Amends AS 17.30.080(a) Controlled Substances Act. Relating to the Federal Controlled Substances Act and prescribing doctors, removes AS 11.71.900 (marijuana.)

Section 40 Amends AS 17.30.080(b) Controlled Substances Act. Relating to the Federal Controlled Substances Act and prescribing doctors. Removes AS 11.71.900 (marijuana.)

Section 41 Amends AS 17.30.140 Education and research. Directs the Department of Health and Social Services, working in cooperation with the Department of Law and Public Safety, to develop educational programs for the public regarding alcohol and marijuana abuse prevention.

Section 42 Amends AS 17.37.030 Medical Marijuana. Relating to medical use of marijuana, provides an affirmative defense for registered caregivers charged with offenses related to medical marijuana as previously provided in AS 11.71.090.

Section 43 Amends AS 17.37.070(a) Definitions Medical use of Marijuana. Concerning the definition of medical use of marijuana. Provides the definition of "medical use" for marijuana as previously provided in AS 11.71.090.

Section 44 Adds AS 17.38.020: Relating to the personal use of marijuana.

Provides:

-Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less marijuana

-Possessing, growing, processing, or transporting six marijuana plants, with three or fewer being mature and possession of the marijuana produced by the plants on the premises where the plants were grown

-Transferring one ounce or less and up to six immature plants to a person 21 years of age or older without remuneration

Prohibits:

-Use of marijuana of in public place Additionally provides the definition of "assisting" does not include possessing, using, displaying, purchasing, or transporting marijuana and marijuana plants in excess of the amount allowed in this section.

Section 45 Amends AS 17.38.070(a) Lawful operation of marijuana related facilities. 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. Language from Ballot Measure 2 with the exception of the phrase: "NOTWITHSTANDING ANY OTHER PROVISION OF LAW" and other stylistic clarifying changes.

Section 46 Amends AS 17.38.070(b) Lawful operation of marijuana related facilities. 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. Language from Ballot Measure 2 with the exception of the phrase: "NOTWITHSTANDING ANY OTHER PROVISION OF LAW" and other stylistic clarifying changes.

Section 47 Amends AS 17.38.070(c) Lawful operation of marijuana related facilities. 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. Language from Ballot Measure 2 with the exception of the phrase: "NOTWITHSTANDING ANY OTHER PROVISION OF LAW" and other stylistic clarifying changes.

Section 48 Amends AS 17.38.070(d) Lawful operation of marijuana related facilities. 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. Language from Ballot Measure 2 with the exception of the phrase: "NOTWITHSTANDING ANY OTHER PROVISION OF LAW" and other stylistic clarifying changes.

Section 49 Amends AS 17.38.070(e) Lawful operation of marijuana related facilities. Relating to licensed businesses that operate in accordance with the laws cannot be subject to forfeiture or seizure. Language from Ballot Measure 2 with the exception of the phrase: "NOTWITHSTANDING ANY OTHER PROVISION OF LAW" and other stylistic clarifying changes.

Section 50 Amends AS 17.38.090 Rulemaking Directs the board to adopt a regulation that will prohibit a retail marijuana store from selling more than five grams of marijuana concentrate per day to a customer.

Section 51 Amends AS 17.38.110(a) Local Control Allows for a local governments and established villages to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or marijuana retail stores through the act of an ordinance.

Section 52.

AS 17.38.200 Misconduct involving marijuana in the first degree. A person commits the crime of MIM in the 1st degree, which is a class A misdemeanor, if they do any of the following without a license:

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

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

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

- Manufactures a marijuana concentrate using a volatile or explosive gas.

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

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

AS 17.38.210 Misconduct involving marijuana in the second degree. A person commits the crime of MIM in the 2nd degree, which is a class B misdemeanor, if, at the time of the misconduct, the person:

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

AS 17.38.220 Misconduct involving marijuana in the third degree.

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

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

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

AS 17.38.230 Misconduct involving marijuana in the fourth degree.

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

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

AS 17.38.240 Proof of registration to be exhibited on demand; penalty. Requires a licensee to have a copy of their marijuana license at all times when transporting more than one ounce of marijuana, and shall present the license on demand by a peace officer.

AS 17.38.250 Bail forfeiture for certain offenses. Requires the court to make a bail schedule allowing defendants to pay the fine for violations without a court appearance for MIM 3rd (AS 17.38.220) and MIM 4th (AS 17.38.230.)

AS 17.38.260 Restriction on prosecution for certain persons in connection with a significant adverse marijuana reaction. A person may not be prosecuted for various marijuana misconduct crimes if that person seeks, in good faith, medical or law enforcement assistance for another person who is believed to be experiencing a significant adverse marijuana reaction and the person remains at the scene until assistance arrives and cooperates with medical or law enforcement personnel.

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

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

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

AS 17.38.280 Court records of violations by minors confidential.

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

AS 17.38.290 Local option.

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

AS 17.38.300 Removal of local option.

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

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

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

AS 17.38.320 Procedure for local option elections.

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

- The lieutenant governor shall place on a separate ballot at a special election the content from a

petition that received at least 35 percent of registered voters within the village.

- The election may not be conducted during the first 24 months after the local option was adopted or more than once in a 36-month period.

- Another petition may not be filed until after the question presented in the first petition has been voted on. Only one local option question may be presented in an election.

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AS 17.38.330 Establishment of perimeter of established village.

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

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

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

Section 53 Amends AS 17.38.900(6) Definitions Marijuana. Provides the definition of marijuana.

Section 54 Adds a new section to AS 17.38.900 Definitions. Adds definitions for criminal negligence, deliver(y), established village, knowingly, manufacture, marijuana concentrate, public place and "usable marijuana."

Section 55 Amends AS 18.66.100(c) Protective orders: eligible petitioners; relief. Allows for protective orders to require the respondent to participate in marijuana abuse treatment programs

Sections 56; 57 Amends AS 18.67.080; AS 18.67.101 Violent Crimes Compensation. Prohibits the violent

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

Section 58 Amends AS 21.42.365(b) Coverage for treatment of alcoholism or drug abuse. For insurance purposes defines drug abuse to include marijuana dependency

Section 59 Amends AS 23.10.600(a) Employer protection from litigation. Prohibits legal actions against an employer for drug testing, and the results of the drug testing. Adds marijuana and marijuana impairment testing.

Section 60 Amends AS 23.10.600(b) Employer protection from litigation. Creates an exception in cases when an employer tampers with a test or creates a false positive. Adds marijuana.

Section 61 Amends AS 23.10.600(d) Employer protection from litigation. Prohibits legal actions against an employer for a false negative test. Adds marijuana impairment testing.

Section 62 Amends AS 23.10.600(e) Employer protection from litigation. Prohibits action against an employer for not implementing drug testing or prevention programs. Adds marijuana impairment testing and marijuana.

Section 63 Amends AS 23.10.610 Limits on causes of action for disclosures. Prohibits action against an employer for defamation, slander or libel due to their use of a drug or alcohol test. Adds marijuana and marijuana impairment testing.

Section 64 Amends AS 23.10.620(a) Employer policy. Prohibits employers from conducting drug and alcohol testing without first adopting a written policy and properly informing employees. Adds marijuana.

Section 65 Amends AS 23.10.620(b) Employer policy. Describes the requirements for a written policy on drug testing. Adds marijuana.

Section 66 Amends AS 23.10.620(c) Employer policy. Allows employers to test for drug and alcohol testing and investigation. Adds marijuana impairment testing.

Section 67 Amends AS 23.10.620(e) Employer policy. Describes the parameters of employer drug and alcohol testing Adds marijuana.

Section 68 Amends AS 23.10.620(f) Employer policy. Clarifies the statute requirements for alcohol and drug impairment testing are not in an effort to hinder testing by employers. Adds marijuana impairment testing.

Section 69 Amends AS 23.10.630(a) Collection of samples. Allows employers to test potential employees for alcohol impairment. Adds marijuana.

Section 70 Amends AS 23.10.630(c) Collection of samples. Describes how alcohol impairment testing should be scheduled. Adds marijuana impairment testing.

Section 71 Amends AS 23.10.630(d) Collection of samples. Requires employers to pay the entire cost for alcohol testing. Adds "marijuana impairment testing."

