

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 10, 2015

1:07 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Bob Lynn
Representative Matt Claman

MEMBERS ABSENT

Representative Charisse Millett
Representative Max Gruenberg
Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 30(FIN)

"An Act relating to controlled substances; relating to marijuana; relating to crimes and offenses related to marijuana and the use of marijuana; relating to open marijuana containers; relating to established villages and local options; relating to delinquent minors; making conforming amendments; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 30

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

SPONSOR(S): JUDICIARY

01/23/15	(S)	READ THE FIRST TIME - REFERRALS
01/23/15	(S)	JUD, FIN
01/26/15	(S)	JUD AT 1:00 PM BUTROVICH 205
01/26/15	(S)	Heard & Held
01/26/15	(S)	MINUTE(JUD)
01/28/15	(H)	JUD AT 1:00 PM CAPITOL 120
01/28/15	(H)	-- Companion Bill --
01/30/15	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

01/30/15 (S) -- Meeting Postponed to Monday 2/2/2015
--
02/02/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/02/15 (S) -- Rescheduled from 01/30/15 --
02/05/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/05/15 (S) Scheduled but Not Heard
02/06/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/06/15 (S) -- MEETING CANCELED --
02/09/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/09/15 (S) Heard & Held
02/09/15 (S) MINUTE(JUD)
02/11/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/11/15 (S) Heard & Held
02/11/15 (S) MINUTE(JUD)
02/13/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/13/15 (S) Heard & Held
02/13/15 (S) MINUTE(JUD)
02/16/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/16/15 (S) -- MEETING CANCELED --
02/18/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/18/15 (S) Heard & Held
02/18/15 (S) MINUTE(JUD)
02/20/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/20/15 (S) Moved CSSB 30(JUD) Out of Committee
02/20/15 (S) MINUTE(JUD)
02/23/15 (S) JUD RPT CS 1DP 3AM NEW TITLE
02/23/15 (S) DP: MCGUIRE
02/23/15 (S) AM: COSTELLO, COGHILL, MICCICHE
02/24/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/24/15 (S) Heard & Held
02/24/15 (S) MINUTE(FIN)
03/03/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/03/15 (S) Heard & Held
03/03/15 (S) MINUTE(FIN)
03/05/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/05/15 (S) Heard & Held
03/05/15 (S) MINUTE(FIN)
03/06/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/06/15 (S) -- MEETING CANCELED --
03/09/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/09/15 (S) -- MEETING CANCELED --
03/09/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
03/09/15 (S) Departments: Environmental Conservation
03/10/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
03/10/15 (S) Departments: Environmental Conservation
03/11/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
03/11/15 (S) -- Public Testimony --

03/12/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
 03/12/15 (S) Heard & Held
 03/12/15 (S) MINUTE(FIN)
 03/13/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/13/15 (S) -- MEETING CANCELED --
 03/13/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
 03/13/15 (S) Heard & Held
 03/13/15 (S) MINUTE(FIN)
 03/14/15 (S) FIN AT 10:00 AM SENATE FINANCE 532
 03/14/15 (S) -- MEETING CANCELED --
 03/18/15 (H) JUD AT 1:00 PM CAPITOL 120
 03/18/15 (H) <Bill Hearing Canceled>
 03/23/15 (S) FIN RPT CS 1DP 3NR 3AM NEW TITLE
 03/23/15 (S) DP: MACKINNON
 03/23/15 (S) NR: BISHOP, DUNLEAVY, HOFFMAN
 03/23/15 (S) AM: KELLY, MICCICHE, OLSON
 03/23/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/23/15 (S) Moved CSSB 30(FIN) Out of Committee
 03/23/15 (S) MINUTE(FIN)
 03/25/15 (S) FIN CS ADOPTED Y16 N4
 03/30/15 (S) TRANSMITTED TO (H)
 03/30/15 (S) VERSION: CSSB 30(FIN)
 03/31/15 (H) READ THE FIRST TIME - REFERRALS
 03/31/15 (H) JUD, FIN
 04/06/15 (H) JUD AT 1:00 PM CAPITOL 120
 04/06/15 (H) Heard & Held
 04/06/15 (H) MINUTE(JUD)
 04/07/15 (H) JUD AT 1:30 PM CAPITOL 120
 04/07/15 (H) Heard & Held
 04/07/15 (H) MINUTE(JUD)
 04/08/15 (H) JUD AT 1:00 PM CAPITOL 120
 04/08/15 (H) Scheduled but Not Heard
 04/09/15 (H) JUD AT 1:00 PM CAPITOL 120
 04/09/15 (H) <Bill Hearing Canceled>
 04/10/15 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

CYNTHIA FRANKLIN, Director
 Alcoholic Beverage Control Board (ABC Board)
 Department of Commerce, Community, and Economic Development
 Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSSB 30(FIN), offered testimony and answered questions.

KACI SCHROEDER, Assistant Attorney General
 Criminal Division

Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSSB 30(FIN), answered questions.

AMY SALTZMAN, Staff
Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSSB 30(FIN), offered side-by-side comparisons of Versions T and Q.

JORDAN SHILLING, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSSB 30(FIN), offered side-by-side comparisons of Versions T and Q.

JORDAN WELLINGTON, Attorney
Law Office of Vincente Sederburg
The Marijuana Law Firm
Denver, Colorado

POSITION STATEMENT: During the hearing on CSSB 30(FIN), offered testimony and answered questions.

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

POSITION STATEMENT: Answered questions during the hearing on CSSB 30(FIN).