Section 72 Amends AS 23.10.640(a) Testing procedures. Adds "marijuana impairment".

Section 73 Amends AS 23.10.645(a) On-site testing. Adds "marijuana" to the list of substances an employer can include in its on-site testing policy.

Section 74 Amends AS 23.10.650 Training of test administrators. Adds "marijuana" to the list of substances included in the certified test administrator training program.

Section 75 Amends AS 23.10.655 Disciplinary procedures. Includes "marijuana impairment testing" to the list of tests that permit an employer to take adverse employment action if there is a positive drug test and it violates the employer's written policy.

Section 76 Amends AS 23.10.660 Confidentiality of results; access to records. Includes "marijuana impairment test" to the list of tests that are privileged and confidential, and may only be disclosed to the employee in question, the individuals designated by the employer to evaluate test results, or if the disclosure is ordered by a court or governmental agency.

Section 77 Amends AS 23.10.670 Effect of mandatory testing obligations. Adds "marijuana impairment testing" to provide that an employer who is obligated by state or federal law to have drug and alcohol testing shall receive the full protections from litigation contained within AS 23-10.600 - 23.10.699.

Section 78 Amends AS 23.10.699 Definitions. "Marijuana" has the meaning given in AS 17.38.900.

Section 79 Amends AS 25.20.061 Visitation in proceedings involving domestic violence. Includes "marijuana" in the list of substances a domestic violence perpetrator shall abstain from possessing or consuming during parent/child visitation and 24 hours prior.

Section 80 Amends AS 28.01.010(j) Provisions uniform throughout state. Pertaining to the requirement that ignition interlock devices must be applied to all DUI crimes, Includes "marijuana" in the list of substances that could incur DUI.

Section 81 Amends AS 28.15.031(b) Persons not to be licensed. Adds "marijuana" to the list of substances that, if used habitually to the degree that the person is incapable of safely driving, precludes the department from issuing a driver's license to that person.

Section 82 Amends AS 28.15.046(d) 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.

Section 83 AS 28.15.046(k) 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.

Section 84 Amends AS 28.15.081(a) Examination of applicants. Applicants for a driver's license must undergo a test of the applicant's knowledge of the laws and effects of list of substances. Adds "marijuana" to the list of substances contained in the test.

Section 85 Amends AS 28.15.085 Alcohol and drug awareness and safety examination of applicants. Pertaining to a person applying for a new license after the previous license has expired, adds "marijuana" to the list of substances.

Section 86 Amends AS 28.15.165(c) Administrative revocations and disqualifications resulting from chemical sobriety tests and refusals to submit to tests. Adds "marijuana" to the list of substances that can incur a DUI.

Section 87 Amends AS 28.15.166(g) Administrative review of revocation. Adds "marijuana" to the list of substances that can incur a DUI.

Section 88 Amends AS 28.15.181(a) Court suspensions, revocations, and limitations. Adds "marijuana" to the list of substances that can incur a DUI or refusal, which leads to immediate license revocation, if convicted.

Section 89 Amends AS 28.15.183(a) 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.

Section 90 Amends AS 28.15.183(h) 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.

Section 91 Amends AS 28.15.184(g) Administrative review of revocation of a minor's license. Adds

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

Section 92 Amends AS 28.15.191(e) 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.

Section 93 Amends AS 28.15.191(g) 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.

Section 94 Amends AS 28.15.191(h) Court and parole board reports to department; surrender of license or identification card. Adds "marijuana" to a statute relating to conditions of parole and notification.

Section 95 Amends AS 28.15.271(e) Fees. Adds "marijuana" to a statute relating to the issuance of new licenses to replace a cancelled license due to being restricted from purchasing alcohol. If the person has been ordered to refrain from consuming alcoholic beverages under Title 4.

Section 96 Amends AS 28.20.230(c) Proof of financial responsibility for the future. Adds "marijuana" to the list of substances that can incur a DUI or refusal charge.

Section 97 Amends AS 28.33.030 Operating a commercial motor vehicle. Operating a motor vehicle while under the influence of an alcoholic beverage, marijuana, inhalant, or controlled substance. Adds "marijuana"

Section 98 Amends AS 28.33.031(a) Implied consent for operators of commercial motor vehicles. Adds "marijuana" to statutes relating to DUI and refusal.

Section 99 Amends AS 28.33.130(a) 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.

Section 100 Amends AS 28.33.140(a) Conviction resulting in disqualification from driving commercial vehicle. Adds "marijuana" to offenses that are grounds for immediate disqualification from driving a commercial motor vehicle.

Section 101 Amends AS 28.33.190 Definitions. Defines "marijuana" as having the same meaning given in AS 17.38.900.

Section 102 Amends AS 28.35.028(h)(1) Court-ordered treatment. Includes "marijuana" into the definitions of "court-ordered treatment program" and "treatment plan".

Section 103 Amends AS 28.35.029(a) Open container. Provides that a person may not drive a motor vehicle when there is an open marijuana container in the passenger compartment with the exceptions provided below (b.)

Section 104 Amends AS 28.35.029(b) Open container. Creates exceptions to an open marijuana container being in the vehicle: the container is in the trunk of the vehicle; behind the last upright seat in certain vehicles; behind a solid partition that separates the driver from the passengers, or certain types of passenger vehicles.

Section 105 Amends AS 28.35.029(c) Open container. Defines "open marijuana container" as a receptacle that contains marijuana, is open or has a broken seal and there is evidence marijuana has been consumed in the vehicle.

Section 106 Amends AS 28.35.030(a) Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or

controlled substance. Adds "marijuana" to the DUI statutes.

Section 107 Amends AS 28.35.030(b) Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance. Adds "marijuana" to the DUI statutes.

Section 108 Amends AS 28.35.031(a) Implied consent. Adds "marijuana" to the list of substances associated with DUI. A person is considered to have given consent to a chemical test if lawfully arrested for driving impaired on those substances.

Section 109 Amends AS 28.35.031(g) Implied consent. Adds "marijuana" to the implied consent statute. With probable cause, consent is implied to test blood or urine for the presence of marijuana if the person is involved in a motor vehicle accident that causes death or serious physical injury to another person.

Section 110 Amends AS 28.35.032(a) Refusal to submit to chemical test. Adds "marijuana" to the refusal statutes.

Section 111 Amends AS 28.35.032(e) Refusal to submit to chemical test. Adds "marijuana" to the refusal statutes.

Section 112 Amends AS 28.35.033(a) Presumptions and chemical analysis of breath or blood. Adds "marijuana" to the list of substances associated with DUI statutes, and changes

Section 113 Amends AS 28.35.035(a) Administration of chemical tests without consent. Adds "marijuana" to the statute providing that a chemical test can be administered without consent if the offender causes death or physical injury to another person.

Section 114 Amends AS 28.35.035(b) Administration of chemical tests without consent. Adds "marijuana" to the statute that an unconscious person who is incapable of refusal is considered not to have withdrawn consent and a chemical test may be administered.

Section 115 Amends AS 28.35.039(1) Definitions: Alcohol safety and controlled substances. Amends the definition of "alcohol safety action program" to include marijuana.

Section 116 Amends AS 28.35.039 Definitions: Marijuana. Adds a new paragraph providing "marijuana" has the meaning set forth in AS 17.38.900.

Section 117 Amends AS 28.35.280(a) Minor operating a vehicle after consuming alcohol. A peace officer with probable cause can arrest or request a chemical test from a minor, who is at least 14 years of age, but not yet 21, for suspicion of operating a vehicle after consuming alcohol. This section includes the operation of motor vehicles, aircraft, or watercraft. Adds "Marijuana."

Section 118 Amends AS 28.35.280(b) Minor operating a vehicle after consuming alcohol. In cases involving minors and vehicles if a chemical test is performed and the discovery of any amount of alcohol is found, the person is cited and released to their parental guardian or legal custodian. Adds "Marijuana."

Section 119 Amends AS 28.35.280(d) Minor operating a vehicle after consuming alcohol. Involving sentencing, fines and community work for a minors found guilty of operating a vehicle under the influence of alcohol. Adds "Marijuana"

Sections 120-123 Amends AS 28.35.285(a);(c);(d) Minors refusal to submit to chemical test. The refusal to submit to a chemical test of a person's breath, is a violation subject to the same caveats and conditions attending a minor's refusal to submit to a request of a peace officer to undergo chemical testing. Adds "marijuana."

Section 124;125 Amends AS 28.35.290(a);(b) Minors Driving during the 24 hours after being cited for alcohol or breath test offenses. Involving sentencing, fines and community work for a minors found guilty of operating a vehicle during the 24 hour period after being cited for operating a vehicle under the influence of alcohol. Adds "marijuana"

Section 126;127 Amends AS 29.10.200; AS 29.35 Article 1 Limitation of home rule powers. Municipal powers and duties. Adds a new section, involving the general powers of municipalities. Provides the right to limit marijuana to the state and municipalities cannot enact or enforce an ordinance inconsistent with 17.38, except as specifically provided by state statute. The section applies to home rule and general law municipalities.

Section 128 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 129 Amends AS 33.16.150(b) Conditions of parole. Adds subsection (b)(11) which permits prohibiting the entry into an establishment where marijuana is sold or otherwise dispensed as a condition of parole.

Section 130 Amends AS 33.16.900(3) Definitions Controlled Substance Removes AS 11.71.190 or "marijuana" from the schedule of control substances definition provided for the chapter.

Section 131 Amends AS 33.30.015(a) Living conditions for prisoners. Describes the authority and limitations of the commissioner of corrections. Subsection (a)(3)(k) relating to controlled substances and alcohol, adds "marijuana."

Section 132 Amends AS 33.30.065(b) Service of sentence by electronic monitoring. In determining whether to designate a prisoner to serve a term of imprisonment or period of temporary commitment by electronic monitoring. Adds "marijuana" to the list of substances of abuse for consideration for determining whether electronic monitoring is appropriate.

Sections 133- 137 Tenant obligation Landlord Tenant Act. Amends AS 34.03.120; AS 34.03.360(7); AS 34.05.100(a); AS 34.05.100(d)(1) Activities a tenant may not knowingly engage in on rented premises. Adds " illegal activity involving marijuana."

Section 138 Amends AS 44.19.645(a) Alaska Criminal Justice Commission. Removes AS 11.71.190 or "marijuana" from the list of controlled substances reviewed by the Alaska Criminal Justice Commission for the purposes evaluation of sentencing laws and criminal justice practices.

Section 139 Amends AS 47.10.900(17) Child in Need of Aid Definitions Intoxicant Adds "marijuana" to the definition of "intoxicant."

Section 140 Amends AS 47.17.024(a) Duties of practitioners of the healing arts. Requirement that a practitioner must notify closest office of Department of Health and Social Services if the practitioner determines infant adversely affected by alcohol, drug abuse or misuse of inhalants or hazardous materials. Adds "marijuana."

Section 141 Amends AS 47.37.010 Declaration of policy. The State's policy of recognizing, appreciating, and reinforcing examples of sobriety; and in its policy of not criminally prosecuting "alcoholics and intoxicated persons" finding treatment to be a better option. Adds "marijuana."

Section 142 Amends AS 47.37.030 Powers of Department of Health and Social Services. The list of prevention and treatment programs the Department is empowered to establish and maintain; in addition, treats "marijuana abusers" throughout subsections in same manner as alcoholics and persons addicted to other substances.

Section 143 Amends AS 47.37.040 Duties of Department of Health and Social Services. The Department of Health and Social Services with corporation from the Department of Public Safety and Administration is required to implement prevention-of-abuse programs. Adds "marijuana abuse" and "marijuana abusers" to the list of types of activity for which these programs are developed.

Section 144 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 145 Amends AS 47.37.170(d) Definitions. List of causes of incapacitation for which an incapacitated person may not be held beyond his or her period of incapacitation, or for more than 48 hours in any event, at a facility. Adds "marijuana."

Section 146 Amends AS 47.37.170(f) Treatment and services for intoxicated persons and persons incapacitated by alcohol or drugs. If a person is admitted to an approved treatment facility, and not incapacitated by drugs or alcohol, they can request that his or her next of kin not be notified and this will be upheld. Adds a person can also not be incapacitated by use marijuana for this privilege.

Section 147 Amends AS 47.37.170(g) No action for damages. List of incapacitating substances which, if caused an incapacitated person to be taken into custody, prevents an incapacitated person from bringing an action for damages, unless damages were caused by gross negligence or intentional misconduct. Adds "marijuana"

Section 148 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 149 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 150 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 151 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 152 Amends AS 47.37.270(1) Definitions: Alcoholic or drug abuser. Alcoholic or drug abuser, commissioner, department, drugs by including marijuana and marijuana abuser in the defined terms.

Section 153 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 154 Amends AS 47.37.270(7) Definitions: Incapacitated. Incapacitated by alcohol, adds marijuana to the definition of what it means to be incapacitated.

Section 155 Amends AS 47.37.270(10) Definitions: Intoxicated person. By adding marijuana to the definition of what it means to be intoxicated.

Section 156 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 157 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 158 Repeals the enumerated statutes.

Section 159 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 160 Provides for an immediate effective date pursuant to AS 01.10.070(c).

1:12:35 PM

MR. BROWN corrected the sectional analysis in each member's packet by pointing to the bottom of the first page in the "Overview" it reads "Sections 129-138 are conforming amendments concerning landlords and tenants." He advised that is an error. The "Overview" should read "Sections 129-132 are conforming amendments dealing with the Department of Corrections; Sections 133-137 concern landlords and tenants; and, Section 138 is a conforming amendment dealing with the criminal justice commission."

1:15:34 PM

MR. BROWN pointed to Sec. 50 and 52, page 29, beginning line 6, and said the new Sec. 50 amends AS 17.38.090 by instructing the Marijuana Control Board, yet to be created, that it should adopt a regulation prohibiting a retail marijuana establishment from selling more than five grams of marijuana concentrate per day, per customer.

CHAIR LEDOUX assumed that five grams is less than one ounce.

MR. BROWN responded "significantly less."

CHAIR LEDOUX further assumed an individual is not allowed to have more than five grams of marijuana concentrate.

MR. BROWN advised "that is correct." It is simply eliminating the amount an individual can purchase from a retail outlet of marijuana concentrate per day.

CHAIR LEDOUX offered that an individual could go to different stores and purchase five grams from each store. She asked the thought process behind this [provision].

MR. BROWN responded that since marijuana concentrate is considered to be more potent than regular marijuana, it was wise to consider limiting the amount any customer could purchase in a single day from a single outlet. He advised that no real ideas have been put forth as to how to prevent that scenario.

1:17:55 PM

REPRESENTATIVE GRUENBERG reiterated that the bill reads that one store cannot sell more than five grams of concentrate each day

to one customer. He opined that would not prohibit the customer from going from store to store.

MR. BROWN advised "that is exactly correct and [the drafters] do not have a way around that yet."

[1:18:32 PM](#)

REPRESENTATIVE GRUENBERG asked whether it is wise or constitutional for the board to do this all by regulation or should this be in the statute.

MR. BROWN opined that the strongest arguments against this is that this does not belong in a criminal bill. He further opined this would more appropriately be in a regulatory bill as this subsection is not criminal law.

REPRESENTATIVE GRUENBERG questioned whether the legislature should enact it, or a board.

[1:19:22 PM](#)

REPRESENTATIVE MILLETT remarked that she had a long conversation with Senator Coghill regarding this amendment and whether it should be in this bill. She noted that where the initiative was vague on quantity of hash oil, it left a broad range of quantity of hash oil that one could possess. However, she said, the initiative did limit the amount of marijuana plants and the marijuana itself. This is an attempt to also limit hash oil because five grams of hash oil has the same amount of quantity as one ounce of leaf marijuana. She related that leaving hash oil out of the bill, but limiting the amount of plants and the amount of leaf marijuana an individual can possess would be a failure on the part of the legislature. She offered that THC and hash oil are much stronger than an ounce of marijuana leaf that an individual smokes. Ingesting hash oil is a much more direct form of medicinal value than smoking marijuana. She acknowledged "this is a clumsy way to do it" but it is part of the committee process that the House Judiciary Standing Committee come up with ... five grams of hash oil equals approximately one ounce of marijuana. She noted that within the initiative there is not a limitation on hash oil whereas there are limitations on leaf marijuana. She opined it would be wise for the committee to consider "something."