MATT DAVIDSON
Division of Juvenile Justice
Department of Health & Social Services
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSSB 30, offered testimony and answered questions regarding juvenile records.

RON LESTER
Delta, Alaska

POSITION STATEMENT: Offered testimony during the hearing on CSSB 30(FIN).

TOM PATMOR
Citizens for Rights on Marijuana

Clam Gulch, Alaska

POSITION STATEMENT: Testified during the hearing on CSSB 30(FIN).

CAPTAIN ANNA YOUNG

Cordova, Alaska

POSITION STATEMENT: Offered testimony during the hearing on CSSB 30(FIN).

KEN ALPER, Director

Tax Division

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Offered testimony during the hearing on CSSB 30(FIN).

ACTION NARRATIVE

[1:07:58 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Representatives Keller, Lynn, Claman, and LeDoux were present at the call to order. Representative Foster arrived as the meeting was in progress.

CHAIR LEDOUX advised that the committee will specifically hear testimony comparing the crimes in CSSB 30(FIN), Version T and House CS for CS for Senate Bill 30(JUD), Version Q.

[1:08:09 PM](#)

CHAIR LEDOUX announced that the only order of business would be CS FOR SENATE BILL NO. 30(FIN), "An Act relating to controlled substances; relating to marijuana; relating to crimes and offenses related to marijuana and the use of marijuana; relating to open marijuana containers; relating to established villages and local options; relating to delinquent minors; making conforming amendments; and providing for an effective date."

SB 30-MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES

[1:09:40 PM](#)

CYNTHIA FRANKLIN, Director, Alcoholic Beverage Control Board (ABC Board), Department of Commerce, Community, and Economic Development, referred to the ABC Board and agency's perspective regarding Versions T and Q, and advised she would address

criminal provisions relating to marijuana in light of the initiative. The document, "Preliminary Considerations for the Implementation of AS 17.38," is located on the agency's web site, she pointed out. She explained that the document addresses how the criminal provisions relating to conduct around marijuana will work and informed that committee that alcohol is not in the Controlled Substances Act. She further explained that all of the rules around alcohol are contained in Alaska Statute Title 4, except that alcohol crimes relating to driving are under Title 28. She opined that having all of the criminal provisions in one place allows the ABC Board and its enforcement officers to serve as de facto experts on what is, and is not, allowed around alcohol in the State of Alaska. She stated that in the event a Marijuana Control Board is created, the agency can serve the same role regarding the regulation of marijuana and what is, and is not, allowed. In assigning all of the criminal provisions in one place, side-by-side, next to the statutes enacted by the voters will assist in the laws being clear for the general public and law enforcement officers.

1:11:58 PM

MS. FRANKLIN pointed out that the voters stated in AS 17.38, their intention that marijuana is a legal substance for individuals 21 years of age and older, which puts it in the same category as alcohol as a legal but dangerous and regulated substance. She conveyed that requiring law enforcement to start with the basis that the substance is illegal is both contraindicated in the initiative and confusing for law enforcement and members of the public. The conduct around the substance is what the laws will be designed to address. She offered that under the split scheme of having marijuana as a controlled substance in Title 11, and also a legal and regulated substance in Title 17, forces an officer into the position of determining whether or not he/she is looking at a pile of legal regulated marijuana or a pile of illegal marijuana. She extended that it is not a concern of the ABC Board that it can't be done, as it can, and if no criminal bill is passed that will be the status of the law in this state. The concern is that there would potentially be a lack of enforcement over conduct around marijuana that is illegal. She pointed out that in discussing goals set forth in the James M. Cole, Deputy Attorney General, U.S. Department of Justice, 2/19/13 memo entitled "Guidance Regarding Marijuana Enforcement," and how to strictly regulate this substance and stay on the right side of the James M. Cole Memo, the ABC Board should be able to enforce the rules and if the rules are confusing and difficult to enforce, the state

risks a lack of enforcement that could lead to public safety issues. She articulated that as set forth in the ABC Board's preliminary considerations document, the ABC Board has taken the position that the most desirable approach is to place a series of criminal offenses in one place in Title 17, which proclaims and announces to the world what is, and is not, allowed around marijuana subsequent to the voter initiative.

[1:14:51 PM](#)

MS. FRANKLIN responded to Chair LeDoux that the "Preliminary Considerations for the Implementation of AS 17.38" document is part of larger document and Ms. Franklin will email it to her.

[1:15:31 PM](#)

REPRESENTATIVE CLAMAN commented that currently there are marijuana offenses as a controlled substance in Title 11. He asked what the criminal offense would be for more than one ounce, and whether there would both be up to one ounce that is legal and also a Title 17 offense that begins at over one ounce. There would be no be Title 11 marijuana offenses, and all misdemeanor and felony marijuana offenses would be contained in Title 17, he surmised.

MS. FRANKLIN responded "Yes," and explained the alcohol offenses in Title 4 apply to both licensees and non-licensees. She advised that all provisions in Title 4 are not only related to commercial alcoholic activities. She used the example of AS 04.16.051, which is furnishing alcohol to a minor by someone who does not hold an ABC Board license, and AS 04.16.052, is what happens when a liquor licensee furnishes alcohol to a minor. She clarified that the idea is that all criminal conduct around marijuana would be contained in one place, whether it is committed by someone holding a marijuana license or someone who does not.

REPRESENTATIVE CLAMAN surmised that also contained in Title 17, would be the specification that up to one ounce, if a person is over 21, is now legal and above that would be illegal. He further surmised it would clearly have that first ounce consistent with the initiative and would be clearly legal as articulated in the statute.