[1:21:23 PM](#)

CHAIR LEDOUX said that if the intent is to prohibit an individual from possessing, displaying, consuming more than five grams of hash oil then the criminal bill should say no one is allowed to have more than five grams of hash oil. She offered that the committee could consider that language rather than saying that "an establishment can't ... if we say that, then it would also be forbidden to sell more than five grams of hash oil." She opined that there is a regulation stipulating that one store cannot sell more than five grams of hash oil, yet it is still not illegal for an individual to possess more than five grams of hash oil. Chair LeDoux expressed that she was not sure this way accomplishes what the committee may or may not want to do but is something to consider.

[1:22:58 PM](#)

MR. BROWN referred to [Sec. 52, AS 17.38.200], page 29, line 28, and noted that it adds the words "delivers or" to the provision, which read:

(iii) delivers or transports more than one ounce of usable marijuana or more than six plants;

MR. BROWN noted it is replicated a multiple of times throughout the bill with similar instances.

[1:23:26 PM](#)

MR. BROWN responded in the affirmative to Chair LeDoux that he is referring to [AS 17.38.200(a)(1)(A)](iii).

CHAIR LEDOUX noted that prior to this change it read "transports." She questioned if anyone knew the difference between "delivers" and "transports."

[1:23:49 PM](#)

MR. BROWN opined that "transporting" is simply moving something from one place to another. Whereas, "delivery" implies a commercial aspect but, his definitions could be wrong, he acknowledged.

[1:24:18 PM](#)

CHAIR LEDOUX pointed the committee to [Sec. 52, AS 17.38.200], page 30, lines 3-6, "for remuneration."

[1:24:49 PM](#)

REPRESENTATIVE CLAMAN offered that classic delivery is a sale and there are statutes with "intent to deliver." Possession with intent to deliver is an individual in the process of sale, he explained. Whereas, "transportation" is when an individual is caught with an illegal substance in a vehicle or an airplane. There is not a sale, but there is an assumption [the product] is being taken to Point B, for purposes of delivery except the individual is caught before arriving at Point B.

[1:25:41 PM](#)

MR. BROWN referred the committee to [Sec. 52], page 29, lines 28-29, and page 30, lines 3-6 wherein the language is "delivers or transports more than one ounce of usable marijuana or more than six marijuana plants," which is above the threshold established by the initiative. He continued that according to the initiative and this bill it is legal to possess up to one ounce of marijuana and six marijuana plants. He referred to page 29, lines 28-29, and stated the language makes it illegal to deliver or transport more than that legal amount.

MR. BROWN then addressed page 30, lines 3-6, and said it makes the distinction that an individual cannot deliver or transport any amount for remuneration.

CHAIR LEDOUX pointed out that when talking about remuneration it was supposed to be the difference between delivery and transport. She assumed delivery means something an individual is transporting or delivering for remuneration, as opposed to transporting and taking it from Point A to Point B. She then referred to two sections [page 30, lines 3-6] which talk about the same thing, but "for remuneration."

[1:27:14 PM](#)

REPRESENTATIVE MILLETT reiterated that the bill is clumsy "at best" for what the committee is trying to do. Possibly Legislative Legal and Research Services could offer language clarifying the issue.

[1:27:53 PM](#)

REPRESENTATIVE KELLER said he is not sure he understands the discussion. He then moved to the difference between [Sec. 52, AS 17.38.200(a)(1)(A)], page 29, line 22-24, which read:

(A) is not a registered marijuana establishment under this chapter or acting in the person's capacity as an officer, agent, or employee of the marijuana establishment and knowingly ...

REPRESENTATIVE KELLER and the scenario described on page [Sec. 52, AS 17.38200(a)(1)(B)], page 30, lines 7-11, which read:

(B) is a registered marijuana establishment under this chapter or acting in the person's capacity as an officer, agent or employee of the marijuana establishment, the possession, manufacture, transport, or delivery does not comply with the requirements of the registration, and the person knowingly ...

REPRESENTATIVE KELLER understood Mr. Brown to mention earlier that there was a typo, but he still did not understand. Representative Keller pointed out that [A] is not a registered marijuana establishment, and [B] is a registered marijuana establishment and he gets lost in the difference.

[1:28:55 PM](#)

MR. BROWN explained that [(A)], page 29, beginning line 22, stated the only people allowed to possess more than six plants or one ounce limit are registered marijuana establishments. He then read a portion of (A) "if someone is 'not' a registered marijuana establishment" they may not possess that amount for any reason. Whereas, if an individual is transporting, possessing, manufacturing, or delivering any of these amounts, the individual is breaking the law.

MR. BROWN further explained that [(B)], page 39, beginning line 7, references an individual as a registered marijuana establishment that is not complying with the requirements of the registration and are knowingly, personally, possessing above the established amount. He agreed that the language was cumbersome and awkward because the state did not have registration requirements yet, so to suggest an individual is not complying is a catch-22, at best.

[1:30:23 PM](#)

CHAIR LEDOUX conveyed she was still confused with the language because if an individual is a registered marijuana establishment who is not complying with the terms of the registration, then

the individual is not a registered marijuana establishment. She offered the scenario that if a bar has a liquor license and the ABC board takes away its liquor license because the bar is doing something wrong, then the bar cannot sell liquor as if it is a bar.

MR. BROWN advised that this actually takes place before, in said scenario, "they yank your license. This is the reason they yank your license."

[1:30:59 PM](#)

REPRESENTATIVE MILLETT related that it would be as if a bar did not have a license but was selling alcohol, or the bar has a license and is selling liquor but transporting it in the wrong way.

[1:31:31 PM](#)

CHAIR LEDOUX questioned if the bar is transporting it or selling it in the wrong way ...

REPRESENTATIVE MILLETT stated it is very clumsy the way ... "we should probably work on this section" because she imagined there is better language to say it is illegal to transport the quantity of marijuana being discussed.

[1:32:06 PM](#)

CHAIR LEDOUX suggested it is the same crime for the registered marijuana establishment who is not complying with being an appropriate registered marijuana establishment, as with an individual not registered in the first place.

[1:32:22 PM](#)

MR. BROWN noted there are legal minds online or in the audience to assist.

[1:32:37 PM](#)

REPRESENTATIVE MILLETT referred to the definitions in [Sec. 54, AS 17.38.900(16), page 37, lines 27-29, which read:

(16) "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to

another of marijuana, whether or not there is an agency relationship;

CHAIR LEDOUX noted there did not appear to be a definition of transport on pages 37-38.

[1:33:49 PM](#)

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, said the court system is neutral on this bill, but she may be able to assist in understanding the provisions. The definition of "transport" means to carry. Transport is not a defined term a court would look to, as it is a commonly understood definition, she explained. The definition of "deliver" is that an individual is about to give a [product] to another individual at the end of the transport, whether for sale or as a gift, or otherwise. The Senate bill was drafted for transport and delivery to be two different concepts.

[1:34:57 PM](#)

CHAIR LEDOUX referred to the issues previously discussed on pages 29-30, beginning line 22. The issue is a registered marijuana establishment that does not comply with the requirements of registration.

MS. MEADE reminded the committee to keep in mind these are criminal laws being passed so the law enforcement officer would look to which section of law was violated. She offered the scenario of an unregistered individual being in possession of 40 plants, the officer will cite under (A)(1). She explained that if the individual is registered and an establishment, such as The Brown Jug and "messing up" the officer will cite under (B)(1) because the individual is registered, and not complying. She opined that Legislative Legal and Research Services opted to split (A) and (B) into two separate subsections of the same misdemeanor crime.

[1:36:33 PM](#)

CHAIR LEDOUX questioned Hilary Martin why she chose to draft the language in the manner she drafted the provisions.

HILARY MARTIN, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said for example, the issue is whether the committee wants to make possession of 25 or more marijuana plants a crime, the bill

could read that it is a crime. However, under the initiative, the issue becomes that there are marijuana establishments authorized to grow marijuana plants. They will likely have more than 25 plants, so there must be a system that allows for an individual that is a registered establishment operating within the bounds of their registration, to have more plants than 25. The issue then becomes, for example, "a retail store is not licensed to actually grow plants, and then they are growing plants. Then you have to ... then they are not complying with their registration, and so that is a crime." She said the reason she separated the issues is that there are regular individuals not registered and committing illegal actions, and there are registered individuals not complying with the terms of their registration.