MS. FRANKLIN answered in the affirmative, and advised that essentially it would state where a person gets beyond what is contained in the initiative as being legal. She advised that

the term used in the previous version of the bill was "misconduct involving marijuana," and it would described how that offense is committed and include the various types of conduct that would run a person into that problem and the associated penalty.

[1:18:21 PM](#)

CHAIR LEDOUX noted that under the initiative a person can possess one ounce purchased from a vendor, and a person can also possess up to six marijuana plants which can grow more than one ounce. She questioned whether it makes sense that a person cannot purchase more than one ounce and it becomes either a fairly hefty misdemeanor or maybe a felony, but a person can grow as much as they can grow. In that regard, a person with a "green thumb" could produce quite a bit and someone else couldn't produce any, and that the criminal laws are based upon that issue.

MS. FRANKLIN responded that the legislature is guided by the initiative and the initiative decriminalizes possession of an ounce outside a person's home. [The initiative] then turns to what a person can do inside of their home and discusses the growing provisions and does provide that a person is permitted to possess the harvest of their grow. She opined it does vary because Alaskans have had the right to grow in their own home for many, many years, and that the amount of the harvest varies tremendously from thumb-to-thumb. She further opined that criminal penalties would have to be written that are structured around what the voters have voted for. Although, she answered, it doesn't necessarily make sense and when compared to alcohol where a person can virtually have any quantity unless in a local option community, it would make these criminal provisions look very different. She remarked that she is taking the advice of colleagues in Colorado who said, when embarking into this new territory the legislature should start conservatively with strict rules and regulations that later on can be reviewed once it is determined how the rules are working. She said she takes the initiative literally, and when it talks about possession outside of a person's home and puts the one ounce limit on it that it makes sense the rules would have to say what happens when a person possesses more than one ounce outside of their home. She pointed out that it is the legislature's policy determination in setting the penalties and posited that if the legislature says, as the voters have said, the limit on the amount a person can possess outside their own home is one ounce,

there must be a corresponding provision to inform what happens when a person possesses more than one ounce.

[1:22:07 PM](#)

CHAIR LEDOUX extended that the initiative does not read that a person can only possess an ounce outside of a person's own home as it just reads an ounce. She put forth a scenario of the police coming into a person's home for some other reason and finds two ounces of marijuana with no plant. The person then advises that the plant died and the two ounces is harvest from their plant. Practically, she asked, what happens and how does Ms. Franklin anticipate that working inside the home.

MS. FRANKLIN replied that it is a difficult question because inside the home is the exact area the Alaska Supreme Court addressed in Ravin v. State of Alaska, 537 P.2d 494 (Alaska 1975), and in Noy v. State of Alaska, 83 P.3d 538, 544-45 (Alaska Ct. App. 2003), in which the Alaska Supreme Court deemed Alaskans have a constitutional right of privacy to possess up to four ounces of marijuana in their own home. She described it as a difficult task to set those limits and the legislature has a tough job in terms of creating offenses around what a person can, and cannot, possess. She advised that the ounce she was speaking of was literally the ounce referred to in the initiative, which is legal for adults to possess up to one ounce outside the home. She warned the committee to be careful when legislating the amount adults can possess inside their home when cross-referencing the Alaska Supreme Court precedent that has been created and upheld in this state.

[1:24:29 PM](#)

CHAIR LEDOUX asked whether Ms. Franklin reviews the initiative as regulating one ounce outside of the home as opposed to inside the home. She surmised that it includes inside the home also except that with the marijuana plant a person can possess more as long as it came from that particular marijuana plant.

MS. FRANKLIN responded that there are three areas: outside the home; inside the homes with respect to growing and harvesting the plants; and inside the home with respect to the rules established by the Alaska Supreme Court in the Ravin and Noy decisions.

[1:25:33 PM](#)

CHAIR LEDOUX asked Ms. Kaci Schroeder how, in a practical manner, the questions she asked Ms. Franklin would work with the Department of Law (DOL).

[1:26:02 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law (DOL), summarized Chair LeDoux's questions as to when a person possesses two ounces in their home and for some reason law enforcement ...

CHAIR LEDOUX restated the scenario in that a person has two ounces in their home with no marijuana plant.

MS. SCHROEDER responded that it is difficult to offer a straight answer because there is the Noy decision that re-enforced the four ounces and it is still good law. She advised that subsequent to the 2006 Noy decision, the legislature changed the law again as it had new findings regarding how bad marijuana was. The legislature then lowered the limit and did not specify, so it applies inside the home. As a practical matter, she stated, she does not know whether a trooper would make an issue out of Chair LeDoux's scenario. She related that the law on the books, in December, has not been challenged so there is some conflict between case law and what is on the books.

[1:27:14 PM](#)

CHAIR LEDOUX asked whether the Noy decision was four ounces.

MS. SCHROEDER advised that it re-enforced the legislature's determination of four ounces.

CHAIR LEDOUX pointed out that a marijuana plant could produce more than four ounces and a person can possess all of the harvest.

MS. SCHROEDER agreed in that the initiative reads there is no threshold as long as a person is cultivating and harvesting it from their own plant.

CHAIR LEDOUX surmised that if a person wants more than four ounces there had better be a plant in the house.

MS. SCHROEDER indicated that when a person has a plant it has been referred to as a justification.

[1:27:59 PM](#)

REPRESENTATIVE CLAMAN stated that the initiative reads one ounce and six plants. He asked whether that means a person could possess an ounce on the street, and when at home could add to the same ounce with whatever the person can gather off of six plants.