[1:38:37 PM](#)

CHAIR LEDOUX asked why on [page 29, lines 26-27], (A)(iii) the language is "delivers or transports more than one ounce of usable marijuana ..." Whereas on [page 30, lines 15-16], (B)(iii) the language only talks about "transporting more than one ounce of usable marijuana ..."

[1:39:54 PM](#)

MS. MARTIN advised she did not have an answer as sections (i)-(v) are the same, except for [(iii)].

[1:40:16 PM](#)

CHAIR LEDOUX offered that it may not be a drafting error as there may have been an amendment in the Senate and it was not necessarily caught.

[1:40:30 PM](#)

MR. BROWN advised Chair LeDoux that she was correct, as this was added from the previous version as an amendment and it only included the section on page 29, and did not include the section on page 30. The amendment was not complete as it did not address everything.

[1:40:54 PM](#)

REPRESENTATIVE KELLER asked whether the list given on a registered non-compliant establishment is a comprehensive list. He then asked the scope of potential violations.

MR. BROWN responded that such a list does not yet exist but will be addressed in the regulatory bill which was introduced in the Senate today.

[1:42:03 PM](#)

CHAIR LEDOUX quiered whether a violation of a regulation that is not legislated by the legislature, but is promulgated by the ABC Board or a possible Marijuana Control Board, can lead to criminal sanctions as opposed to regulatory licensing problems.

[1:42:40 PM](#)

MS. MEADE responded that violations by boards can be put on Supreme Court "bail schedules." She opined that this bill sets up two misdemeanors and three violations. The violations are to be put on bail schedules which are easier to think of as fine schedules. The legislature tells the Supreme Court to put certain things that are violations on a schedule so people can pay their ticket without showing up at court. The court may put regulations on bail schedules as well, so law enforcement can enforce the regulations through a ticket or otherwise. She opined that the executive branch cannot create crimes through regulations, but there are violations on bail schedules.

[1:43:53 PM](#)

CHAIR LEDOUX surmised that penalties can be created by regulations, but a crime must be created through the legislative body.

[1:44:06 PM](#)

MS. MEADE answered in the affirmative with the understanding that the Department of Law will correct her if she is wrong. Violations with only a fine amount are considered minor offenses and not crimes.

REPRESENTATIVE CLAMAN said he thought there were violations that were administratively identified, but are incorporated by reference. For example, he said, a fishing violation does not list everything in the statute but refers back to regulation and it would become criminal violations.

[1:44:47 PM](#)

MS. MEADE responded that she does not know the answer to that, but she will investigate.

[1:45:19 PM](#)

MR. BROWN pointed the committee to [Sec. 52, AS 17.38.210(a)(1)], page 31, line 15, and said the language added to the statute is "21 years of age or older ...". In order to conform with a Senate amendment, he pointed to [AS 17.38210(a)(B)(i) and (ii)], page 31, lines 22-25, and advised he had received a suggestion to delete phrases, which read:

(i) except when authorized by the terms of registration issued under this chapter, or

(ii) except when authorized by the terms of registration issued under this chapter;

He explained that the Senate amendment, [CSSB 30] page 33, line 7, deleted the language "except when authorized by the terms of registration issued under this chapter."

[1:49:09 PM](#)

CHAIR LEDOUX asked what deleting that [phrase] accomplishes.

MS. MEADE answered that eliminating the two "except" clauses in (B)(i) and (B)(ii) means it would be a "mim 2 misdemeanor." She used the example of an unregistered adult possessing more than one ounce of marijuana in public, it gets rid of "except." In other words, she explained, an individual cannot ever possess more than one ounce in a public place. The current language offers that an individual can [possess more] if the terms of registration allow them to. By eliminating those clauses the exception is gone, she advised.

[1:50:34 PM](#)

CHAIR LEDOUX assessed that when the clause is taken out for registered establishments, they can't have more than six plants so there could not be growing operations in the state.

[1:50:53 PM](#)

MS. MEADE advised the (B)(i) is just in a public place, whereas (B)(ii) has the drafting problem Chair LeDoux pointed out and she cannot speak to the intent of the drafter. She expressed

she does not know why someone would want the "except" clause out of the bill, and determined that Chair LeDoux is correct in what the result would be.

[1:51:23 PM](#)

CHAIR LEDOUX said to "totally, basically, to gut the initiative."

MS. MEADE said "to be clear" these are not registered marijuana establishments so when reviewing AS 17.38.210(a)(1) the discussion is that an individual "is 21 years of age, or older, an adult not registered" Whereas the discussion in AS 17.38.210(a)(1)(B) is "possesses (ii) more than six marijuana plants." She opined it does not make sense to say "except when authorized by registration" because one is already not registered.

[1:51:53 PM](#)

CHAIR LEDOUX surmised that if the committee did this, there could not be any marijuana establishments with more than six plants in the state.

[1:52:12 PM](#)

MS. MEADE pointed that out (1) is for not registered, and (2) like the prior "mim 1 misdemeanor," the drafter has separated out different subsections of the statute to apply to registered people, and unregistered people. Sub (1) is a not registered marijuana establishment and an individual will be cited under it if the individual commits one of these. Sub (2) is a registered establishment. She summarized that if an individual is not registered they cannot have more than six plants, and that is the provision the individual would be cited under, no exceptions.

REPRESENTATIVE GRUENBERG requested that the committee go through and flag issues.

CHAIR LEDOUX stated "that is what we are trying to do. We are not trying to resolve anything right now, we're flagging it, minimally discussing it, and come back to it when we come back to it."

[1:54:26 PM](#)

MR. BROWN advised there was a suggestion from the Public Defender's Office regarding [Sec. 52, AS 17.38.210(a)(1)], page 31, beginning line 15, inserting language similar to "is not knowingly a registered marijuana establishment under this chapter ...". In that manner, reckless activity could be targeted and the innocent protected, he said.

REPRESENTATIVE GRUENBERG stated he was not sure if under the general mental state statute AS 11.81, the action has to be done knowingly and the result has to be reckless. He mentioned asking Legislative Legal and Research Services about the language.

[1:58:07 PM](#)

MR. BROWN referred the committee to [Sec. 52, AS 17.38.210], page 32, lines 2-4, added (a)(3), which read:

(3) is not a registered marijuana establishment under this chapter or acting in the person's capacity as an officer, agent, or employee of the marijuana establishment and knowingly sells any amount of marijuana.

MR. BROWN turned to [Sec. 52, AS 17.38.230], page 33, line 7, and stated the language deleted read: "except when authorized by the terms of registration issued under this chapter." He opined the clause was deleted due to the prior explanation of Ms. Meade.

CHAIR LEDOUX surmised that the individual is 21 or older, and uses any amount of marijuana in a public [place] and questioned whether that would prohibit marijuana bars, or marijuana clubs, or any sort of place where marijuana can be bought and used. Is it the intent of the drafter that those be considered public places, she asked.

[2:00:10 PM](#)

MS. MEADE offered she does not know the intent of the drafter but there is quite a bit of discussion regarding that issue. She believes the Senate may still be considering amendments as to whether a public place would include a marijuana bar or marijuana social club.

CHAIR LEDOUX asked that if the bill was left in this manner the committee would be saying there are no clubs, and nothing like Amsterdam, and so forth.

[2:00:58 PM](#)

MS. MEADE, in response to Chair LeDoux, replied that would be the conclusion ... an individual cannot be over 21 and use marijuana in public. She explained that if those bars are considered a public place the individual would be subject to \$100 fine and that is exactly the issue.

[2:01:09 PM](#)

REPRESENTATIVE GRUENBERG remarked that the general intent statute would apply here in that the person would have to knowingly use marijuana.

[2:01:37 PM](#)

CHAIR LEDOUX advised that the bigger issue for this committee to decide is as a policy issue, whether it is appropriate that there be marijuana clubs, marijuana establishments, marijuana bars in which people who enter those establishments can knowingly or unknowingly consume cannabis.

REPRESENTATIVE GRUENBERG opined that the committee has to deal with both issues.

[2:02:23 PM](#)

MR. BROWN remarked there have been suggestions for changes to the bill from many departments and requested those in the audience or on line be allowed to convey their suggestions to the committee.