MS. SCHROEDER answered in the affirmative as that is how DOL reads the initiative.

[1:28:58 PM](#)

CHAIR LEDOUX advised that Amy Saltzman and Jordan Shilling will take the committee through the bills, particularly the side-by-sides with respect to penalties and tell the committee, in the event it decides to take marijuana out of controlled substance, what might need to be done to tweak the bill a bit.

[1:29:36 PM](#)

AMY SALTZMAN, Staff, Senator Lesil McGuire, Alaska State Legislature, [Available to testify and answers questions.]

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, [Available to testify and answers questions.]

[1:29:42 PM](#)

MS. SALTZMAN referred to a comparison document provided in the committee member's packets and advised that the document was prepared so the committee could review the differences between the version passed out of Senate Judiciary Standing Committee [Version Q], and the version passed out of Senate Finance Committee [Version T] with regard to the crimes and penalties assessed. She pointed to the document and that the Senate Finance Committee version, class C felony crimes, include:

- * Possesses 16 or more ounces of useable marijuana outside of the home.
- * Possesses 25 or more plants.
- * Furnishes marijuana twice within five years to a person under 21 years of age.

MS. SALTZMAN stated the penalty is a fine of up to \$50,000 and jail time of zero to five years. The Senate Judiciary Standing Committee version started its highest penalty crimes at class A misdemeanor crimes, include:

- * Possesses 25 or more marijuana plants, manufacturing more than six marijuana plants.

[1:30:53 PM](#)

CHAIR LEDOUX asked how a person manufactures a plant.

MS. SALTZMAN responded that it is the cultivation process ...

MR. SHILLING replied that growing a plant is excluded from the definition of manufacture. He stated that Ms. Hilary Martin could speak to the nuances.

[1:31:38 PM](#)

MS. SALTZMAN continued reading the Senate Judiciary Standing Committee version's highest penalty crimes at class A misdemeanor crimes, include:

- * Delivers or transports more than one ounce of usable marijuana or more than six marijuana plants.

MS. SALTZMAN advised the above is in reference to transporting in a person's vehicle or delivering to another person by carrying these out in the public or transporting by vehicle. She continued that the Senate Judiciary Standing Committee version's highest penalty crimes at class A misdemeanor crimes, include:

- * Delivers any amount of marijuana to a person under the age of 21.
- * Manufactures a marijuana concentrate using a volatile or explosive gas.
- * Delivers or transports an ounce or less of marijuana or six plants or less for remuneration or barter.

[1:32:20 PM](#)

CHAIR LEDOUX referred to remuneration or barter and said that barter is part of remuneration. She offered a scenario in which a person gives six marijuana plants for six bottles of wine, therefore, the person is paid. She asked why the term barter is included and how barter differs from remuneration.

MS. SALTZMAN advised that the issue was debated by the committee and was an amendment as to the definition of barter.

MR. SHILLING said that remuneration strictly means monetary gain, currency. He explained that the intent of adding barter is because there are other things that have value and barter is to include the exchange of goods and services.

[1:33:25 PM](#)

CHAIR LEDOUX asked Mr. Shilling how he determined that the definition of remuneration only includes money. She further asked whether it was a Webster's Dictionary definition or a definition in law as his definition is not the common place definition of remuneration.

MR. SHILLING conveyed that Legislative Legal and Research Services advised it is strictly money, and offered to review Black's Law Dictionary, or that Chair LeDoux could speak with Ms. Hilary Martin.

MS. SALTZMAN added that the original language used "benefit" which was too broad for most people to interpret, and that it was typically used within the Alaska Statutes. The intent was to get it a little narrower, however, barter is a fairly broad term, she noted.

[1:34:21 PM](#)

CHAIR LEDOUX asked whether "benefit" is from the initiative.

MR. SHILLING answered that the initiative only refers to "remuneration." "Benefit" is the term Legislative Legal and Research Services used when initially drafting the bill. He opined that is the form it took for a of couple working committee substitutes in the Senate Judiciary Standing Committee.

[1:35:00 PM](#)

MS. SALTZMAN continued with the presentation and referred to the Senate Finance Committee version of CSSB 30 [Version T] class A misdemeanor crimes, include:

- * Delivers or transports more than one ounce of marijuana or more than six marijuana plants.
- * Possesses 3 but less than 16 ounces of marijuana outside of the home or 12-24 plants.
- * Delivers any amount of marijuana to a person under 21 years of age.
- * Delivers or transports an ounce or less of marijuana or six plants or less for remuneration or barter.
- * Manufactures a marijuana concentrate using a volatile or explosive gas.
- * Brings marijuana into a correctional facility.

CHAIR LEDOUX questioned whether there are provisions in the Senate Finance Committee version that are not a class A misdemeanor within the Senate Judiciary Standing Committee version.

MS. SALTZMAN answered in the affirmative.

CHAIR LEDOUX asked whether those provisions are in any [class] within the Senate Judiciary Standing Committee version.

MS. SALTZMAN replied that within the Senate Judiciary Standing Committee version marijuana was removed from the controlled substances and it did address the issue of bringing marijuana into a correctional facility. She opined that it wasn't put on the crime schedule but it may have ended up there if there had been further debate. She remarked that it was recommended by DOL that it remain as a class A misdemeanor. She conveyed that the possession crimes are the significant difference by adding the amounts, thresholds, and limits on the 3-16 ounces, which was the heart of the Senate Finance Committee debate when it added these crimes in the schedules.

[1:36:59 PM](#)

CHAIR LEDOUX quiered whether they were not crimes at all under the Senate [Judiciary Standing Committee] version.