[2:02:59 PM](#)

REPRESENTATIVE KELLER referred the committee to [Sec. 17, AS 11.71.030(a)(3)(A)(i) and (ii), page 13, lines 4-5, which read:

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

REPRESENTATIVE KELLER asked the committee to consider whether "500 feet" from a school should be amended to read "1,000 feet." Representative Keller suggested the same language change in [Sec. 18, AS 11.71.040(a)(4)(i) and (ii)], page 14, lines 17-18, which read:

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

2:03:40 PM

CHAIR LEDOUX suggested that those [provisions] do not apply to marijuana at all right now as they apply to controlled substances and marijuana has been removed from the controlled substances section. "This would totally not be applicable." She offered that if this is amended to include marijuana, then if an individual is walking by a school and has marijuana in the backpack, the individual would be guilty of a crime. She said she does not believe the state does that with liquor right now.

2:05:24 PM

REPRESENTATIVE FOSTER pointed out that in view of Alaska's small communities, such as Nome 1,000 feet would probably be about one-third of the entire town, and it could be an entire village. He suggested possible language of "in places that have a population of greater than ..." and maybe 1,000 feet could apply.

2:05:56 PM

REPRESENTATIVE KELLER stated he wanted to bring it up for thought and [to mark it].

2:06:09 PM

REPRESENTATIVE MILLETT she assessed that because marijuana cannot be smoked in public, and alcohol cannot be consumed in public, and since the committee has not decided whether to have marijuana establishments, at this point, walking past a school with a six-pack of beer doesn't pose any danger. She suggested that since marijuana can be sold, maybe the committee should look at a statute that says it is illegal to sell, distribute ... those types of things, rather than possessing in front of a school.

[2:07:05 PM](#)

REPRESENTATIVE KELLER clarified that this section is incidentally open solely because the word "marijuana" is being inserted.

[2:07:16 PM](#)

CHAIR LEDOUX advised that the bill removed "marijuana" as it had read was "you couldn't have any controlled substance within 500 yards of the school," but now marijuana is not a controlled substance as of yesterday.

[2:07:52 PM](#)

REPRESENTATIVE KELLER referred the committee to [Sec. 27, AS 12.30.016(g)(2)], Page 19, lines 21-26, which read:

(2) submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of marijuana, marijuana products, or marijuana accessories by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing marijuana, marijuana products, or marijuana accessories;

REPRESENTATIVE KELLER said this subsection is new and submitting to a search without a warrant is "serious stuff." He questioned whether the bill goes too far in searching without a warrant, and pointed out the issue of forfeiture items.

[2:09:07 PM](#)

REPRESENTATIVE CLAMAN related that this [provision] is for someone on probation and not for the average citizen. He explained that when an individual is placed on probation the court is allowed to order, as a condition of probation or parole that they have to submit to searches.

REPRESENTATIVE KELLER asked whether this is the standard for anyone on probation whether marijuana is involved or not.

REPRESENTATIVE CLAMAN described the Probation Code as very standard, and stated it revokes many rights the rest of us are pleased to hold.

MS. MEADE responded to Representative Keller that it is a bail condition provision rather than probation condition provision, but the crux is the same. The judicial officer has these sorts of options as bail conditions in other drug crimes, or alcohol related crimes, or other crimes in general.

[2:10:30 PM](#)

REPRESENTATIVE GRUENBERG reiterated Ms. Meade's previous statement and added that the peace officer says they have reasonable suspicion and anything found in the search is admissible because it is pursuant to a lawful search. He asked Ms. Meade whether he was correct in that if anything is found the individual can be charged with new crimes.

MS. MEADE responded "I believe that to be the case."

REPRESENTATIVE GRUENBERG opined that the impact goes far beyond revoking the bail, as it could lead to other crimes.

[2:11:52 PM](#)

CHAIR LEDOUX asked whether an individual charged with an alcohol related crime must submit to a search without a warrant to look for alcohol.

MS. MEADE stated she believes that is a standard bail condition that the judge may apply in any particular alcohol related, and in this case marijuana related prosecution.

[2:12:20 PM](#)

CHAIR LEDOUX asked with respect to any prosecution of any crime with bail, whether the individual has to basically give up their right to not be searched without a warrant.

MS. MEADE answered that it can be one of the choices a judicial officer has regarding bail conditions.

[2:12:44 PM](#)

CHAIR LEDOUX opined that this is not that different from any other crime. She remarked that she understands Representative

Gruenberg's comment and policy implication, but it is not making any change just for marijuana. She noted that possibly in another bill somewhere this could be considered.

MS. MEADE said it is a fair way to characterize that provision.

[2:13:16 PM](#)

REPRESENTATIVE CLAMAN noted that Ms. Meade is correct, that this is the bail statute and further noted there are companion provisions in the parole statute that he is not suggesting be amended. He pointed out that he is aware there are companion provisions in the parole and probation statute that are probably not Title 12 that give the court and probation officer similar latitude to order similar searches without a warrant.

[2:13:40 PM](#)

REPRESENTATIVE KELLER referred to [Sec. 48, AS 17.38.0709(d)], page 28, lines 17-22, and stated this provision has to do with a marijuana testing facility. He then referred to [Sec. 48, AS 17.38.0709(d)(1)], page 28, lines 23-24, which read:

(1) possessing, cultivating, processing, repackaging, storing, transporting, displaying, transferring, or delivering marijuana;

REPRESENTATIVE KELLER questioned why a testing facility would be "cultivating," and why that would be okay.

CHAIR LEDOUX said to mark that [provision] and asked if this [language] is in the initiative itself.

MS. MEADE responded in the affirmative and suggested someone on line could be more knowledgeable.

CHAIR LEDOUX reiterated to mark the provision as there was no one on line to assist.

[2:15:20 PM](#)

REPRESENTATIVE KELLER referred to [Sec. 48, AS 17.38.0709(d)(2)], page 28, lines 25-27, which read:

(2) receiving marijuana or marijuana products from a registered marijuana cultivation facility, a registered marijuana retail store, a registered

marijuana products manufacturer, or a person 21 years of age or older; and

REPRESENTATIVE KELLER questioned why the language reads "or a person 21 years or older."

[2:16:37 PM](#)

MR. BROWN advised that Representative Keller is reading the language correctly as "registered marijuana cultivation facility, a registered marijuana retail store, a registered marijuana products manufacturer" can all go to a testing facility to have their products testing, as can anyone 21 or older.

REPRESENTATIVE KELLER opined that it seems strange to make a law of what is legal.

CHAIR LEDOUX remarked that is one of the interesting characteristics of the initiative process in that the bill is saying what is legal. Generally, she noted, criminal law says what is not legal, but the committee is trying to live up to the terms of the initiative and this is what the initiative said.

[2:18:04 PM](#)

REPRESENTATIVE KELLER referred to [Sec. 48, AS 17.38.0709(b)], page 27, lines 9-14, which read:

(b) **The** [NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE] following acts, when performed by a marijuana cultivation facility with a current, valid registration, or a person 21 years of age or older who is acting in the person's capacity as an owner, employee, or agent of a marijuana cultivation facility, are lawful and **are not offenses** [SHALL NOT BE AN OFFENSE] under Alaska law or **bases** [BE A BASIS] for seizure or forfeiture of assets under Alaska law:

REPRESENTATIVE KELLER pointed out it discusses a registered marijuana cultivation facility. He noted there is nothing in this section discussing minor children and he questioned what a cultivation facility look like, would it be a home, should there be a comment about minors and how they would fit into the licensed facility.

CHAIR LEDOUX related that is an interesting point and is duly noted.

[2:18:59 PM](#)

CHAIR LEDOUX questioned Cynthia Franklin, Alaska Alcohol Control Board (ABC Board) Director, about a statement in the [2/24/15] Alaska Dispatch wherein Ms. Franklin had addressed a question regarding the issue of more than one individual living in the home. Chair LeDoux posed a scenario of four people living in a home, and asked whether each person can have their own ounce of marijuana and their own six plants. Ms. Franklin responded "No" because she interpreted the law to mean one home equals only one ounce of marijuana, and Chair LeDoux asked whether Ms. Franklin was misquoted, or if she was misunderstood.

[2:20:13 PM](#)

CYNTHIA FRANKLIN, Director, Alaska Alcohol Beverage Control Board, stated she was misquoted in the sense of one ounce in the home. The initiative discusses possession of one ounce or less of marijuana by an adult over 21. Ravin v. State of Alaska, 537 P.2d 494 (Alaska 1975), and Noy v. State of Alaska, 83 P.3d 538 (2003), discuss a small amount of marijuana in their home being defined as up to four ounces. She pointed out that the question was original placed on the Alcoholic Beverage Control Board (ABC Board) web site as part of the six plants question. She offered that if an individual is allowed to grow six plants in their home, does that mean that four adults over the age of 21 living in the home could grow 24 plants. She explained the reason the ABC Board said "No" is due to court decisions that interpret and define the term possession as it relates to possessing a controlled substance. She opined that there have been several cases over the years where more than one individual is caught with a controlled substance. She further opined there is a lot of case law on this subject and ideas such as "joint possession" and "constructive possession" have been defined and interpreted by courts. Essentially, she said, both when it comes to a controlled substance and to other types of property that individuals might be found in possession of ... in the case [Nelson v. State of Alaska, 628 P.2d 884 (Alaska 1981)] where the Supreme Court discusses the concept of burgled goods, for instance. She opined that case stands for the proposition that, if an individual has burgled goods in a home and you are an adult in the home, then you have constructively possessed those goods. She offered the scenario of living in a house with her husband and she possesses six plants, he also possesses those

same six plants as they both have equal control over the plants which means over the area in which the plants are grown. When speaking of a regular household where everyone has access to all of the rooms, it is the ABC Board's opinion, based on case law, that everyone in the house possesses the plants that are grown in the house, she explained. She acknowledged that there are various scenarios wherein an individual has four roommates who were growing in their rooms and each of their rooms were locked off from the other rooms. She opined there can always be a scenario where it can be argued. But, the ABC Board's general message has been that these are personal use plants and once the number gets up into a 24 plant category, "why do you need that many plants." This is actually talking about growing for other than personal use, she remarked.

[2:23:27 PM](#)

MS. FRANKLIN continued that the [initiative] does allow an individual to possess the harvest of six plants without any type limitations on how many ounces that is. The short answer is "Yes," the ABC Board interprets Alaska case law, and the term possess as it has been applied in both controlled substances and burgled or stolen goods cases, to mean that if an individual has equal access or control to the area where the plants are being grown, that individual jointly possess those plants with any other adult who has equal access and control. She opined it would be clearer, without requiring people to interpret case law, to put a household limit on plants grown. In Colorado, at the state level, there is a 12 plant limit and the City of Boulder established a six plant per household limit. In that manner, she suggested, the committee is just left with the question of what constitutes a household. In general, she remarked, the ABC Board has the impression that most people who ask this question are trying to find a way to take personal grow and make it into a quasi-commercial grow where they can make money off of it. As opposed to truly being the type of personal use, private marijuana grow of six plants that originated with the Supreme Court decisions in Ravin and Noy, and then work (indisc) in AS 17.38.

[2:25:19 PM](#)

CHAIR LEDOUX remarked it was obvious this would be a policy decision of the House Judiciary Standing Committee. She stated she has always read six plants to mean an individuals can have six plants. In the event the committee disagrees with Ms. Franklin's interpretation, it must specifically put into law

exactly what is meant by six plants per individual or household, she expressed.

[2:26:13 PM](#)

REPRESENTATIVE CLAMAN commented that he generally concurs with Chair LeDoux's observations about six plants, especially under Ravin and the right to privacy. He opined that Alaska court would analyze that as an open question and he believes there are many situations of people sharing a house and they each have plants in their own bedroom. By the same token they could elect to work together to grow their own individual plants in the basement, he further opined. He noted that the argument they all get accumulated when each individual has the right to possession is a complicated and thorny issue. He hesitated to opine on what the Supreme Court, if given the opportunity, would offer on that.

[2:27:18 PM](#)

CHAIR LEDOUX expressed that the goal of the committee is to take the opportunity away from the Supreme Court and away from the judiciary, as it is the committee's job to be clear enough that both the law enforcement community and the public knows what a crime is.

[2:27:42 PM](#)

REPRESENTATIVE KELLER questioned Ms. Franklin regarding what constitutes an ounce. He noted that the definition of marijuana, [Sec. 53, AS 17.38.900(6)], page 37, [lines 17-24], which reads:

(6) "marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacturer, [SALT,] [sic] derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant that [WHICH] is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;

REPRESENTATIVE KELLER asked what constitutes an ounce and whether there is a way the committee can tie the potency level to the ounce so there some sort of connect.

[2:28:53 PM](#)

MS. FRANKLIN responded that the ABC Board has struggled with this question in that "how do you make an ounce not an ounce when it comes to certain types of marijuana products." She opined there is not a way to regulate the THC content of marijuana. She said they asked their counterparts in Colorado and Oregon those questions and the problem is that unlike alcohol where the manufacturer controls the strength of the product, the THC content of any given crop of marijuana plant is controlled somewhat by nature. There has been testimony that marijuana plants being cultivated today, generally speaking, have a higher THC content than previous generations of marijuana plants as some growers and cultivators are working to increase the THC content. When the solvent processes are used, CO2 process, or simply simmering the marijuana plant in butter or oil, there is a higher THC content. She explained that the ABC Board cannot determine how to regulate by THC content without creating a regulatory nightmare for themselves. She explained that the fact the voters have defined marijuana as including concentrates would foreclose the opportunity to make an ounce of concentrate not an ounce. "An ounce is an ounce," she said, and opined that the way to deal with concentrates in a regulated environment is to focus on the serving sizes. Although that suggestion is outside the scope of [CSHB 79], the concentrates are used to make edibles, the concentrates are combined with other products to make edibles, or the concentrates are sold in a concentrated form. But, in terms of attempting to control the peoples' use of this product, and how much they have at any given time by redefining or using a different measuring system for the concentrates is going down a road that would make it difficult to get consistent regulations.

[2:32:03 PM](#)

MS. FRANKLIN said that the other states have not done that and believes issues around concentrates can be carefully evolved in a manner that has a lot of limits already set in place by virtue of regulating the products that are sold. "It's a long way of saying I don't know of a way that we can make an ounce, not an ounce without violating the intent of the initiative," she remarked. She suggested the committee keep in mind that very

little concentrate is used in edible product. She advised they asked a Colorado retail marijuana establishment how many edible products they would have to buy to get to the one ounce resident limit in that store, and was told "95." There is a practical limit on how many of these products a person can physically eat at one time. In other words, she explained, even though they may be buying an ounce of concentrate when in the edible form, there are other fill ingredients. She said she is optimistic about concentrates, and the committee could honor the voters' intent that an ounce of marijuana be allowed, which would include an ounce of concentrate. By regulating the form in which these products are marketed, and educating the public about what they are, the state can avoid some of the less desirable consequences that states like Colorado have seen.

[2:34:27 PM](#)

REPRESENTATIVE KELLER opined that the committee cannot back off on this because if the committee decides a tax, and bases it on a per ounce system, in essence the committee is perversely incentivizing the oils and the concentrates if there is less cost. He expressed it has to be tied somehow to the THC percentage.

[2:35:08 PM](#)

MS. FRANKLIN responded that the tax is imposed at the grower level so the state would only be taxing the plant and never the concentrate. She explained the \$50 an ounce state tax is at the grow level, and the marijuana then travels to the processors which is the stage that the concentrates are made. She opined that by that time the marijuana all would have been taxed equally. She acknowledged that is her understanding from reading the initiative.

[2:36:48 PM](#)

REPRESENTATIVE GRUENBERG questioned Kaci Schroeder, Alaska Department of Law, whether her answers differ legally from any of the answers the committee has received today. He asked that she review the tape and forward a memo to the committee with her response. He said there may be several lawyers testifying on the bill and he would like to see what they agree on and do not agree on.

[2:37:37 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Alaska Department of Law, said she would be happy to review the hearing today.

[2:38:24 PM](#)

REPRESENTATIVE MILLETT referred to the earlier discussion of five grams of hash oil equivalency to one ounce of marijuana, and asked whether the Department of Law has a position on whether the amount of hash oil or marijuana oil should be limited in the legislation. Obviously, she remarked, an ounce of hash oil is not equivalent to an ounce of marijuana.