MS. SALTZMAN explained that the only crime the committee had was possessing 25 plants or more which was a class C felony. She noted it was moved from a class C felony to a class A misdemeanor in the Senate Judiciary Standing Committee version.

CHAIR LEDOUX asked whether 3-16 ounces of marijuana outside of the home or 12-24, was anything in the Senate Judiciary Standing Committee.

MS. SALTZMAN responded that the committee had a class A misdemeanors as possession of 25 or more, and a class B misdemeanor as possessing more than 6 but less than 25 plants. Ms. Saltzman replied to Chair Ledoux that the committee struggled in attempting to determine the best definition for usable marijuana. She advised that the Senate Judiciary Standing Committee and the Senate Finance Committee worked together in attempting to ascertain a clear definition for [usable marijuana], which was achieved in the Senate Finance Committee version.

CHAIR LEDOUX pointed out that the [usable marijuana] definition would be relevant not only for 3-16 ounces of marijuana, but also one ounce.

MS. SALTZMAN answered in the affirmative.

[1:38:33 PM](#)

MS. SALTZMAN continued her presentation and advised that the Senate Judiciary Standing Committee version, class B misdemeanor crimes, include:

- * Possesses, purchases, displays, delivers or transports more than 6, but less than 25 marijuana plants.
- * Delivers more than one ounce of usable marijuana in a public place or possesses, or delivers more than six plants.

MS. SALTZMAN stated that the Senate Finance Committee version [class B misdemeanor crimes] include:

- * Possesses more than two, but less than three ounces of usable marijuana outside of the home.
- * Possesses seven to eleven plants.

[1:39:02 PM](#)

MS. SALTZMAN said with regard to violations, the Senate Judiciary Standing Committee version, violations punishable by a fine of \$300, include:

- * Manufacture marijuana in a location where the plants are in public view or 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.

MS. SALTZMAN said the Senate Judiciary Standing Committee version, violations punishable by a fine of \$100, include:

- * Are under 18 and possesses, uses, or displays any amount of marijuana.
- * Are over 21 and use any amount of marijuana in a public place.
- * Are between the ages of 18-20 and use, display or possess one ounce or less of marijuana.

MS. SALTZMAN clarified that the drafting language of some sections in the Senate Judiciary Standing Committee version are convoluted as there were issues in putting the initiative language into misdemeanor crimes, and attempting to replicate the initiative language of delivery, display, and possess. She indicated the committee attempted to put that language in the bill for clarity sake, but it made the language more confusing. Therefore, she pointed out, some of the language needs to be cleaned up.

[1:40:33 PM](#)

MS. SALTZMAN referred to the Senate Finance Committee version wherein violations punishable by a fine up to \$300 include:

- * Possesses over one ounce but less than two ounces of marijuana outside the home.
- * Consumes marijuana in a public place.
- * Grows marijuana in public view or on someone else's property without their consent.
- * Uses marijuana while operating a vehicle.
- * As a minor, possesses less than two ounces of marijuana or consume any amount of marijuana.

[1:41:10 PM](#)

CHAIR LEDOUX referred to the Senate Judiciary Standing Committee version of the non-controlled approach, and asked Ms. Saltzman's recommendations in incorporating some of the Senate Finance Committee version.

MS. SALTZMAN stated it would be best to create a hybrid if that is the direction the House Judiciary Standing Committee preferred. She offered that the Senate Finance Committee version clarifies the definition of marijuana. She indicated that another policy call the committee might consider is in the Senate Finance Committee version wherein Tetrahydrocannabinol (THC) was removed from the IIIA controlled substances, and put into VIA controlled substances, which is the definition of marijuana in the controlled substances. She stated it is up to the committee to consider whether it prefers removing THC entirely from the IIIA controlled substances, or where the committee would like to put marijuana in the future.

[1:42:39 PM](#)

MS. SALTZMAN, in response to Chair LeDoux, advised that Tetrahydrocannabinol (THC) is listed in the IIIA controlled substance schedule and ...

CHAIR LEDOUX asked "as opposed to the Sec. 6."

MS. SALTZMAN answered in the affirmative, and advised that the confusion was discussed with DOL, who indicated they are not sure what it is defining, and what is the definition of THC. She indicated that DOL considered putting it in to deal with synthetic THC, rather than organic THC. Although, she opined,

since the definition is so unclear there is the issue that the committee could be making all of marijuana illegal because there is no marijuana without THC. In that regard, removing it entirely from IIIA controlled substances might be an option to consider, or possibly moving it to another place, she offered.

[1:43:35 PM](#)

MS. SALTZMAN continued her presentation and advised that the sale of concentrates section was added in Senate Judiciary Standing Committee and amended in the Senate Finance Committee, wherein it reads that a person could only sell five grams per transaction. The Senate Judiciary Standing Committee version reads five grams total, which is not possible to track because the initiative prohibits any sort of tracking system of sale. She related that it was corrected in the Senate Finance Committee version.

CHAIR LEDOUX offered that it is questionable whether or not the sale belongs in the criminal bill as opposed to letting the, hopefully, created Marijuana Control Board deal with that.

[1:44:32 PM](#)

MS. SALTZMAN advised that in the event the Marijuana Control Board does exist, the Senate Finance Committee version grants the powers of enforcement through Title 11 and Title 17, thereby granting authority to follow through with the enforcement issues it would be tasked with. There is a provision providing firemen or EMS under 21 to enter a marijuana facility if responding to an issue which, she added, the Senate Judiciary Standing Committee version supports. She referred to the open container law and advised it was changed from the Senate Judiciary Standing Committee version and in the Senate Finance Committee version was modified slightly. With reference to the CourtView records for juveniles, Ms. Saltzman advised that staff worked closely with the Senate Finance Committee and the Alaska Court System to be certain the language reflected the intention of the Senate Judiciary Standing Committee.

CHAIR LEDOUX referred to juveniles and offered her concern that when a person is joining the military, there is probably a conviction question regarding a felony or misdemeanor, and a person convicted of a felony or misdemeanor may not be able to join the military. She stated that in order to be certain with juveniles that the committee should keep it in the violation category.

[1:46:51 PM](#)

MS. SALTZMAN responded that the Senate Judiciary Standing Committee and Senate Finance Committee debated keeping these records off of CourtView once the cases were closed. She explained that the intent was not prohibiting any sort of life-long decision that a juvenile might damage.

CHAIR LEDOUX advised her concern is keeping them off CourtView so the public, when they have nothing better to do in the evening, cannot see a juvenile's [record]. She remarked that if the committee wants to be certain it is not having an impact forever on a juvenile's life, it might take eliminating it from CourtView altogether.

REPRESENTATIVE CLAMAN offered that court records are available at the courthouse regarding files purposely not available on CourtView, and that the public can draw wrong conclusions from information involving acquittals and other issues.

[1:48:38 PM](#)

MS. SALTZMAN said that the Senate Finance Committee version added delivery of marijuana as a crime in order to prohibit a delivery service of marijuana, and the committee may want to consider keeping that in.

CHAIR LEDOUX asked for clarification regarding the licensed marijuana establishment not being allowed to deliver its goods. She added that in California they do deliver medical marijuana, but that is something that should be dealt with in the marijuana regulations.

[1:49:44 PM](#)

MS. SALTZMAN indicated that the Senate Finance Committee version added language for the local option of opting out or the option of established villages opting back in.

[1:50:03 PM](#)

REPRESENTATIVE CLAMAN stated it is the House Judiciary Standing Committee's view that the "opt in/opt out" topic was addressed in HB 75.

[1:51:48 PM](#)

The committee took an at-ease from 1:51 to 1:53 p.m.

1:53:01 PM

JORDAN WELLINGTON, Attorney, Law Office of Vincente Sederburg, The Marijuana Law Firm, said his background includes being a staffer in the Colorado General Assembly, an attorney and former bill drafter for the New Jersey legislature including a legalization initiative. At the end of the legislative session he worked for the Colorado Marijuana Enforcement Division and assisted in organizing its rule making and working groups and was part of a small team that drafted regulations governing both retail and medical marijuana in Colorado. He then joined the Law Firm of Vincente Sederburg, and works on regulatory compliance for licensed marijuana businesses. He remarked that he performs policy work with other states in devising responsible regulatory structures. He noted that the discussion [today] is of de-scheduling cannabis and whether that is an appropriate way to move forward.

1:55:23 PM

CHAIR LEDOUX asked whether he had any advice for this legislature based upon what Colorado did right, or wrong.

1:55:34 PM

MR. WELLINGTON responded that a large lesson is the importance of a policy perspective embracing the challenge and setting up a regulatory structure designed to protect public safety, but doesn't go overboard. He stated that his first piece of advice is to take a careful, thoughtful approach to what is put in place because there is a lot of white noise that can create negative consequences. For example, there are numerous labeling requirements in Colorado, many of which were well intentioned but created so much white noise on the label that Colorado is not conveying the most important information to consumers in order to protect public safety, he explained. In drilling down specifically on the issue of de-schedulaization it is important to look holistically at the code, and especially criminal codes where the controlled substances come up. Colorado drafters frequently reference that list of substances and it has been dealing with the child abuse and neglect statutes. He said that due to the manner the statutes are written that basically the possession, manufacture, production, or use of a controlled substance, is more or less per se child abuse in a lot of

situation. Currently, there is a situation in Colorado where it is important to remove cannabis from those schedules so it can be treated as much more of a totality of the circumstances approach. Obviously, he pointed out, engaging in the use of any substance as a parent could present a risk to their child as it depends upon whether the parent does so responsibly, as in alcohol or any other substance they might take. He advised it is important to look at cannabis as a legal substance and the totality of the circumstances situation and not just a binary first (indisc.) decision that is seen in many abuse and neglect statutes. He offered that probation is another great example where people who are very sick, people with epilepsy, and people with cancer, that are on probation are denied the use of medical cannabis due to federal prohibition. He advised that removing cannabis from the schedule allows each individual circumstance to be treated more appropriately as opposed to a broad brush stroke that the Controlled Substances Act is.

[1:58:57 PM](#)

REPRESENTATIVE KELLER said that he read an article wherein regret was expressed from Colorado and Washington for not having done more to enable the regulation of concentrates and potency, which he assumes relates to the labeling.

MR. WELLINGTON responded that he has heard concerns about concentrates with the biggest issue being developing a solid equivalency standard for sales through the Marijuana Enforcement Division, in order that the discussion would be like components. He conveyed that he has not seen a lot of actual concerns on the ground in terms of people using cannabis concentrates as there are legitimate substances a person may want to use, both for medical or recreational purposes. He related that it is really a question of how that line is drawn to determine that people are not over aggregating large quantities, and that his focus is always public safety, diversion to other states, and diversion to minors. He opined that an important way to do that is having reasonable sales limitations at the counter. In that manner, a person may be able to purchase just one ounce of marijuana flower at the register, and not necessarily an entire ounce of marijuana concentrate at the register. He pointed out that developing a rational equivalency standard would reduce the amount a person could purchase thereby limiting diversion, which he strongly suggested the legislature consider if it makes sense for Alaska.