[2:39:06 PM](#)

MS. SCHROEDER responded that the Department of Law does not have an official position, and she agrees with Representative Millett's statement that they are more concentrated. However, she pointed out that the initiative reads one ounce, and it is within the committee's purview to limit that should it choose.

[2:39:24 PM](#)

CHAIR LEDOUX surmised that hash oil is a concentrate and heard "Ms. Franklin say a couple of minutes ago that an ounce is an ounce, is an ounce." Subsequently, she heard Ms. Schroeder say that hash oil is a concentrate but [CSHB 79 Version S] discusses five grams. She then referred to a new section, Sec. 50, [AS 17.38.090(c)] page 29, lines 7-8, which read:

(c) the board shall adopt a regulation that prohibits a retail marijuana store from selling more than five grams of marijuana concentrate a day to a customer.

[2:40:19 PM](#)

MS. SCHROEDER responded that it says "marijuana concentrate," which is a sub part of marijuana, if you look at the definition. She said the definition of marijuana arguably does include concentrate and described marijuana as the [umbrella] and the concentrate as the sub part.

[2:40:38 PM](#)

CHAIR LEDOUX said she is trying to determine whether saying five grams of marijuana concentrate, as opposed to one ounce of

marijuana be it concentrated or not concentrated, contravenes the initiative.

[2:41:04 PM](#)

MS. SCHROEDER responded "potentially." She reiterated it is within the legislature's purview to amend the initiative, should they choose to do so.

[2:41:20 PM](#)

CHAIR LEDOUX questioned "so we choose not to abide by the will of the people."

[2:41:25 PM](#)

REPRESENTATIVE MILLETT opined that is a loaded question because she is not sure that when people voted on the initiative, they understood the difference between marijuana concentrate and marijuana leaves. The issue of going against the will of the people, she expressed, is for each legislator to understand and decide policy based on "our" interpretation of the initiative, what it meant, and what is known now.

[2:42:34 PM](#)

REPRESENTATIVE GRUENBERG noted that a court would attempt to find an answer to the question by looking at the history of the initiative.

[2:42:57 PM](#)

REPRESENTATIVE MILLETT replied "only if it was challenged."

[2:43:01 PM](#)

REPRESENTATIVE GRUENBERG maintained that Representative Millett was asking a legal question, therefore the legal answer is how a court would likely look at it. He asked Ms. Schroeder if she knew whether the answer was in the legislative history. He questioned whether the sponsors of the initiative or official documents refer to the phrase "five grams" and whether it was defined as concentrate, or defined as a leaf, or undefined.

[2:44:21 PM](#)

MS. SCHROEDER said she does not believe there was a lot of discussion regarding concentrates but Major Dennis Casanovas, Department of Public Safety (DPS) attended many of the hearings and may have a better recollection of the legislative history and what actually occurred at the hearings.

[2:44:50 PM](#)

DENNIS CASANOVAS, Major, Deputy Director, Division of Alaska State Troopers, Department of Public Safety, said he did listen to all of the public hearings and stood by for questions. There was testimony and comments about concentrates probably at each of the public hearings and the sponsors of the [initiative] primarily described the ballot measure and that the definition of marijuana in essence included concentrates, much like the definition in [CSHB 79].

[2:45:51 PM](#)

CHAIR LEDOUX submitted that page 29, lines 7-8, discusses limiting sale to five grams of marijuana concentrate per day per customer.

[2:46:21 PM](#)

MAJOR CASANOVAS responded that Chair LeDoux is correct. He said he was referring to Sec. 53, AS 17.38.900(6), page 37, lines 17-24, where the definition of marijuana in this legislation is very similar to what was on the ballot measure. He observed there is a subtle difference as the bill elects to remove the word "salt" from what is considered marijuana. He pointed out that the word "oil" appears on line 21 as something that is not defined as marijuana. The ballot initiative as well as CSHB 79 still has vagueness the committee may want to take into consideration to refine the definitions. He stated he does not believe the ballot initiative or any of the testimony spoke specifically to the five grams referred to. He informed the committee there are approximately 28.35 grams in an ounce. Therefore, if a person were to be restricted to only purchase five grams per store, a person would have to go to five stores to receive approximately one ounce.

[2:48:34 PM](#)

REPRESENTATIVE MILLETT questioned what 28.35 grams of concentrate equals how many ounces of leaf marijuana.

[2:49:02 PM](#)

MAJOR CASANOVAS responded that a concern of law enforcement is the definition of an ounce as it does not appear that the initiative or CSHB 79 defines whether or not it is the weight of an ounce, or a fluid ounce. He explained, that if the interpretation is only the weight of an ounce, the viscosity of honey oil, or hash oil, those sort of concentrates, in bulk might only be about the size of half of a tangerine, depending on the viscosity of the concentrate itself.

[2:50:06 PM](#)

REPRESENTATIVE LYNN requested that someone bring in samples of an ounce of liquid or bulk, but not the actual product, to demonstrate what it looks like. He questioned whether law enforcement takes a scale with them, or a volume amount of some kind to measure.

[2:51:19 PM](#)

CHAIR LEDOUX replied that she thought liquids were weighed by a fluid ounce versus non-liquid by dry ounces. When talking about hash oil would it be by fluid ounces.

[2:51:44 PM](#)

REPRESENTATIVE MILLETT asked Ms. Schroeder how the Department of Law (DOL) is measuring an ounce of marijuana, by the fluid ounce or the weight.

[2:51:59 PM](#)

MS. SCHROEDER responded that DOL would defer to law enforcement on that issue. Ms. Schroeder clarified that earlier in her testimony when she said "the initiative says one ounce," she meant in reference to possession not in reference to scale.

[2:52:22 PM](#)

CHAIR LEDOUX opined that the committee had better clarify that in the bill. She then said Major Casanovas, on page 37, line 21, mentioned that oil was not included in the definition of marijuana. She advised that she reads the provision as "marijuana does include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination..." She opined

marijuana does include oil, but not oil from the seed which is not capable of germination.

[2:53:32 PM](#)

MS. SCHROEDER opined that was probably the intent, however, from a grammatical standpoint oil is isolated by commas and therefore is read as an isolated substance. She suggested a way to clear it up is to delete the comma after oil ", oil or cake made from the seeds ..." so it would be the one item. She noted that DOL agrees with Major Casanovas in that there must be further clarity in the definition.

[2:54:12 PM](#)

CHAIR LEDOUX said to mark it and the committee would deal with the grammar [later].

[2:54:26 PM](#)

REPRESENTATIVE GRUENBERG agreed with Representative Lynn in that he would like a demonstration. He pointed out how important a comma can be in legislation as it can change the meaning of a phrase.

[2:55:28 PM](#)

REPRESENTATIVE CLAMAN said he is not certain how the weight question is applied in Alaska law, but federal law does not get involved in fluid ounces and is concerned about grams.

[2:56:09 PM](#)

REPRESENTATIVE MILLETT questioned if the federal government would recognize Alaska's legislation on marijuana when it comes to ounces.

[2:56:20 PM](#)

REPRESENTATIVE CLAMAN said "it is always comforting to know he does not speak on behalf of the federal government."

[2:56:23 PM](#)

REPRESENTATIVE MILLETT added that the federal government does not recognize marijuana as legal.

[2:56:26 PM](#)

REPRESENTATIVE GRUENBERG opined it may be helpful in some of the issues to review federal law.

[2:56:44 PM](#)

CHAIR LEDOUX directed that someone from the Department of Community and Regional Affairs be available at the next meeting in order that the committee can review local options. Chair LeDoux expressed she is not sure that local options should be in the marijuana crime bill. She expressed concern that the committee may not be perceiving ramifications regarding Tribal government versus local governments.

[2:58:04 PM](#)

REPRESENTATIVE GRUENBERG said with respect to the Alaskan Native villages and Alaska law he would like a witness available to discuss the interplay.

[2:58:35 PM](#)

CHAIR LEDOUX agreed with Representative Gruenberg's request, although, she stated, she was not certain the committee will necessarily want to have that provision one way or the other in this bill.

[HB 79 was held over.]

[2:58:54 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:58 p.m.