[2:00:55 PM](#)

REPRESENTATIVE KELLER indicated that he was hoping Mr. Wellington could give the committee the rational equivalency standard.

[2:01:03 PM](#)

REPRESENTATIVE CLAMAN referred to prior testimony from Ms. Cynthia Franklin that indicated a broad concept thereby starting with a clear set of regulations and basic set of laws. He extended that in going forward they would need to be refined, but to not try and get every detail right the first go-around. He asked Mr. Wellington for background in terms of Colorado's experience as to how much detail it tried to provide at the first instance, and the timeline in which it has gone in making modifications or adjustments to the laws and regulations.

[2:02:06 PM](#)

MR. WELLINGTON answered that Colorado has seen issues on both sides of this kind of situation. On one hand there are regulations and statutes drafted broadly enough that allowed the Marijuana Enforcement Division (Colorado's regulatory agency) to adjust and massage the regulations over time without statutory intervention. He expanded that an example can be found in Colorado's concentrate production regulations, which he strongly recommends Alaska's regulatory body review as it is an important worker safety measure. The Colorado Marijuana Enforcement Division had broad authority to regulate various things for basic efficient and safe administration of the article, he remarked. Although, he pointed out, there was no express designation for them to regulate concentrate production it was able to use the broad grant of authority to establish a fairly comprehensive set of regulations designed to protect worker safety around the production of concentrates.

[2:03:13 PM](#)

MR. WELLINGTON offered an example regarding the manner in which packaging language was drafted in that a determination was made that serving sizes should be more intuitive in a retail marijuana product. He explained that without any statutory authority or direction from the legislature, the Colorado Marijuana Enforcement Division recognized it needed to adjust the structure of packaging and immediately convened working groups, developed a set of rules, and implemented the rules very quickly. He further explained that it created economic

incentives to reduce the size of cannabis within a package, and at the same time made serving sizes more intuitive for adults thereby reducing accidental over ingestion. He pointed out that in contrast to that, Colorado still has problems with labeling requirements as there are 20 different things per statute that must be on the label. He advised that label requirements are statutory and specific, and they downed the regulators hands. He noted that the regulators would like to remove some of the noise and unnecessary information on the label. For example, he offered, only the batch number and producer is needed, but there is a host of other tracking information that due to Colorado's tracking system is duplicative and unnecessary but is forced to be on there. He said that all of that information creates white noise for the consumer and thus reduces the ability to put special warnings in larger font regarding storing safely, not allowing access to minors, or waiting two hours for the effect of an edible product to come in, which affects consumer safety. He noted there is a balance of making sure the regulators do check off all their boxes, and not binding their hands to very specific legislation in that the Alaska regulatory agency has the flexibility to change those rules as it sees fit. This is involving policy and just because something works in Colorado doesn't mean it will work in Alaska. He pointed out that the Alaska legislature will have to design policy that fits its communities and state, and the legislature will not get it right the first time as no one does. He related that giving regulators flexibility within the language to make adjustments to protect public safety is very important.

[2:06:16 PM](#)

REPRESENTATIVE CLAMAN surmised that Mr. Wellington strongly recommends, in the area of labeling, to be certain as a legislature that it gives the regulatory entity authority to manage labeling in that it doesn't come back to the legislature every time.

MR. WELLINGTON agreed with Representative Claman's statement, but stated that on the other hand the legislature does not want to give the regulatory entity flexibility on things like child resistant packaging as everything should be in child proof packaging with no negotiations or conversations to the contrary.

[2:07:40 PM](#)

HILARY MARTIN, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, said she is available on line.

CHAIR LEDOUX asked what manufacturing a plants means.

MS. MARTIN responded that manufacture is currently defined in AS 11.71.900, and reads that manufacturing does not include growing marijuana for personal use. She offered that manufacturing does include growing, cultivating, production, and preparation and conveyed that manufacturing includes growing marijuana and making it into a concentrate or some other process to get a different product out it.

[2:08:51 PM](#)

CHAIR LEDOUX asked whether [the bill] could [read] cultivating and processing marijuana as opposed to manufacturing marijuana, which might be easier for a person to understand.

MS. MARTIN replied that processing and cultivating is included in the definition in AS 11.71.900, and there does not have to be an identical definition. She pointed out that the initiative does not define manufacture and if Chair LeDoux wanted to adjust the definition it is certainly a possibility.

[2:09:34 PM](#)

CHAIR LEDOUX asked whether remuneration is defined in any of the statutes and whether it includes barter.

MS. MARTIN responded that remuneration is not currently defined in the statutes and is in defined in the initiative. She said that a common dictionary definition seems to imply a transaction for money, and it is unclear whether it would include barter. An option to solve the problem is including a definition of remuneration to make it clear what it is, and is not, she remarked.

CHAIR LEDOUX previously questioned the confidentiality issue of juvenile records and asked Mr. Matt Davidson to testify.

[2:10:46 PM](#)

MATT DAVIDSON, Division of Juvenile Justice, Department of Health & Social Services, said any felony or misdemeanor provision is handled by the Division of Juvenile Justice under

AS 47.12.310 or .315. He pointed out that the records are strictly confidential and released under limited circumstances so the criminal act under marijuana would remain confidential and handled by the Division of Juvenile Justice. The portion of the bill speaking to confidentiality deals with violations that would become district court offenses, basically pot tickets. He noted concern in the Senate Judiciary Standing Committee about those being on juvenile's records publically forever and assessable. He explained that the provision is aimed at the non-criminal offense, and more the violations that are handled in district court via fine.

2:12:00 PM

REPRESENTATIVE CLAMAN surmised that the parallel would be minor consuming for alcohol that show up as district court minor infraction type offenses whereas everything else would go into their juvenile record. In that regard, he said, with marijuana someone might get ticketed for possession of marijuana in district court. In the event the person was under 18, it would be a public record unless there was a means to insist those could only be prosecuted by juvenile authorities which would bring in the confidentiality, or provisions to make them confidential.

2:12:51 PM

MR. DAVIDSON stated that Representative Claman is correct, and there was discussion regarding the potential of moving all marijuana offenses or keeping them all in the Division of Juvenile Justice. He advised that would be problematic as those would be status offenses and not currently going to be criminal acts. He explained that a status offense is something that is not illegal if an adult, but illegal as a juvenile. He related that the Division of Juvenile Justice had provided testimony that it would like to keep them out of the criminal system as they are violations, and are given a fine, which is the same for alcohol. He noted that there are provisions in place under AS 47.12.310 allowing the division to release information, with the consent of the individual, to military recruiters or employers, but is limited to adjudications which would be the equivalent to being convicted for a crime as a juvenile. He offered that the division is authorized to release those records, and juveniles themselves are allowed to release any confidential information from their juvenile records. He noted that the military requires signing under oath regarding anything a person has been charged with, so whether it is confidential or not, the juvenile

should not withhold that information. He remarked that this bill would not change information a juvenile is required to release to a military recruiter.

2:15:00 PM

CHAIR LEDOUX asked whether or not being a minor in possession of pot would preclude someone from getting into the military.

MR. DAVIDSON advised that he researched this issue and under either version of the bills a minor cited for a marijuana violation would not be precluded from entering the military. Although, he commented, the military may decide a person having a number of violations could be precluded. He remarked that the military does have a waiver processes whereby kids with criminal records, and some of them extensive, are given waivers when they can show they have been rehabilitated. In that regard, juveniles who go through the Division of Juvenile Justice, and sometimes an adjudicated delinquent that spends time in a juvenile treatment facility are sometimes able to enter the military, but they have to go through a more formal process. He opined that the military recruiting documentation indicates that a violation such as a marijuana ticket, under-age drinking ticket, fish & game violation, or a traffic violation under these bills will not preclude a juvenile. He suggested that a felony or higher misdemeanor conviction might preclude a person from joining the military.

CHAIR LEDOUX opened public testimony.

2:18:06 PM

TOM PATMOR, Citizens for Rights on Marijuana, said it is ridiculous to expect kids 21 years or younger to abide by any rules unless the parents are given some discretion in disciplining these kids. He related that a parent tries to spank a kid, is reported to the police, and the parents go to jail for disciplining their kids. He remarked that kids now days think they are more grown up than they actually are and telling them they can't do something until they are 21 ... they hardly ever listen to that as they want to do the same as adults. He pointed out that if they see their parents, or neighbors, or anyone else smoking pot they are going to figure they can do it also. He offered that more discretion has to be given to parents in disciplining their kid, and get the message across that they shouldn't be doing these things.

2:19:52 PM

MR. PATMOR related that as a child his father convinced him with the back of his hand that he shouldn't smoke cigarettes. He remarked that a parent can influence their kids regarding what they are going to do and who they hang out with, but if the parent faces the possibility of going to jail over it a lot of parents won't even try to discipline their kids. He pointed out that parental discipline will be the main factor in deciding how many kids use pot and its derivatives.

2:20:54 PM

CAPTAIN ANNA YOUNG reiterated Representative Nageak's comments spoken on the House floor in that there is no comparison between marijuana and alcohol, and they should not be compared or ruled on in the same manner. She said she agrees with Representative Nageak in that prisons are overrun with non-violent offenders and the court system is jammed up with non-violent criminals. Alaska should try to eliminate this problem and look at the violence toward women and children rather than worrying about pot smokers that are not damaging anyone. She advised that in 2000, she ran for Congress on the platform of legalizing industrial hemp which was associated with pot and, therefore, went down. She noted that Colorado has received a lot of money from industrial hemp and Alaska could do the same. She remarked that she would like to have a choice at the pumps with her medicine, her food, and able to grow industrial hemp and pot for uses that are well documented. Alaskans, she stated, are becoming disenchanted with Juneau as they vote for things that never happen, such as, moving the Capitol three times. The voters spoke regarding legalizing marijuana and she described it as being picked apart whereas a lot of the state will not be eligible for this legalization, such as Cordova because it is not in a borough, and as a resident of Cordova rejects this part of the planning.

2:23:49 PM

KEN ALPER, Director, Tax Division, Department of Revenue, referred to the discussion regarding legal limits and the difference between the various bills. He suggested that a potential solution would be to make volumes in excess, of whatever the legislature chose, subject to the excise tax on marijuana. He explained that the \$50 tax in the initiative is subject to the grower at their first sale to a wholesaler or a

retailer, and that tax could also be put upon the person who possesses an illegal amount.

[2:24:54 PM](#)

CHAIR LEDOUX said that SB 30 was held over.

[2:25:08 PM](#)

CHAIR LEDOUX advised there will be another committee substitute for SB 30 based upon the testimony of Ms. Franklin and the overwhelming public testimony, and that it will follow in the approach of the Senate Judiciary Standing Committee.

[2:25:48 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:25 p.m.